

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 December 2023

Public Authority: Southend-On-Sea City Council

Address: Civic Centre
Victoria Avenue
Southend-On-Sea
Essex
SS2 6ER

Decision (including any steps ordered)

1. The complainant asked Southend-On-Sea City Council (the Council) for advice and assistance to formulate a request for information.
2. The Commissioner's decision is that the Council has failed to comply with its obligation, under section 16 of FOIA, to provide advice and assistance.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Either provide the complainant with advice and assistance to help him submit a valid request or explain, to him, why it would not be reasonable in the circumstances to do so.
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. The complainant's request relates to a response they received from a previous request. The response stated the following:

"There is no internal newsletter/round-up/briefing or similar to employees within the Childrens services department. However the Council as a whole has a variety of staff communications which are sent via email by the Media Team to all SCC employees."

6. In light of the Council's response, on 18 September 2023, the complainant wrote to the Council requesting the following:

"Section 16 of FOIA outlines your responsibilities to provide reasonable advice and assistance to people who propose to make, or have made, requests for information.

Therefore, please may you help me formulate an FOI by providing me with the names of the categories/subjects/topics that exist in respect of the variety of staff communications which are sent out via email by the Media Team."

7. The Council acknowledged the correspondence on 10 October 2023 but did not provide a substantive response.

Reasons for decision

8. Section 8 of FOIA sets out the criteria for a request for information to be valid. A request must:

- be in writing; and
- state the name and address of the requester; and
- describe the recorded information the requester wants to receive.

9. The Commissioner is not satisfied that the complainant's correspondence met the above requirements because it does not clearly describe any recorded information. However, just because it was not a valid request does not mean that the Council had no obligations under FOIA.

10. Section 16(1) of FOIA states that:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to

do so, to persons who propose to make, or have made, requests for information to it”.

11. FOIA does not define what advice and assistance is reasonable in what circumstances. The Commissioner considers that what a public authority should be expected to provide will depend on the particular circumstances. However, the Code of Practice notes that public authorities should provide advice and assistance to help would-be requesters make requests that meet the requirements of section 8 of FOIA. Public authorities must also attempt to clarify unclear requests and should, where possible, help the requester to submit a request that does not exceed the cost limit.
12. The Commissioner recognises that there may be circumstances where it is not reasonable for the public authority to provide advice and assistance. For example, the request may be too broad or too vague to be meaningfully refined so that it falls within the cost limit. Equally the requester may have refused to take on the advice and assistance they were previously given or may otherwise be abusing their rights under FOIA.
13. The Commissioner contacted the Council on 21 November 2023 in respect of the complainant’s correspondence of 18 September 2023. No evidence has been put forward to suggest that the Council has since provided any advice and assistance and the Council has not attempted to argue that it would be unreasonable to be expected to do so.
14. The Commissioner therefore does not consider that the public authority has provided reasonable advice and assistance and has thus failed to comply with section 16 of FOIA.
15. The Council must now either provide reasonable advice and assistance to help the complainant submit a valid request for information or it must explain why it would be unreasonable in the circumstances to do so.

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

Roger Cawthorne
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Wycliffe House
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Cheshire
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