

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 17 October 2022

Public Authority: Middlesbrough Council
Address: PO Box 500
Civic Centre
Middlesbrough
TS1 9FT

Decision (including any steps ordered)

1. The complainant requested information about out of hours calls to deal with safeguarding matters. Middlesbrough Council (the Council) initially stated that it did not hold the information requested. At the time of its internal review the Council disclosed some of the information requested and stated that other information was not held. The Commissioner's decision is that the Council breached section 10 in its handling of the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 6 March 2021, the complainant wrote to Council and requested information in the following terms:

"How many times in the last 6 months (or most recent figures) have the Emergency Duty Team for social services been called out of hours to deal with a safeguarding matter involving a child or young person?"
3. Following a number of chase emails, the Council responded on 30 April 2021 and stated that the information requested was not held as

Stockton-on-Tees Borough Council run the service on behalf of all participating authorities.

4. There followed an exchange of emails between the complainant and the Council relating to the handling of the request, who had been consulted about the information held and who was responsible for the referral service.
5. On 14 September 2021 the complainant asked the Council to conduct an internal review into the handling of the request. The complainant explained that they had contacted Stockton-on-Tees Council who had responded within 2 days. Stockton-on-Tees Council had informed the complainant that the information in question had been provided to Middlesbrough Council on 12 January 2021 and 3 November 2020.
6. The Council provided the outcome of its internal review on 10 March 2022. It acknowledged that it had failed to respond to the request in accordance with the statutory timescales. The Council also confirmed that, on further review, its initial response stating that the information was not held was incorrect, for which it apologised. The Council provided the information for the period 1 January to 31 March 2021 but confirmed that it did not hold any information prior to 1 January 2021.

Scope of the case

7. The complainant initially contacted the Commissioner on 1 December 2021 to complain about the way their request for information had been handled. The complainant contacted the Commissioner again on 15 March 2022 following receipt of the Council's internal review response to express their continued dissatisfaction.
8. In their complaint to the Commissioner the complainant confirmed that they were now in receipt of all the information requested, albeit some of the information was obtained from another authority. In light of this, the scope of the Commissioner's investigation is to consider procedural matters associated with the Council's handling of the request.

Reasons for decision

Section 1 – general right of access

Section 10 – time for compliance

9. Section 1 of FOIA states that "any person making a request for information to a public authority is entitled to be informed in writing by

the public authority whether it holds information of the description specified in the request”.

10. Section 10(1) provides that a public authority must comply with section 1 promptly and in any event not later than the twentieth working day following the date of receipt of a request for information.
11. In this case, the complainant submitted their request on 6 March 2021 and the Council issued its response on 30 April 2021. In its initial response the Council stated that it did not hold the requested information. Following further exchanges between the complainant and the Council, in its internal review the Council confirmed that its initial response was incorrect and provided the information held relevant to the request.
12. The Commissioner finds that the Council breached section 10(1) by failing to confirm that the information was held within the statutory time period.
13. Section 1(1)(b) requires a public authority to provide disclosable information within the statutory time . As the Council failed to do so, the Commissioner finds a further breach of section 10(1).

Other matters

14. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Section 45 – Internal review

15. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
16. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it

is expected that this will only be required in complex and voluminous cases

17. In this case the complainant requested an internal review on 14 September 2021 and the Council did not provide the outcome of its internal review until 10 March 2022, some 124 working days later.
18. It is clear that in this case, the Council failed to complete its internal review within the Commissioner's guidance. The Commissioner expects the Council to ensure that reviews it handles in the future adhere to the timescales he has set out in his guidance.
19. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"¹ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"².

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

20. 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

21. 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.
22. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF