

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2013

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
Hampshire
PO1 2PX

Decision (including any steps ordered)

1. The complainant requested risk assessments carried out on the seafront by Portsmouth City Council in the last 2 years. The council initially stated that no such assessments existed, but subsequently a risk assessment was provided to the complainant dated 2010. This was provided to the complainant outside of the 20 day period required by section 10(1) of the Act.
2. The Commissioner's decision is that Portsmouth City Council has breached section 10(1).
3. The Commissioner does not require the authority to take any steps.

Request and response

4. On 5 September 2012, the complainant wrote to the council and requested information in the following terms:

"Please could I have a copy of the last two risk assessments that have been made by [name of officer redacted], Seafront Manager of Portsmouth seafront. The information I am seeking in particular to determine is when all the water safety signs were last reviewed and updated and what safety provisions are in place at various points on the seafront from the Hot Walls in Old Portsmouth to Eastney beach.

5. The complainant is part of a residents committee which received a complaint about children 'tombstoning' in Old Portsmouth, endangering themselves. As part of its consideration over this she noted that safety signs surrounding the seafront were confusing and/or in places incorrect. She considers that incorrect signs to warn members of the public to the dangers of the area and to direct members of the public what to do in the case of an emergency left members of the public in danger. The complainant states that various areas of the seafront are particularly dangerous because of wash from ferries, steep drop off in water depths close to some beaches and strong currents. She states that an individual had died in the waters off the beach shortly before her request was made.
6. The FOI team at the council responded on 2 October 2012. It stated that it had asked the seafront manager for copies of any risk assessments but he had stated that he had not been tasked with carrying out any risk assessments on the seafront and knew of no requirements for these in open spaces *"else we would have them for every park, beach, grassland, mountain lake etc in the whole of the UK and this as far as I know is not the case"*
7. Through her position and links on the residents committee she was introduced to a strategic director at the council as a point of contact to deal with her questions. Through correspondence with this person the complainant was told that a risk assessment was held. The complainant asked the director for a copy of the risk assessment and this was provided to her on 30 October 2012. The risk assessment was dated 2010 and was produced by the Royal National Lifeboat Institution (the 'RNLI').
8. The complainant wrote back to the council FOI team on the same day. She provided a copy of the risk assessment and asked the FOI team to consider the actions of the seafront manager in stating that no risk assessment existed when one had clearly been held by the council.
9. The council wrote to the complainant on 13 November 2012. It stated that it had once again asked the seafront manager about the risk assessment. He had stated that he had not been aware that the RNLI had carried out risk assessments for the seafront until he had met with them on 15 October 2012. It admitted however that the council had held a copy of the assessment when it had responded to her initial request however it said that it had not realised that that was the case.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way her request for information had been handled. Her concern was that if she had not had the contacts she had made through her membership of the residents committee she would not have received a copy of the risk assessment and would not have known of its existence. The response to her FOI request had initially been that no such assessment existed and she would have had no knowledge or means of questioning this.

Reasons for decision

Section 1(1)(a)

11. Section 1(1)(a) of FOIA states that

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. Under section 1(1)(a) the council is required to inform the applicant whether the information which has been requested is held by the council or not. In this case the council initially stated that no such document existed however this has proven to be incorrect as a document did exist and was held by the council at that time. Its initial response therefore breached section 1(1)(a).
13. However the complainant subsequently received a copy of the document from the council, albeit that she only did so from a source outside of the normal FOI processes at the council.
14. In effect the council appears to have relied upon the seafront manager's statement that no risk assessments had been carried out when responding to the FOI request, and in doing so it appears that it did not carry out any further searches to ascertain whether information was held or not.
15. The document was not produced by the council but by the RNLI. However the council admitted to the complainant in its review that it did hold a copy of the document when the request was received. The

existence of the document was therefore overlooked by the council in the initial stages of dealing with the complainant's request.

16. The council has however recognised its failings in this respect and wrote to the complainant prior to the Commissioner becoming involved, stating that it realised that its response was inadequate, that it had learnt from its mistakes and that it would implement changes to its processes to prevent such errors occurring again. These are matters which the Commissioner would have noted of the council within this decision notice had they not already been considered and responded to it.
17. Notwithstanding the manner in which the complainant eventually obtained the information from the council she did eventually receive the information she had asked for. The requirements of section 1 relate to the public authority as a whole rather to any specific department or individual within the authority. As a public authority the council therefore eventually complied with the Act by providing the document to her. The council has therefore now complied with the requirements of section 1 of the Act.

Section 10

18. 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."

19. The complainant made her request for information on 5 September 2012. She received the information from the director at the council on 30 October 2012. This falls outside of the 20 day period required by section 10 of the Act. None of the exceptions to the requirements of section 10 (1) are present in this case.
20. The Commissioner's decision is therefore that the council breached the requirements of section 10(1) in that it failed to provide a copy of the requested information to the complainant with the deadline of 20 working days required by that section.

Right of appeal

21. 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

22. 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.
23. 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
Cheshire
SK9 5AF