

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

Date: 22 November 2022

Public Authority: Isle of Wight Council
Address: County Hall
High Street
Newport
Isle of Wight
PO30 1UD

Decision (including any steps ordered)

1. The complainant has requested information from the Isle of Wight Council relating to the implementation of the Local Government Pension Scheme Regulations 2020.
2. The Commissioner's decision is that the Isle of Wight Council did not provide a valid refusal notice within the statutory timeframe, and has therefore breached section 17 of the FOIA.
3. No steps are required.

Request and response

4. On 22 December 2021, the complainant wrote to the Isle of Wight Council ("the council") and requested information in the following terms:

"The Trust remains open to reaching an amicable and reasonable settlement. However, this is only going to be possible via transparency on the part of the Fund / IWC. It is clear to us that Members are much more alive than Officers to the issues at play here and so we are not willing to attend any meeting at which they are not represented. Neither do we see any point in attending without the answers to the questions (above) that we have repeatedly posed.

So, in respect of the latter, please take this email as a formal Freedom of Information Request for copies of all IWC email correspondence relating to this matter (specifically - internal staff dialogue, discussions with actuaries and councillor briefings). We understand that there may be a charge for this and that there is a time limit of 18 hours in respect of the work involved in gathering the information. However, given that it took us 3-4 hours to put together all copies of all historical email correspondence between the Fund, our Trustees and Legal Advisers (22,4024 words), we cannot see any genuine circumstance in which this limit should be exceeded.

Please note here is no need to provide copies of correspondence between the Fund and the Trust on the matter as we, obviously, have all of this. Indeed we have, in the spirit of transparency, already shared this information with Cllrs Jarman, Hastings and Bacon."

5. The council responded on 1 February 2022. It summarised the request as: "Please supply all IWC email correspondence relating to the implementation of The Local Government Pension Scheme (Amendment) (No.2) Regulations 2020 (legislation.gov.uk) and in particular its implications for the museum." It provided emails that were in scope of the request, and redacted some information on the basis of section 43 (commercial interest) and section 40 (personal information) of the FOIA.
6. On 17 March 2022, the complainant requested an internal review. The complainant provided evidence of information missing from the council's response, they stated that they were based upon "specific references made within the documentation, and patterns of activity revealed in the exchanges."
7. Following an internal review, the council wrote to the complainant on 26 July 2022. It changed its position and stated that all of the information should have been withheld on the basis of section 43 and section 40 of the FOIA.

8. The council provided the complainant with two further bundles of information on 3 August 2022 and 10 August 2022. The council stated that the bundles included all of the information relevant to the complainant's queries detailed in the email of 17 March 2022. However it stated that this information had been provided as a "business as usual request", rather than an FOIA response. It stated that the requestor was entitled, in their role as a staff representative, to receive the information. However in terms of the FOIA request, the information remained withheld on the basis of section 43 and section 40 of the FOIA as it was not appropriate for disclosure to the world at large.

Scope of the case

9. The complainant contacted the Commissioner on the 27 May 2022 to complain about the way their request for information had been handled. Specifically that the council had responded late to their request, and hadn't responded to their request for an internal review which had identified missing information.
10. Subsequently, the complainant confirmed that they were dissatisfied with the internal review decision of 26 July 2022, which was to withhold the requested information on the basis of sections 43 and 40 of the FOIA.
11. The council then released further information to the complainant, which it stated was provided outside of the FOIA, on 3 and 10 August 2022. Whilst the complainant remained uncertain whether all the information had been provided, they advised the Commissioner that they had no firm evidence that anything else was being withheld and therefore would not be pursuing this matter further.
12. The complainant confirmed to the Commissioner that their final position on the complaint was regarding the way in which the council dealt with their request, and the delays in releasing information.
13. The Commissioner is unable to consider the time taken by the council to provide the bundles of information to the complainant, because they were provided outside of the FOIA. Neither can he consider the scope of the information released initially to the complainant as the council subsequently changed its position to withhold all of the information in scope of the request. The Commissioner will not consider the application of the exemptions to the withheld information. This would be a purely theoretical exercise as the complainant has confirmed that they are satisfied with the information released, albeit provided outside of the FOIA.

14. However the Commissioner will consider the way in which the council dealt with the request. The scope of this case, therefore, is to determine whether the council made any procedural errors in its handling of the request.

Reasons for decision

Sections 10 and 17

15. 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".
16. 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 the receipt".
17. Section 17(1) of the FOIA states that: "A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
 - (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies."
18. The council breached section 10 of FOIA as it failed to identify all the information it held within the scope of the request within 20 working days.
19. The council breached section 17 of FOIA as it failed to issue a refusal notice, citing all the exemptions upon which it was relying, within 20 working days.
20. The Commissioner does not require any steps as the position has been documented within this decision notice.

Other matters

21. The Commissioner notes that the request was poorly handled by the council. It initially responded with information in scope of the request, which contained redactions made on the basis of FOIA exemptions. During the internal review the council stated that all of the information should have been withheld on the basis of FOIA exemptions.
22. The council explained to the Commissioner that the initial request response was not provided under the FOIA, but as "business as usual". However the Commissioner notes that this initial response cited two FOIA exemptions as the reason for redacting some information. It does therefore have the appearance of being provided under FOIA. If the initial request was not provided under FOIA then the council didn't provide a response until the internal review which means it took 147 working days to respond to the request.
23. The internal review was undertaken 89 days after the complainant requested it. There is no statutory requirement or time limit within the FOIA for carrying out an internal review. However, the Commissioner considers that internal reviews should normally be done, if requested, and take no longer than 20 working days and never longer than 40 working days.
24. The Commissioner asks the council to take steps to improve both its request and internal review handling procedures in respect of these issues.

Right of appeal

25. 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

26. 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.
27. 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

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