

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2015

Public Authority: North Lincolnshire Council
Address: Civic Centre
Ashby Road
Scunthorpe
DN16 1AB

Decision (including any steps ordered)

1. The complainant requested information from North Lincolnshire Council ("the council") on the subject of what representations Leonard Cheshire Disability had made to the council regarding increases in the fees paid for the social care provided by them in order to pay carers the living wage. The council relied on the exemption under section 43(2) of the Freedom of Information Act 2000 ("the FOIA"). This exemption relates to commercial interests. At the start of the Commissioner's investigation, the council decided to withdraw its reliance on the exemption and disclose the information. The Commissioner finds that the council breached sections 1(1)(b), 10(1) and 17(1) of the FOIA. There are no steps to take.

Request and response

2. On 30 January 2015, the complainant requested information from the council. While other requests were made in this item of correspondence, only the following is the subject of this complaint:

"Leonard Cheshire Disability (LCD) claim that they would like to pay their carers the Living Wage but that they are not paid enough by social care funders such as yourself to do so.

I wonder if you could please tell me:

- 1) *What representations Leonard Cheshire Disability (LCD) have made to the Council asking for increases in the fees paid for social care provided*

by them, in order to pay their carers the Living Wage."

3. The council replied to the above request on 2 March 2015. The council said that it had received a letter dated 16 December 2014. It said it was currently in the process of looking at the fees and will be inviting providers to support this work.
4. The complainant replied on 2 March 2015 and asked the council to clarify whether the letter referred to mentioned Leonard Cheshire Disability's wish to pay their carers the living wage as a reason for the increase.
5. On 5 March 2015, the complainant requested an internal review. He said that the council had not provided the information requested.
6. The council completed its internal review on 28 April 2015. It said that it had initially understood that the request was asking for confirmation that any representations had been made, not that the complainant wished to know the contents of those representations. It said that the information was exempt under section 43(2) of the FOIA and the public interest did not favour disclosure.

Scope of the case

7. The complainant contacted the Commissioner on 29 April 2015 to complain about the way his request for information had been handled. He asked the Commissioner to consider the following issues:
 - The council's use of the exemption under section 43(2) of the FOIA
 - The council's initial misinterpretation of the request
 - The time it took for the council to respond to the request and complete its internal review
8. There is no statutory time limit in the FOIA for conducting internal reviews but the Commissioner has made comments about this in the Other Matters section at the end of this decision notice.

Reasons for decision

Section 10(1) and 17(1)

9. The general obligations to confirm or deny whether requested information is held and to communicate it are provided by section 1(1)

of the FOIA. Section 10(1) provides that a public authority must comply with its obligations under section 1(1) promptly and within 20 working days.

10. In this case, the complainant requested information on 30 January 2015. The council did not provide any response until 2 March 2015, which was a breach of section 10(1).
11. Within its response, the council highlighted that it had received a letter from Leonard Cheshire Disability about fees dated 16 December 2014. The complainant subsequently said that he wanted to know whether Leonard Cheshire Disability had specifically mentioned their wish to pay the carers a living wage. The council explained in its internal review that it had initially understood that the complainant only wanted confirmation that representations had been made.
12. The Commissioner has considered the terms of the request and he notes that it begins "*What representations...*". The Commissioner does not consider that the council's interpretation of the request was reasonable. Nonetheless, the council had already confirmed that it held the information and so no further breach of section 10(1) arose in the circumstances. However, the misinterpretation of the request did mean that the council failed to understand that the complainant was seeking the contents of the letter and this resulted in a delay in applying the exemption under section 43(2). This was a breach of section 17(1) of the FOIA since exemptions must be relied upon within 20 working days.
13. The council subsequently withdrew its reliance on the exemption under section 43(2). The Commissioner therefore finds that the council breached section 1(1)(b) and 10(1) for failing to disclose the requested information within 20 working days and by the time of the internal review.

Other matters

14. There is no statutory time limit for considering internal reviews under the FOIA. However, the Commissioner's guidance is that they should generally be undertaken within 20 working days. The Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 also provides that complaints procedures should encourage a prompt determination of a complaint. On this occasion, the complainant asked for an internal review on 5 March 2015 but the council did not complete one until 28 April 2015. The Commissioner trusts that the council will make improvements to the timeliness of its request handling in future.

Right of appeal

15. 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

16. 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.
17. 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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Wycliffe House
Water Lane
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Cheshire
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