

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 October 2018

Public Authority: Royal Borough of Kingston upon Thames
Address: The Guildhall
High Street
Kingston upon Thames
Surrey
KT1 1EU

Decision (including any steps ordered)

1. The complainant requested information about the number of times a specific councillor had objected to particular types of planning applications in a specific manner during a specified time period.
2. The Commissioner's decision is that the Royal Borough of Kingston upon Thames ("the Royal Borough") failed to respond to the request within 20 working days and has therefore breached Section 10 of the FOIA.
3. As a response has now been issued, the Commissioner does not require any further steps to be taken

Background

4. The request in question arose out of a chain of correspondence between the complainant and the Royal Borough in which the complainant attempted to bring his request within the cost limit of the FOIA.
5. On 2 April 2018, the complainant requested information in the following terms:

"On how many occasions has Councillor Malcolm Self objected to planning applications relating to the construction (or renovation) of front walls / gardens or driveways in the Southborough Conservation Area between September since 2014 and October 2016 using the RBK email system? Note: This request is confined to

email communications from Councillor Self to RBK planning office and / or planning officers ([names redacted]) using the domain address:- kingston.gov.uk"

6. On 1 May 2018, the Royal Borough refused the request, citing Section 12 of the FOIA. It stated that it could only guarantee that it would capture all the information within the scope of the request via a manual examination of records relating to "in excess of 400 properties." When the complainant challenged whether this was necessary, the Royal Borough noted that it could perform a search of its email system only, but that this was unlikely to capture all the information within the scope of the original request.

Request and response

7. On 1 May 2018, the complainant wrote to the Royal Borough, referred to his previous request and stated that he only required the Royal Borough to search its own email system and not the planning database itself. He accepted that there was a risk that not all the information he was seeking would be caught by processing the request in this manner.
8. The Royal Borough did not formally acknowledge the request until 5 July 2018 and failed to provide a substantive response until 4 September 2018.

Scope of the case

9. The complainant contacted the Commissioner on 22 August 2018 to complain about the failure, by the Royal Borough, to respond to the request.
10. In line with her usual practice, the Commissioner contacted the Royal Borough on 3 September 2018 to highlight the outstanding response. She requested that the Royal Borough respond to the request within 10 working days. The Royal Borough responded the following day to notify the Commissioner that a response had now been issued to the complainant.
11. The Complainant contacted the Commissioner on 2 October 2018 to request a decision notice considering the Royal Borough's compliance with the FOIA.
12. The scope of this notice and the following analysis is to consider whether the Royal Borough has complied with Section 10 of the FOIA.

Reasons for decision

13. Section 1(1) of the 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.*

14. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

15. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

16. She further considers that the request made on 1 May 2018 was a refined version of the earlier request – given that it restricted the scope of the search the Royal Borough would be required to carry out. Therefore it was a distinct request in its own right.

17. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

18. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Royal Borough has breached Section 10 of the FOIA.

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

Ben Tomes
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