

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 September 2011

**Public Authority:** Wolverhampton City Council  
**Address:** Civic Centre  
St. Peters Square  
Wolverhampton  
WV1 1SH

### Decision

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1. In the course of ongoing correspondence with Wolverhampton City Council (the council), the complainant requested information relating to an internal matter. During the Information Commissioner's investigation, the council agreed to address the outstanding elements of the various requests and the complainant subsequently indicated that she wished the Commissioner to give his decision in respect of various procedural aspects of the complaint.
2. The Commissioner's decision is that Wolverhampton City Council failed to disclose requested information within the statutory time limit of 20 working days and failed to issue notices to the complainant which complied with the requirements of the Freedom of Information Act 2000.
3. The Commissioner is currently engaged in work with the council, which is intended to improve its FOIA compliance.

### Request and response

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4. The complainant was in correspondence with Wolverhampton City Council (the council) about an internal matter, and wrote to it over several months, including various dates in July and August 2010. Her correspondence was generally responded to by the council in the normal course of business, ie without recourse to the provisions of the Freedom of Information Act 2000 (the Act). Within that correspondence, she requested information in the following terms [numbering added for reference]:

**[1] 20 July 2010**, [in relation to approximately 27 issues raised by the council with the complainant] *"I should be grateful if you would inform me of the process by which these allegations were identified by you and the dates on which you identified the complainants."*

**[2] 26 July 2010**, *"I should be grateful to be informed of the date on which the notes of meetings with complainants and witnesses were supplied to them for confirmation of their accuracy."*

**[3] 31 July 2010**, *"please inform me of the number of staff accused of gross misconduct who were employed in the Adults and Community Service group and of those how many were suspended during the preliminary investigation."*

**[4] 6 August 2010**, *"Please confirm that the individuals involved in the 26 new allegations raised by you at the above meeting had been interviewed by you as the investigating officer prior to the allegations being raised with me at the above meeting."*

**[5] 12 August 2010**, *"please provide details of the absence on holiday or sickness in respect of yourself and the investigating officer since the date on which the allegation of misconduct was submitted to the authority."*

5. The council responded on various dates. Some matters were commented on in ongoing correspondence with the complainant, some information was disclosed, but other requests were not responded to. In respect of item [5] the information was refused as it was felt inappropriate to disclose the information.
6. Following an internal review the council wrote to the complainant on 4 November 2010. It acknowledged that its responses did not make reference to exemptions under the Act, and that she had not been informed of the council's review procedure. It gave its view that this was because the correspondence was generally considered to be part of the ongoing internal matter, whose context makes such correspondence likely, but does not carry a clear expectation that the questions and requests will be dealt with under the Act.
7. Having been made aware of the complainant's wish to have the matters considered in the context of the Act, the council explained that item [5] was refused under the provisions of section 40(2) of the Act, as it is personal data. It gave its view that item [1] would require clarification before a response under the Act could be given, due to other matters arising in the same correspondence. It acknowledged that it was unclear whether any such clarification had been sought, and therefore the review was unable to confirm the reasons for the refusal of that request, but it gave its view that the information requested may be covered by

the exemptions for personal data (section 40 of the Act) and information given in confidence (section 41 of the Act). It invited the complainant to give further clarification, if she wished to receive a further response to that request. She was informed of her right to appeal to the Information Commissioner.

## Scope of the case

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8. On 8 November 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complaint may be summarised as follows:
  - she complained about the refusal of request [5] under section 40 of the Act;
  - she complained that she had not had a response to requests [2] and [4];
  - she complained that she had not had a response to request [1]; and
  - she complained that she had asked for an internal review of the council's response to request [3] on 1 September 2010 but this was not carried out.
9. The Commissioner considers that these four points set out the scope of the complaint. During the course of the Commissioner's investigation, the council was informed of the scope of the complaint. Its response:
  - clarified its application of the exemption at section 40 of the Act to request [5];
  - accepted that, after a review of the correspondence, no response to item [2] had been provided, and undertook to make a response at the earliest opportunity;
  - argued that a response to the query in item [4] had been provided on three occasions. It enclosed correspondence in support of that position;
  - argued that it believed that a response to item [1] had similarly been provided in the course of its correspondence with the complainant; and
  - explained that a response to the request for an internal review of item [3] had been provided in February 2011, which post-dates the complaint.
10. Subsequent correspondence between the Commissioner and the council clarified the outstanding elements of the requests, and the council undertook to resolve those matters in further responses and disclosures to the complainant. This was done in a further response to the complainant sent by the council on 8 July 2011.

