

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 September 2012

**Public Authority:** Carrickfergus Borough Council  
**Address:** Museum and Civic Centre  
11 Antrim Street  
Carrickfergus  
BT38 7DG

### Decision (including any steps ordered)

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1. The complainant requested information relating to the dog pound operated by Carrickfergus Borough Council. The Council responded to the request, but failed to respond within the statutory time for compliance. The Commissioner's decision is that the Council failed to comply with section 10(1) and section 17(1) of the FOIA, but as the Council has now responded the Commissioner does not require any steps to be taken.

### Request and response

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2. On 6 March 2012 the complainant requested the following information from the Council:
  - 1) *How many staff are employed by Carrickfergus Borough Council in the Dog Pound?*
  - 2) *How many of the above are 'On call staff'?*
  - 3) *How many males are employed by Carrickfergus Borough Council in the Dog Pound?*
  - 4) *How many of the above are 'On call staff'?*
  - 5) *How many females are employed by Carrickfergus Borough Council in the Dog Pound?*
  - 6) *How many of the above are 'On call staff'?*
  - 7) *How many Catholics are employed by Carrickfergus Borough Council in the Dog Pound?*
  - 8) *How many of the above are 'On call staff'?*
  - 9) *How many Protestants are employed by Carrickfergus Borough Council in the Dog Pound?*

- 10) *How many of the above are 'On call staff'?*  
11) *Since the 9<sup>th</sup> August 2011, how many shifts have been covered by 'on call staff' in the Dog Pound?*

3. The Council did not initially respond, and the complainant contacted it again on 15 April 2012.
4. The Council responded to the complainant on 30 May 2012. The Council apologised for the delay and provided the complainant with a response to his request. The Council provided most of the requested information, but withheld that requested under questions 7-10. The Council explained that the information was exempt under section 41 of the FOIA, and also cited the "the Data Protection exemption".

### **Scope of the case**

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5. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to record the Council's failure to respond to the request within the prescribed time for compliance. The complainant did not complain about the information provided or the Council's refusal of part of the request.

### **Reasons for decision**

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#### **Section 10(1): time for compliance**

6. Section 10 of the FOIA states that a public authority must comply with section 1(1) promptly, and in any event not later than twenty working days after the request has been received.
7. In this case the Council took 59 working days to respond to the request and provide the information which it considered was not exempt. Therefore the Commissioner finds that the Council failed to comply with section 10(1) of the FOIA in respect of this information.

#### **Section 17: refusal notice**

8. Where a public authority refuses a request for information it is required under section 17 of the FOIA to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon. The

Commissioner has produced guidance to assist public authorities in complying with this requirement<sup>1</sup>.

9. Section 17(1) states that the public authority must issue the refusal notice within the time for complying with section 1(1), ie twenty working days. The Council's letter of 30 May 2012 constitutes a refusal notice as it advised that part of the request was being refused. As the refusal notice was issued well outside of the time for compliance, the Council failed to comply with section 17(1).
10. Further, section 17(1)(b) states that public authorities must specify any exemption they are seeking to rely upon. In this case, the Council cited section 41 and the "the Data Protection exemption". The Council should have cited the exemption at section 40(2) of the FOIA, which applies to personal information under the Data Protection Act 1998. Accordingly the Commissioner also finds that the Council failed to comply with the requirements of section 17(1)(b) of the FOIA.

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<sup>1</sup>[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/FES016\\_REFUSING\\_A\\_REQUEST.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/FES016_REFUSING_A_REQUEST.ashx)

## Right of appeal

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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](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)

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 .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**