

## **The Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 December 2022

**Public Authority:** Warrington Borough Council  
East Annexe  
Town Hall  
Sankey Street  
Warrington  
WA1 1UH

#### **Decision**

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1. The complainant's request to Warrington Borough Council (the Council) comprised three parts, and related to a particular letter. The complaint to the Commissioner is focused on the third part of the request, where the complainant requested copies of internal correspondence discussing the letter.
2. The Commissioner's decision is that the Council was entitled to rely on section 36(2)(b) of FOIA to withhold the information within scope of the third part of the request, but the Council breached sections 10 and 17 of FOIA because it did not respond to the request within 20 working days.
3. The Commissioner does not require any steps to be taken following this decision notice.

#### **Request and response**

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4. The complainant made the following information request to the Council on 22 August 2021:

"In connection with the letter that Grant Thornton mentioned at the Audit & Corporate Governance Committee on Thursday 22 June 2021:

1. What is the date on the letter?
2. Which personnel - officers and elected members - have seen the letter?
3. Please provide copies of all internal correspondence, including emails, which discusses the letter. I will accept reasonable redaction of confidential items".
5. The Council's initial substantive response was on 21 September 2021, where it answered the first two parts of the request but refused to provide information held within scope of the third part, citing section 22 of FOIA ('information intended for future publication'). The final position of the Council, expressed in its internal review of 11 March 2022, was that the information requested under the third part of the request was being withheld pursuant to sections 36(2)(b) and 36(2)(c) ('prejudice to effective conduct of public affairs').

### **Scope of the case**

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6. The complainant contacted the Commissioner on 14 March 2022 to complain about the way their request for information had been handled.
7. Based on what the complainant said when making the complaint, the Commissioner's understanding is that the complainant is concerned about the Council's refusal to provide the information held within scope of the third part of the request and that the Council was late to respond to the request.
8. The complainant was also unhappy that a new exemption (section 36) was cited at internal review while no mention was made of the exemption the Council had originally cited (section 22). However the Commissioner emphasises to the complainant that his guidance (and the section 45 Code of Practice) notes that internal reviews may involve applying a different or additional exemption(s). Furthermore, it has previously been established by the Upper Tribunal that a late reliance on an exemption is permissible.
9. The Commissioner has not seen the withheld information, nor any formal submissions from the Council about this complaint. However he considers that he is able to make his decision without seeing it or them.

## Reasons for decision

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### Section 36

10. Section 36(2) provides that information is exempt from disclosure if, in the reasonable opinion of a qualified person, its disclosure:
  - “(b) would, or would be likely to, inhibit –
    - (i) the free and frank provision of advice, or
    - (ii) the free and frank exchange of views for the purposes of deliberation, or
    - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”
11. The Commissioner’s [website](#) has detailed guidance on section 36.
12. The Commissioner highlights his decision notice in [IC-162016-X4T2](#), which relates to a similar request (concerning the same “letter that Grant Thornton mentioned at the Audit & Corporate Governance Committee on Thursday 22 June 2021”) made to the Council in July 2021. That request was made a month before the request being considered in the present case (the circumstances at the time of both requests will have been the same), and it covers the same information, as explained below.
13. The request in IC-162016-X4T2 was for (among other things) “correspondence about [the letter] between [the Chief Executive of the Council] **or any other officers**” (emphasis added). The information being sought in the present case is “internal correspondence ... which discusses the letter”. Clearly the same information is being requested in each case, namely any internal correspondence regarding the letter.
14. In IC-162016-X4T2, the Council applied the same exemptions as those it applied in the present case – first section 22, and later section 36.
15. In IC-162016-X4T2 the Commissioner upheld the Council’s reliance on section 36(2)(b) to withhold the requested information, which included the “correspondence about [the letter] between [the Chief Executive of the Council] or any other officers”. The Commissioner therefore upholds the Council’s reliance on the same exemption to withhold the same information (“internal correspondence, including emails, which discusses the letter”) in the present case.

16. Rather than repeat his reasoning in full here, the Commissioner considers that it is appropriate and proportionate to refer the complainant to the published decision notice for [IC-162016-X4T2](#).

### **Sections 10 and 17**

17. Section 1(1) of FOIA provides that a requester is entitled to be informed whether the requested information is held and, if it is, to have that information communicated to them. Where a public authority considers that the information is exempt from disclosure, section 17(1) of FOIA requires the public authority to issue a refusal notice explaining why.
18. Section 10(1) of FOIA provides that these actions must be taken within 20 working days of receipt of the request.
19. In this instance the Council took 21 working days to respond to the request, so the Council breached sections 10(1) and 17(1) of FOIA.

### **Other matters**

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20. The Commissioner notes that the Council took almost six months to complete its internal review. Under the section 45 Code of Practice it is recommended that internal reviews are carried out within 20 working days of receipt. If a request is particularly complex or involves voluminous amounts of information, a public authority is permitted to take longer but no more than 40 working days in total. Six months is well in excess of the timeframe suggested by the Code of Practice and is not acceptable. The Commissioner would therefore like to remind the Council of the importance of adhering to the Code of Practice and ensuring internal reviews are processed in a timely manner in future.

## Right of appeal

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21. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

22. 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.
23. 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 Kennedy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**