

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2012

Public Authority: Newport City Council
Address: Civic Centre
Newport
Gwent
NP20 4UR

Decision (including any steps ordered)

1. The complainant requested information regarding the cost of employing barristers' chambers or solicitors at employment tribunals for all staff over a period of nine years. Newport City Council ('the Council') failed to respond to the request.
2. The Commissioner's decision is that the Council failed to respond to the request and therefore breached its obligations under section 10 of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a substantive response to the complainant either disclosing the information or issuing a valid refusal compliant with section 17 of the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 14 January 2011, the complainant contacted the Council via the whatdotheyknow.com website and requested information in the following terms:

"I would like to know how much the Council has spent outsourcing to either Barristers Chambers or Solicitors at Employment Tribunals for all Council Staff (including Teaching Staff). Any combination of those below, between 1st August 2000 and the 31 October 2010:

- 1) For constructive dismissal
- 2) Unfair dismissal
- 3) One (or more) of the various discrimination claims and/or under the Protection from Harassment Act
- 4) Public Interest Disclosure Act 1998
- 5) Any other Employment issues, I may have omitted.

Please name the Solicitors/Barristers that the Council have outsourced to: For example, 2010 Number (which is the cost spent) Name (Name of Solicitor/Barrister). Please provide the figures in the following format e.g. 2006 – NUMBER HERE AND SOLICITOR OR BARRISTERS NAME HERE; 2007 – NUMBER HERE AND SOLICITOR OR BARRISTERS NAME HERE; 2008 – NUMBER HERE AND SOLICITORS OR BARRISTERS NAME HERE ; 2010 – NUMBER HERE AND SOLICITORS OR BARRISTERS NAME HERE; etc, thus making it easier for one to read and to ensure there is no misunderstandings.

I would request that you include VAT in the figures. Not a before and after VAT, a figure which included total cost including VAT.

Please also send this information as "calendar years" not financial years.

Please note that I do not seek or require any personal information such as names and addresses – only the total figures and name of the law firms to whom the Council outsourced.

I would ask that you remember the statutory duty imposed upon public authorities by virtue of Section 16 of the Freedom of Information Act to provide advice and assistance to requesters. If for any reason you are leaning toward rejecting any part of this request or if you plan to argue that it is unmanageable or unanswerable in any way then I would expect you to contact me promptly to find ways to answer this request to our mutual Satisfaction [sic]."

6. The Council acknowledged the request on 17 January 2011.

7. As the complainant had not received a response, she requested an internal review on 21 March 2011. This was acknowledged by the Council on 22 March 2011.
8. Despite further reminders from the complainant to the Council no response to the request was provided.

Scope of the case

9. The complainant contacted the Commissioner on 12 February 2012 to complain about the Council's failure to respond to her request for information. She asked the Commissioner to issue a decision notice to compel the Council to issue an appropriate response.

Reasons for decision

10. Sections 1 and 10 of the FOIA provide a general right of access to recorded information held by public authorities. These sections provide that when a written request for information is made, the public authority must state whether it holds that recorded information within 20 working days. If it does, it must provide that information within 20 working days unless a valid reason for not doing so exists under the FOIA. If such a reason does exist, a refusal notice should be issued in accordance with section 17 of the FOIA, again within 20 working days.
11. By failing to respond to the request at all, the Council breached section 10 of the FOIA.

Other matters

12. The Commissioner is particularly concerned at the excessive delay experienced in this case. The request was submitted on 14 January 2011 and no response has been issued despite a number of reminders being sent by the complainant. It also appears that the Council made no proactive attempts to keep the complainant informed in relation to the ongoing delays. This is clearly not within the spirit nor the letter of the FOIA and may be indicative of underlying issues that the Council needs to address such as inadequate resources or staff training. The Commissioner trusts that the Council will carefully consider this and ensure that it makes appropriate improvements in the future.

Right of appeal

13. 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

14. 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.
15. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF