

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 June 2015

Public Authority: Wirral Metropolitan Borough Council
Address: Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant made a request to Wirral Metropolitan Borough Council ("the Council") to ask for information about whether it had diverted or screened emails sent to Councillors. The Council failed to respond to the request.
2. The Commissioner's decision is that the Council has breached section 10(1) of FOIA by failing to respond to the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Council should inform the complainant whether the requested information is held. If the information is held it should provide it to the complainant or else issue a refusal notice in accordance with section 17 of 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 6 May 2014, the complainant made a request to the Council for information in relation to concerns he had that emails sent to Councillors may have been diverted to an email account maintained by Council staff. The request read as follows:

Please read the following recent article from local newspaper The Wirral Globe:

<http://www.wirralglobe.co.uk/news/111889...>

Following these revelations, public concern has been raised that senior officers of the council may have overstepped their powers under RIPA (Regulation of Investigatory Powers Act 2000) and I would ask you to allay my own particular concerns by answering the following questions in full.

The following email addresses have been anonymised to protect my privacy and to avoid spammers, but will match both addresses for [the complainant] which you will hold on your systems. I would ask that you substitute the correct addresses when answering the points within the FoI request below:

A. ***f*@e***v*****a*****e.co.uk*

B. ***u*.***d**@*t*w****.com*

1. Please provide a full list of the total number and identities of all Wirral councillors who have agreed, either in response to a prior request / suggestion or through their own autonomous actions, to have emails from the above A and B email addresses (and addressed "to" or "c.c." these councillors) diverted to the quoted "specific inbox" within the above article or to another distinct and separate inbox. Please state whether such a list does or doesn't exist and / or whether you do / do not hold it. Please state who does hold it if not yourselves.

2. Please provide a full list of the total number and identities of all councillors who have had emails originating from the above email addresses (and addressed "to" or "c.c." these councillors) diverted to the quoted "specific inbox" or to another distinct and separate inbox WITHOUT the relevant councillors' permission. Please state whether such a list does or doesn't exist and / or whether you do / do not hold it. Please state the name of the party holding it if not yourselves.

- 3. Please provide a copy of the information / document(s) identifying the name of the "specific inbox" and also a copy of information / documents detailing and making clear whether it is monitored and read by officers or elected members. Please state whether such documents do or do not exist and / or whether you do / do not hold them. Please state the name of the party holding them if not yourselves.*
- 4. Although I am not making any allegations as regards overstepping RIPA powers, due to the potential seriousness of this matter, please provide a copy of the quoted "confidential note" (correctly and professionally redacted) sent by CEO Graham Burgess to councillors. The reason for this aspect of my request is that the note could contain crucial information to implicate / vindicate council officers - which would in turn clarify whether or not this matter needs to be reported to and pursued further by the appropriate regulating authorities.*
- 5. Please provide information / documents detailing the total number of councillors who were "offended" - presumably these will be the ones making, to quote the CEO, "a number of complaints regarding the content, unacceptable tone and high volume of emails sent by [an individual] including a specific concern regarding comments about the Hillsborough memorial service held at Wallasey Town Hall".*
6. The Council failed to respond to the request within 20 working days despite a reminder from the complainant.
7. On 3 July 2014 the complainant asked that the Council carry out an internal review of its handling of the request but received no response.

Scope of the case

8. On 22 January 2015 the complainant contacted the Commissioner to complain about the Council's failure to respond to his request.
9. On receipt of the complaint the Commissioner contacted the Council to remind it of its duty to respond to requests for information within 20 working days and to ask that it respond to the complainant. Neither the complainant nor the Commissioner received a response.

Reasons for decision

Section 10 – Time for compliance with request

10. Section 10(1) of FOIA provides that a public authority must respond to a request promptly and in any event within 20 working days.
11. The complainant made his request for information to the Council on 6 May 2014 but has failed to receive a response. The Council has clearly exceeded the 20 working day limit very significantly and therefore the Commissioner has found that the Council breached section 10(1) in its handling of the request.

Right of appeal

12. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

13. 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.
14. 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

**Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**