11. The Commissioner wrote to the complainant to enquire if there was any matter which required further action. The complainant replied and indicated that she wished the Commissioner to adjudicate in respect of the timescale taken for the council's responses to her requests, its failure to treat requests in accordance with FOIA and the failure to inform her of her rights of appeal. This decision notice therefore addresses those outstanding elements of the complaint only.

## **Reasons for decision**

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### **Time for Compliance**

#### **Section 10(1) provides that –**

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

### **Refusal of Request**

#### **Section 17(1) provides that -**

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

#### **Section 17(7) provides that –**

"A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50."

12. The Commissioner recognises that the complainant's requests were submitted in ongoing correspondence during July and August 2010, and it was only in early July 2011 that the requests were fully dealt with. Section 10(1) of the Act requires a response to be provided in the circumstances of these requests within 20 working days, and therefore section 10(1) has been breached.
13. Furthermore, due to the council's treatment of her requests in ongoing correspondence, the formal requirements of the Act were not observed. Because the circumstances led the council to believe that these were requests for information in the context of an ongoing internal matter, it did not treat them as requests made under the Act.
14. Section 17(1) of the Act requires any notice that a request is being refused, to state if that request is refused under an exemption provided in part II of the Act and, if so, to explain why the exemption applies to the request if that isn't already apparent. Consequently, as formal refusal notices meeting the requirements stipulated at section 17(1) of the Act were not issued, the council has also breached section 17(1) of the Act.
15. It is the requirement of section 17(7) of the Act that a requester is informed of their right of appeal against a refusal of a request. In failing to issue proper refusal notices, the council also breached section 17(7) because this requirement was not met. The complainant was informed of her right to appeal to the Information Commissioner, in the council's internal review letter of 4 November 2010.
16. Breaches of the kinds described in paragraphs 12-15, above, cannot be remedied after the event, therefore the Commissioner cannot order any steps to be taken by the council to comply with these requirements in this case. He is, however, currently engaged in working with the council to improve its FOIA compliance in future.

## Other matters

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17. The Commissioner wishes to remind the council that, technically, any request submitted to a public authority which:
  - (a) *is in writing,*
  - (b) *states the name of the applicant and an address for correspondence, and*
  - (c) *describes the information requested.*

can be considered to be a Freedom of Information (FOI) request. He acknowledges that, in the specific circumstances of the complainant's

correspondence, it is understandable that the requests were not recognised as formal FOI requests, and were dealt with differently, through the normal procedures laid down for the conduct of the internal matter in question.

18. He recognises that there may often be good reasons why queries and requests for information might be more quickly and effectively dealt with 'in the normal course of business', and that often this will be in the requester's own best interests. Disclosure under the Freedom of Information Act is deemed to be disclosure to the wider world and one consequence of this is that FOI requests are, at least to some degree, a public process conducted under the 'spotlight' of FOI.
19. He therefore hesitates to criticise a public authority for failing to treat requests, submitted in circumstances similar to this case, as FOI requests, and it is reasonably clear that some internal matters will require a degree of discretion which runs counter to the public nature of FOI matters. But, he cautions that if the three requirements listed at paragraph 17, above, are met, a public authority risks non-compliance with the requirements of the FOIA if it responds in the normal course of business, but if the requester's expectations are for a response under FOIA. It may therefore be in a public authority's own interests to clarify the disclosure regime anticipated by the requester, if in any doubt.
20. With regard to the time taken for the council's internal review to request [3], the Commissioner notes that there is no statutory timescale for the completion of an internal review, and consequently no breach of any section of the Act in this regard, but that his guidance suggests that internal reviews should be completed within 20 working days. In some circumstances internal reviews may take longer but should not take longer than 40 working days.
21. The complainant requested an internal review of request [3] on 1 September 2010, but this was not sent to the complainant until February 2011, considerably longer than the 20 working days set out in the Commissioner's guidance. The Commissioner recognises that this may be a further consequence of the council's response to the complainant's correspondence and questions in the normal course of business, rather than as formal FOI requests.

## Right of appeal

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22. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

23. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**