

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 August 2016

**Public Authority:** Winchester City Council

**Address:** City Offices  
Colebrook Street  
Winchester  
Hampshire  
SO23 9LJ

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the council's 'All risks insurance policy'.
2. The Commissioner's decision is that in failing to respond to this request within 20 working days, Winchester City Council (the council) has breached section 10(1) of the FOIA. The Commissioner also finds that the council has breached section 9(1) as it did not provide the complainant with a fees notice within 20 working days of receiving the request.
3. The Commissioner does not require the council to take any steps as a result of this decision notice.

#### Request and response

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4. The complainant had made previous requests relating to Tree Preservation Orders. On 11 November 2015, the complainant wrote to the council and requested information in the following terms:

*"In view of the foregoing, please provide me with a copy of your All Risks Insurance Policy so that I can forward a copy to my house insurance provider."*

5. Following intervention by the Commissioner the council responded on 15 February 2016. It provided the complainant with a copy of its Liability Insurance Statement and explained that it set out the details of the

council's policies and the indemnity limit. The council further stated that this was the information required by the complainant's home insurers if he wished to forward a copy to them. The council went on to explain that the Insurance Policy consisted of two lever arch files and estimated the cost of providing this would be £25.00, payable in advance.

6. On 21 February 2016 the complainant requested an internal review. The council provided its response on 16 March 2016 and maintained that it could provide the information requested subject to payment of £25.
7. In its internal review response the council again explained that the Liability Insurance Statement previously provided would be sufficient for the purposes of forwarding to household insurers

### **Scope of the case**

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8. The complainant initially contacted the Commissioner on 5 January 2016 to complain about the way his first request for information had been handled.
9. Following the Commissioner's intervention the complainant received a response to his previous request. This decision notice relates to a follow-up request.
10. The complainant wrote to the Commissioner on 2 April 2016 and stated that he had not received either the name of the council's insurer or a copy of the relevant 'tree damage' section of their policy. He further stated that the information provided was not an insurance policy as requested, but a risk assessment template. He therefore considered that the council had failed in its duty to comply with the legislation.
11. The council's position is that it advised the complainant that there would be a charge of £25 to provide a copy of the policy as requested, and that it is entitled to make such a charge. The Commissioner therefore considers the scope of this case to determine if the council has complied with the FOIA.

### **Reasons for decision**

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#### **Section 1 of the FOIA**

12. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held

and, if the information is held, to have that information communicated to them.

### **Section 10 of the FOIA**

13. Section 10(1) of the FOIA states *"...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."*
14. In this case the council breached section 10(1) by failing to respond to the request within 20 working days.

### **Section 9 - Fees**

15. The Commissioner has issued guidance of when a charge can be made for providing information even though it does not exceed the appropriate limit<sup>1</sup>.
16. This guidance states that where it would not exceed the appropriate limit to comply with a request, and a public authority wishes to charge a fee, it can only include the charges it reasonably expects to incur in:
  - Informing the requestor whether it holds the requested information (even if the information will not be provided), and
  - Communicating that information to the requestor.
17. This generally means that a public authority can only charge for expenses actually incurred, for example, photocopying or postage. It must issue a fees notice advising the requestor of the amount it will charge.
18. Where the estimated costs of complying with a request would not exceed the appropriate limit, then a public authority must comply with the request unless an exemption applies. However, a public authority can charge for complying with the request. The amount that the public authority can charge is determined by section 9 of the Act.

### **Section 9(1) – (5)**

19. (1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a
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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1168/fees\\_cost\\_of\\_compliance\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1168/fees_cost_of_compliance_appropriate_limit.pdf)

notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).

(2) Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.

(3) Subject to subsection (5), any fee under this section must be determined by the public authority in accordance with regulations made by the Secretary of State.

(4) Regulations under subsection (3) may, in particular, provide –

- (a) that no fee is to be payable in prescribed cases,
- (b) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and
- (c) that any fee is to be calculated in such a manner as may be prescribed by the regulations.

(5) Subsection (3) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.

20. In its submission to the Commissioner the council explained that it had informed the complainant that if he wanted a full copy of the council's insurance policy, (made up of 2 lever arch files) there would be a charge which was estimated to be £25 based on 200 A4 sheets at 10p per sheet plus £5 postage.
21. It stated that the council is entitled to charge for disbursements in responding to requests, but in practice almost never does so – as most requestors make requests for documents to be sent electronically. The complainant has never provided an email address and correspondence has always been by post. It is generally accepted that 10p per A4 sheet is an appropriate reflection of the cost of photocopying which costs can be charged. This charge related purely to disbursements and does not include officer time.
22. The council further stated that the complainant explained in his request for a review that he wanted a copy of the council's "All Risks Policy" and sections of the All Risks Policy because of issues related to damage that he thought may in future be caused by his trees to his property or the property of others. From this, it became clearer that the insurance policy he wished to have a copy of was the council's public liability insurance. A copy of this was sent to him with the review letter of 16 March in which

it was explained that although the council does not have an All Risks Policy as such, the council has public liability insurance. The document sent to the complainant was entitled "Public Authority Combined Liability Insurance (UK) Policy" which is the local authority wording for legal liability insurance. This is a 48 page document for which no charge was made.

23. The council stated it had not refused the request. In previous correspondence the complainant was informed that the council does not have an "All Risks Policy" as such but was instead sent a copy of the Public Liability Insurance which covered the risks he described.
24. The council explained that technically it might have been more correct to say that the council does not hold a document called an "All Risks Insurance Policy" but the council considered it was more helpful to send the insurance details relevant to the issue described by the complainant (bearing in mind section 16 of the Act).
25. The Commissioner is satisfied that the proposed fee in this case is to recover costs associated with communicating the requested information to the complainant and that there is provision under the FOIA for the council to do this.
26. However, although the Council did issue a fees notice in its response of 15 February 2016, it was issued outside of the 20 working days that is a requirement of section 9(1).
27. Section 9(2) of the FOIA says that where a notice has been given to an applicant, an authority is not obliged to comply with section 1(1) [ie to provide a response] unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant. In his published guidance on fees, the Commissioner recommends that public authorities should tell the applicant about the deadline in its fees notice. This does not appear to have happened in this case and the three month period has now expired.
28. In conclusion the Commissioner considers that the council is entitled to charge for the information requested, and this option is still open to the complainant.

## Right of appeal

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29. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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**