

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2011

Public Authority: Mid Devon District Council
Address: Phoenix House
Phoenix Lane
Tiverton
Devon
EX16 6PP

Decision

1. The complainant has requested information relating to the refund of Penalty Charge Notices.
2. The Commissioner's decision is that the public authority did not deal with the request in accordance with the Freedom of Information Act. The Commissioner considers that the public authority has breached section 10(1) of FOIA by failing to disclose the requested information within the statutory time limit of 20 working days.
3. The Commissioner does not require the public authority to take any action as a result of this notice.

Request and response

4. On 18 July 2011, the complainant wrote to Mid Devon District Council ('the council') and requested information in the following terms:

"I refer to a Public Notice I have seen in the Crediton Gazette published on 17th May 2011. It refers to several places in Crediton that include Town Square and Market Street and invites recipients of parking Penalty Charge Notices issued at these places between 5 May 2008 and 31 March 2011 to request an application form for the purpose of applying for a penalty payment refund.

Please provide the following information.

1. How many such PCNs were issued during this period?
 2. What is the total sum of penalty money that was in the possession of the Council in respect of these PCNs at the time of advertisement?
 3. Does the Council have a record of the Vehicle Registration Mark relating to each of these PCNs?
 4. Please explain the reason why every one of the known or readily-identifiable vehicle owners (together with their addresses) who were issued with these PCNs were not sent a notification of their entitlement to a refund of their unlawfully-demanded penalty payment.
 5. Please provide a sufficient extract of Cabinet agenda and decision to show when and who is responsible for authorising the partial refunding of these PCNs by means of this press advertisement, and the terms of what was proposed and approved by Cabinet.
 6. On what authority was the purported requirement made that refund claim applications could be accepted only within the specified 28-day period?
 7. How many applications for refund were received within the first 21 days (i.e. by 1st June)?
 8. How many applications were received in the remaining 7 days?
 9. How many of the refund applications were rejected by the Council for any reason (if any)?
 10. How many enquiries were received by the Council in which prospective claimants were uncertain as to their PCN details or otherwise in any way uncertain as to their entitlement to a refund?
 11. What is the residual sum of un-refunded penalty money held in the possession of the Council?
 12. What is the Council's intention in respect of this residual penalty money which is not in the Council's lawful ownership?"
5. The council responded on 3 August 2011 stating that it does not hold the information requested. It explained that Devon County Council is responsible for Highways within the District and it may be able to provide some further assistance. It suggested that the complainant resubmit the request to Devon County Council and provided an email address for that purpose.

6. An internal review was requested on 3 August 2011. A response was provided on 3 September 2011. The council provided answers to all the questions except 5. and 12. for which it stated that Mid Devon District Council does not hold the information requested and advised the complainant to refer to Devon County Council. The council apologised for any inconvenience caused by not originally providing the information. It explained that this was due to a misunderstanding by the officer in charge of the Civil Enforcement Section that Devon County Council held all the information requested.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically requested that the Commissioner issue a decision notice for council's failure to provide the information within the statutory time period.
8. The Commissioner has not investigated whether the council held information in response to parts 5. and 12. of the request as the complaint relates only to the information not being provided first time and within 20 working days.

Reasons for decision

9. Section 1(1) of FOIA requires a public authority in receipt of a request to confirm whether it holds the requested information, and if so, disclose it to the applicant. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request.
10. The request was submitted on the 18 July 2011. The council did not provide the information until the internal review of 3 September 2011. The Commissioner therefore finds that the council did not make the information available within 20 working days and consequently finds a breach of section 10(1) of FOIA.

Right of appeal

11. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

12. 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.
13. 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
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