

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2013

Public Authority: London Borough of Bexley
Address: Civic Offices
Broadway
Bexleyheath
Kent
DA6 7LB

Decision (including any steps ordered)

1. The complainant requested all relevant information associated with a selection process for a vacancy for which he was not selected. The London Borough of Bexley (the 'Council') did not respond within the statutory 20 working days prescribed by FOIA. The complainant requested that a decision notice be issued by the Information Commissioner recording the delay.
2. The Information Commissioner's decision is that the Council has breached section 10(1) of FOIA by issuing its response late but, as a substantive response has been provided to the complainant, he does not require any remedial steps to be taken.

Request and response

3. Having previously written to the Council on 3 April 2012 in general terms, the complainant wrote to the Council on 1 May 2012 and requested information in the following terms:

"It is now a month since I sent the attached email. Despite the fact that I was telephoned in the week afterwards to be assured that I would receive a substantive response, I have heard absolutely nothing further. The circumstances of this tiresome episode are such an independent observer might be inclined to think that you were being deliberately contemptuous of my earlier requests.

Can I put my request in more formal terms, namely that I would like disclosure of all relevant documentation in relation to the fairness of the selection process for the post, to be received within seven days. This request is made pursuant to the statutory public disclosure provisions, breach of which is an offence by the authority.

The relevant documents should include details of all contemporaneous and subsequent comments, discussions and gradings of all candidates, and reasons for preference/rejection over other candidates."

4. The Council did not respond. On 14 June 2012 the complainant wrote again to the Council requesting the information. The Council made contact with the complainant that same day by telephone, and also wrote to him on 15 June 2012 stating it hoped this contact had now provided him with all the information requested.
5. The Council wrote further to the complainant on 22 June 2012 apologising for the delay in handling his request and referred him to its complaints procedure should he remain dissatisfied; however it still did not respond to the specific request.
6. On 29 August 2012, the Council provided the complainant with all seven candidates' scores, application forms and interviewers' assessments recorded on question and answer sheets, with the details of the six candidates redacted. It also provided an unredacted copy of the same in respect of the complainant.

Scope of the case

7. The complainant contacted the Information Commissioner on 21 June 2012 to complain about the way his request for information had been handled. He specifically asked the Information Commissioner to consider the fact that no substantive response had been provided.
8. On 16 August 2012 the Information Commissioner wrote to the Council reminding it of the need to respond to the request within 10 working days.
9. The Council then provided its response to the complainant on 29 August 2012 and also forwarded a copy to the Information Commissioner.
10. The complainant then contacted the Information Commissioner to request that he issue a decision notice to record the delay.

11. The scope of the Information Commissioner's investigation was therefore to consider whether there has been a breach of section 10(1) by the Council in its handling of the complainant's request.

Reasons for decision

12. Section 10(1) of the FOIA provides:

"...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."

13. The Council advised the Information Commissioner that it had treated the complainant's request as a complaint. The Information Commissioner considers that the complainant's request of 1 May 2012 made it clear that he was making a formal information request and notes that the Council provided a response under FOIA on 29 August 2012, which is a timescale of 83 working days and well over the 20 working days allowed.
14. The Information Commissioner does not need to serve a decision notice in an individual case in order to use that case as evidence for future enforcement action; however, should a complainant request the Information Commissioner to issue a decision notice for a specific complaint he will do so.
15. The Information Commissioner finds that the Council breached section 10(1) of the FOIA in this case and has ensured that the details of the case have been recorded for future monitoring purposes.

Other matters

16. All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the FOIA. It is essential that public authorities have procedures in place to ensure that information requests are recognised, and ensure that sufficient staff are familiar with the requirements of the FOIA and the Codes of Practice issued under its provisions.
17. Whilst the introduction does not form part of the Code itself, the Information Commissioner would echo its recommendations. In this instance, the Council appears to have failed to recognise the request and so did not process it in accordance with the requirements of the

FOIA. The Information Commissioner expects that, in future, the Council will ensure that its' staff are provided with adequate training in relation to the recognition of requests and that procedures are in place for providing appropriate responses.

18. The Information Commissioner would also comment that the complainant's request for his own information relating to the selection process should have been refused under FOIA and instead handled as a Subject Access Request under the Data Protection Act 1998. The Council should ensure that it is aware which of the statutory regimes applies when responding to requests.

Right of appeal

19. 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

20. 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.
21. 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
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Wycliffe House
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SK9 5AF