

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 July 2021

Public Authority: Eastleigh Borough Council
Address: Eastleigh House
Upper Market Street
Eastleigh
Hampshire
SO50 9YN

Decision (including any steps ordered)

1. Information was requested about complaints submitted about a particular market stall. Eastleigh Borough Council ("the Council") initially relied on section 40(2) of the FOIA (third party personal data) to withhold all the requested information, before disclosing some redacted information as a result of an internal review.
2. The Commissioner's decision is that the Council did not discharge its duty under section 1(1)(b) of the FOIA within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner does not require further steps.

Standing

4. This complaint is slightly unusual in that the person who made the complaint ("the complainant") is not the person who made the request ("the requestor"). However, the Commissioner has seen correspondence indicating both that the complainant was aware of the requestor's request and that the requestor was aware of the complainant's complaint. As the complainant and the requestor share a business interest and the request has clearly been made on behalf of that business, the Commissioner is satisfied that the request was made on behalf of both the requestor and the complainant.

Request and response

5. On 15 April 2021, the requestor wrote to the Council and requested information in the following terms:

"Please can you supply me with all complaints data and details made in relation to Hedge End and Eastleigh markets from August 20 to April 21 I want to make a complaint but require this information to do so."

6. The Council responded to the request on 5 May 2021. It confirmed that it held information within the scope of the request, but it relied on section 40(2) of the FOIA to withhold it.
7. The requestor requested an internal review on 6 May 2021. The Council responded to that review on 15 July 2021. It now disclosed redacted versions of the complaints.

Scope of the case

8. The complainant first contacted the Commissioner on 15 June 2021 to complain about the failure, by the Council, to respond to the request.
9. The Commissioner contacted the Council to draw its attention to the outstanding internal review. The Council responded on 20 July 2021 to note that it had completed an internal review, but that it had provided the outcome to the requestor only. The Council subsequently provided a copy of the internal review to the complainant.
10. The complainant contacted the Commissioner on 26 July 2021. She confirmed that both she and the requestor were satisfied with the information that had been disclosed, but were dissatisfied with the time that had been taken to disclose the information.
11. As the remaining grounds of complaint are the timeliness with which information was provided, the Commissioner considers that she has sufficient information on which to base a decision.
12. The scope of this notice and the following analysis is to consider whether the Council 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. Section 10 of the FOIA states that a public authority must comply with its section 1(1)(b) duty "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

17. It is clear to the Commissioner that, in this case, the Council's internal review has done what internal reviews are supposed to do: identify any deficiencies in the initial response and, where possible, remedy those deficiencies.

18. However, the fact remains that the requestor and the complainant did not receive information to which they were entitled within 20 working days of the request. The Commissioner is thus obliged to find that the Council 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Roger Cawthorne
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Wycliffe House
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Wilmslow
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