

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2015

Public Authority: Department for Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DP

Decision (including any steps ordered)

1. The complainant has requested a report made to Wirral Borough Council concerning an investigation of Enterprise Solutions (NW) LTD regarding abuses of the Intensive Start Up Scheme ISUS.
2. The Commissioner's decision is that Department for Communities and Local Government ("the DCLG") has failed to respond to the complainant's request within the twenty working days' time period required by section 10 of the FOIA. The DCLG has therefore contravened section 10 of the FOIA.
3. The Commissioner requires the public authority to make its response to the complainant's request. The DCLG's response should comply with the provisions of section 1 of the FOIA and section 17 if that section is relevant.
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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant made a request for information to the Department for Communities and Local Government ("the DCLG") on 3 January 2015. The terms of the complainant's requests were:

"In Autumn 2013 your investigator was sent to Enterprise Solutions (NW) LTD following an investigation by Grant Thornton that reported to Wirral Borough Council in March 2013 regarding abuses of the Intensive Start Up Scheme ISUS.

Regardless of the fieldwork being complete by December 2013 the report – which is known to me to be written – has not been released.

I request a copy of the report."

6. On 31 January the complainant wrote to the DCLG to complain about its failure to respond to his request for information and to request that the DCLG undertakes an internal review of its non-response.
7. On 6 March the complainant wrote to the DCLG again to remind the department of its failure to respond.
8. On 10 March the DCLG wrote to the complainant to apologise for its delay in making a response to his request. The DCLG stated that it, 'will try to get a response to you as soon as possible'. It gave the complainant the following reference number: 768042.
9. On 31 March the Information Commissioner wrote to the DCLG about its failure to respond to the complainant's request. The Commissioner advised the DCLG of the relevant time for complying provisions provided by the FOIA and the Environmental Information Regulations 2004 ("the EIR") and he asked that the DCLG make its response within the next 10 working days.
10. On 17 April the complainant advised the Commissioner that he had not received any response to his request from the DCLG.

Scope of the case

11. The complainant has complained to the Commissioner about the failure of the DCLG to respond to his request for information within the twenty working days' time period required by the FOIA, and its failure to carry out an internal review which he asked for on 31 January.

12. This notice is the Commissioner's decision in respect of the DCLG's failure to respond to the complainants request within the time period provided by section of the FOIA.
13. The notice does not deal with the complainant's complaint about the failure of the DCLG to undertake an internal review. This is because section 50 of the FOIA, under which this notice is made, is concerned only with complaints made about a public authority's compliance with Part 1 of the FOIA: Internal reviews are not provisions of Part 1 of the FOIA.

Reasons for decision

14. Section 1 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."

15. Section 10 of the FOIA states that:

"...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."

16. In reviewing this case, the Commissioner finds that the responses made to the complainant's correspondence on this matter, is sufficient evidence for him to determine that the DCLG has contravened section 10 of the FOIA. It is clear that the DCLG has exceeded the statutory compliance period by some considerable time.
17. The Commissioner must impress on the DCLG that it must meet its obligations under the FOIA when it receives requests for information in the future. It should endeavour to provide the information which has been requested – if it is held, or it should issue a refusal notice under section 17 of the FOIA within the statutory compliance period.
18. The Commissioner now requires the DCLG to make its formal response to the complainants request within 35 calendar days of the date of this decision notice.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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
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