

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 August 2022

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

Decision (including any steps ordered)

1. The complainant requested information regarding the decision made to give a guarantee to Together Energy LTD for the debts acquired. By the date of this notice Warrington Borough Council (the Council) had not issued a substantive response to this request.
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 step to ensure compliance with the legislation.
 - The Council must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The Council must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 10 January 2022, the complainant wrote to the Council and requested information in the following terms:

"This request seeks information related to the 8 September 2020 decision by the Leader and Deputy leader to give a WBC guarantee to Together Energy Ltd (TE) for the debts TE acquired when they took over the failed Bristol Energy Ltd company.
References are to sections in the Council's Constitution.

1. Was the subject of the guarantee on the Forward plan of Key Decisions? If so:

1.1 What is the Key Decision reference and when did it first appear on the Forward Plan?

1.2 If the General Exemption Rule in the Access to Information Procedural Rules wasn't applied (Section 14.2 page 153) please respond to Item 2.1 below.

1.3 The next Cabinet meeting after September 8th 2020 was on October 12th 2020. Why was the matter not referred to an Extra Ordinary meeting of the Cabinet as indicated in Section 14.3 (Page 153)?

1.4 Since the matter did not wait until either the next Cabinet or an Extra Ordinary Cabinet meeting then Section 14.4 requires the Leader of the Opposition and the Chair of the Scrutiny Committee be consulted.

Please let me have a copy of the information that was provided to those two individuals and any other associated correspondence.

2. If the guarantee was NOT on the Forward plan of Key Decisions then the "General Exception for Key Decisions" rule in the Access to Information Procedural Rules (Rule 13) presumably applies.

2.1 Was Rule 14 Special Urgency for Key Decisions invoked? If so

2.1.1 Under rule 14.1 (Page 187) and if Rule 13 can't be followed, who was the decision taker?

2.1.2 Was the Monitoring Officer consulted on the urgency of the decision? If so what was the date he was consulted?

2.1.3 Under rule 14.4 how would the Council's or Public's interests been prejudiced by a delay to the decision?

(If the council seek to refuse this item on the grounds of confidentiality then an indication of the general nature of the prejudice will suffice).

2.2. Why was it impractical to delay the decision – Rule 13.1(a)? What downsides were the council seeking to avoid? After all the next Cabinet was only 24 working days later.

2.3 Please let me have a copy of the notice and documentation issued to the Chairs or members of the relevant Policy Committees in accord with 13.1(b)

2.4 Please let me have a copy of the public notice required by 13.1(c)

2.5 Please let me know the date the public notice of the decision required by 13.1(c) was made available to the public and where it was posted or advertised. If it was in the Town Hall was the Town Hall open to the public or were Covid restrictions in place.

3. Were any other statutory permissions involved in taking the decision to grant the guarantee? If so what were they?

Incidentally the numbering of the Constitution Headings and their subsections is out of line starting on page 183.”

6. The Council acknowledged the request on 10 January 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 8 August 2022 to complain about the Council’s failure to respond to their request.
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 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. On 10 August 2022 the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.
12. Despite this intervention the Council has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with FOIA. 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.

Right of appeal

14. 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

15. 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.
16. 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

Michael Lea
Team Manager
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Wycliffe House
Water Lane
Wilmslow
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