

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 September 2010

Public Authority: Calderdale Council
Address: Westgate House
Westgate
Halifax
HX1 1PS

Summary

The complainant asked Calderdale Council (the Council) to provide him with a copy of its instructions to West Yorkshire Joint Services regarding a trading standards matter. The Council failed to respond until after the Commissioner's intervention. The Commissioner found that the Council had been in breach of sections 1(1)(a) and 10(1) of the Act. The Commissioner requires no steps to be taken by the Council.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. In 1986 Calderdale Council (the Council), along with other councils in West Yorkshire, reached an agreement to contract responsibility for certain trading standards matters to a joint venture organisation now known as West Yorkshire Joint Services (West Yorkshire).

The Request

3. On 29 October 2009 the complainant, following earlier correspondence on a trading standards matter, wrote to the Chief Executive of the Council and asked if he would provide: *"a copy of your instructions to West Yorkshire Joint Services regarding this matter"* [i.e. the discharge of certain of the Council's responsibilities under the Companies Act 2006 which had been delegated to West Yorkshire].
4. On 29 December 2009 and again on 13 January 2010 the complainant sent reminders to the Council but received no reply to either letter.
5. On 5 February 2010 the complainant wrote again and told the Council that, despite two reminders, one of them sent by recorded delivery, he had yet to receive a reply, an acknowledgment or an explanation as to why the Council had not provided the information requested on 29 October 2009. He added that he believed the Council to be in breach of the Act and invited comments. He again received no reply.

The Investigation

Scope of the case

6. On 26 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that the Council had failed to respond to repeated information requests and had not replied to his complaint to them. He asked the Commissioner to treat his letter as a formal complaint regarding the Council's failure to comply with the Act.
7. The Commissioner's investigation focused on obtaining a response to the complainants request for information.
8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

9. On 29 March 2010 the Commissioner wrote to the Council to draw its attention to the complaint and ask that the Council respond to the request within 20 working days.

10. On 28 April 2010 the Council wrote to the complainant in respect of what it described as his recent enquiry for information under the Act. The Council explained that, due to pressure of work for the then forthcoming General Election, it needed to ask permission for a short extension of the timescale. The Council said it intended to respond within the next ten days and added that it had appointed a new head of department which had resulted in the transfer of work and had exacerbated the election pressures.
11. On 30 April 2010 the complainant told the Council that after six months and a series of reminder letters there had been no response whatsoever to his request for information. The Council's only response now had been to request yet further time to respond, a request which he said he declined.
12. On 10 May 2010 the complainant asked the Commissioner to consider issuing a formal Decision Notice against the Council.
13. On 11 May 2010 the Council told the Commissioner what action it was now taking in response to the complaint.
14. On 14 May 2010 the Council told the Commissioner that it had now fully responded to the complainant and had sent him a copy of the 1986 agreement that had enabled the Council to delegate relevant responsibilities to West Yorkshire.
15. On 17 May 2010 the complainant told the Commissioner that he had received some information from the Council but said that unfortunately it was not the information he had requested on 29 October 2009. He complained that the Council had also not explained why it had taken it so long to respond. He wrote in similar terms to the Council.
16. On 24 May 2010 the Council told the complainant and the Commissioner that it had sent the complainant a copy of the 1986 agreement with West Yorkshire which had allowed it to delegate relevant responsibilities to West Yorkshire. The Council said that the letter the complainant sought did not exist as the Council had not felt it was necessary to send out a letter of instruction to West Yorkshire telling them to discharge their duties effectively when the legally signed agreement from 1986 would suffice.
17. On 26 May 2010 the Commissioner told the complainant that the Council had satisfied him that no further information was held by it which fell within the scope of the request. There was therefore no further action that the Commissioner could take.

18. On 28 May 2010 the complainant told the Council that he had been amazed to learn, after repeated requests to the Council, that the information he sought did not exist. Had the Council told him that in the first place, he said he would not have gone to the inconvenience and cost of pursuing a freedom of information request for non-existent information. He had however expected the Council to respond to his request within the statutory timeframe and he had also expected his complaint to be investigated and responded to. He had received no response at all until after the intervention of the Commissioner and even then the Council had not complied with the Commissioner's request to respond to him promptly.
19. Also on 28 May 2010 the complainant complained to the Commissioner that the Council had not told him the information he had been seeking did not exist. He said that the Council had an obligation to advise him of that rather than ignoring his repeated requests and then ignoring his complaint for failure to respond to the freedom of information request. He asked the Commissioner to consider formal action against the Council.

Analysis

Substantive Procedural Matters

20. Section 1(1) of the Act provides that:

"(1) 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 the information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

21. Furthermore section 10(1) of the Act provides that:

"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

22. The Commissioner found that the Council failed to inform the complainant that no relevant information was held falling within the scope of his request within the 20 working day statutory time limit. It follows that in this matter the Council was in breach of sections 1(1)(a) and 10(1) of the Act.

23. The Commissioner accepts the Council's contention that in its view the 1986 agreement would be sufficient for West Yorkshire to understand its obligations. He therefore considers it reasonable to assume that no further information requested by the complainant would be held; the complainant has now accepted that the information requested is not held.
24. As regards the delay, the Council has explained that the delay in responding had come about for a number of reasons. The request had been sent to the Town Hall, which was across town from the building in which the information governance team were located. Eventually the request had arrived on the desk of the appropriate manager just as that person was leaving the Council's employment; the replacement manager had not been able to deal with the matter straight away. The result was that some time had passed before the letter had managed to find its way into the Council's freedom of information system. The Council said that it was unfortunate that the new manager's workload, the election and delivery to the Town Hall had all delayed the request. However the Council has assured the complainant that it has robust systems in place for dealing with information governance issues. The Council said that it is a busy council with few resources and that individual requests to it rarely go astray; it added that this chain of events had not been the norm.
25. The Commissioner has noted that the complainant has not contested the Council's statement that no more information falling within the scope of his request is held. However the complainant was concerned about the time taken to respond. The complainant was also concerned that the Council had not carried out operational actions that he wanted it to take. However this is not a matter for the Commissioner.

The Decision

26. The Commissioner's decision is that the Council did not deal with the request for information in accordance with the Act and was in breach of sections 1(1)(a) and 10(1) of the Act in respect of the time taken to respond to the request for information.

Steps Required

27. The Commissioner requires no steps to be taken.

Right of Appeal

28. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 14th day of September 2010

Signed

**Rachael Cragg
Group Manager- Complaints Resolution
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**