

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2022

Public Authority: Elmbridge Borough Council
Address: Civic Centre
High Street
Esher
Surrey
KT10 9SD

Decision (including any steps ordered)

1. The complainant requested from Elmbridge Borough Council (“the Council”) various information relating to local sports facilities. The Council issued a response that the Commissioner does not consider to be a valid response under the terms of the FOIA.
2. The Commissioner’s decision is that the Council has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 27 September 2021, the complainant wrote to the Council and requested information in the following terms:
- 1) Please provide copies of all correspondence between the Council and the site operator Place Leisure at the Elmbridge Xcel Sports Hub concerning the maintenance of the athletic facilities and the drainage problems in the toilets and changing rooms.**
 - 2) Please state if there are any penalties clauses in the contract with Places Leisure for not attending to the maintenance of the facilities.**
 - 3) The portable throwing cage was incorrectly installed is the Council going to rectify the incorrect installation?**
 - 4) When the testing company noted defects in the main throwing cage, what action was taken to rectify these defects?**
 - 5) Who is responsible for rectify the defects in (4)**
 - 6) What was the cost of rectifying the original faults in the installation of the main throwing cage?**
 - 7) What was the cost of rectifying other defects in the original installation of the athletic facility? If under warranty the installation company, ongoing maintenance**
 - 8) Who is responsible for the maintenance of the athletic facilities at the Xcel Sports Hub? Please provide their name and contact details.**
6. The Council issued a response on 25 October 2021, which the Commissioner does not consider complies with the requirements of the FOIA. The Council subsequently declined to provide an internal review on the basis that over two months had elapsed since its response.

Scope of the case

7. The complainant contacted the Commissioner on 9 January 2022 to complain about the way his request for information had been handled.

8. The Commissioner has considered whether the Council has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

9. Section 1(1) of 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.

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
11. Having reviewed the Council's response to the request, the Commissioner does not consider that the Council has dealt with the request for information in accordance with FOIA. This is because the Council's response of 25 October 2021 fails to clearly confirm or deny if information is held in respect of each of the requests.
12. The Commissioner also notes that, in respect of requests 6) and 7), the Council indicates that any held information would be exempt from disclosure, but fails to issue a refusal notice citing the exemption it relies upon.
13. The Commissioner finds that the Council has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Other matters

14. The Commissioner reminds the Council of the importance of providing clear and unambiguous responses under the FOIA. This is particularly important in respect of requests that are phrased as 'questions' – to which a public authority may not hold recorded information, but – in order to assist the requestor – chooses to provide an answer outside the terms of the FOIA.
15. Ensuring that a clear response is issued under the FOIA, which confirms or denies that recorded information is held, allows a requestor to not only understand the authority's position under the FOIA, but also ensures that any subsequent challenge can be handled appropriately.

Right of appeal

16. 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

17. 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.
18. 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

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