

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2011

Public Authority: Worcester City Council
Address: Guildhall
Worcester
Worcestershire
WR1 2EY

Decision (including any steps ordered)

1. The complainant asked the council for information as to why it had not responded to an earlier request for information within 20 working days as required by the Act. He also asked for information on the council's fairness policies when issuing and considering appeals on Parking Control Notices.
2. The Commissioner's decision is that Worcester City Council has breached the Act in respect of the first part of the request. This is because the council did not provide the complainant with valid refusal under the Act which confirmed whether it holds any information falling within the scope of the complainant's request.
3. As regards the second part of the request the Commissioner's decision is that the council did respond to this request but that it did not do so within the 20 working days required by the Act.
4. The Commissioner therefore requires the public authority to take the following steps to ensure compliance with the legislation.
 - To respond to the first part of the complainant's request by confirming to the complainant whether it holds any recorded information which will respond to his request.
 - If the council does hold relevant information it should consider whether that information should be disclosed as required by the Act.

5. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. Following a previous request for information from the complainant in which the councils response had been late, the complainant wrote to Worcester City Council on 17 January 2011 requesting information in the following terms:

i) *"Your target response date of 16th December 2010 has been substantially overrun which is surprising as it must have been clear to you within a few days of receiving my letter that the information was not readily available?"*

and

ii) *"How does the council ensure the residents of Worcester are made aware of the extreme fairness with which it [the council] seeks to operate"*

7. On 25 January 2011 the council responded to other issues which the complainant had raised in his letter. However it did not respond to either of the questions noted above.
8. The complainant therefore wrote to the council and clarified that the above 'statements' were actually requests for information under the Act. The council replied on 5 April 2011 apologising for not responding to the initial request. It did not however provide any indication whether it held information which could respond to the first part of the request. It also only partially responded to the second part of the request.
9. In response to further contact from the complainant the council wrote to him again on 15 April 2011 and responded to the second part of the request. It provided him with a web link to its policy on parking control notices. The complainant wrote again stating that he was unhappy with that response. The council's response still did not address the first part of his request.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.

11. The request relates to a parking control notice which was issued to the complainant. The complainant's request for information relates to an earlier request for information he had made relating to this Notice. The council had failed to respond within 20 working days and the complainant was unhappy about this. He therefore requested that the council provided him with information as to why the delay had occurred. It is the second request which the complainant complained to the Commissioner about.
12. Whilst the complainant accepted that the council's refusal notice had been issued correctly, he considered that under the circumstances of the case the council should have used its discretion and disapplied the notice. The council stated however that in order to be fair it needed to apply the parking requirements as they were written and so the Notice would not be withdrawn. The second part of the complainant's request is for details of any fairness policy which the council used to make this decision.

Reasons for decision

13. Section 1 of the Act requires that where a request is received by an authority it should respond to the requestor confirming whether it holds relevant information. If it does, it is also required to consider whether that information should be disclosed to the complainant. The Act also requires an authority to respond to a request within 20 working days.
14. In response to the complainant's initial letter the council's response did not respond to the 2 paragraphs which raised the questions/requests outlined above. The response concentrated on other issues which the complainant had raised alongside his request.
15. When the complainant wrote again pointing out that it had not responded to his requests the council's response was to state that it had mistaken his requests to be comments rather than requests for information.
16. The first part of the complainant's request, labelled i) above, was for any information which would explain why the council's response to his first request was not provided within 20 working days required by the Act. The council responded apologising for the delay, but did not state whether it held information which would respond to that request. The complainant however wrote back clarifying that his comment was actually a request for information under the Act and that the council should respond as required by the Act. He wished information, not an apology.

17. The council's response to that letter still did not confirm whether the council held any relevant information would respond to the first part of the request. It merely reiterated its apologies for the delay.
18. The Commissioner considers that the council was under a duty to consider whether it held any relevant information in relation to both parts of the request and to respond accordingly as required by the Act. It needed to confirm to the complainant whether it held any relevant information or not in order to comply with its obligations under the Act.
19. The Commissioner therefore considers that the council did not comply with its obligations under the Act in respect of the first part of the complainant's request.
20. In response to the second part of the complainant's request the council's letter to the complainant of 15 April 2011 provided a link to its website. The website linked to information which explained the council's policies matters to do with parking and Parking Control Notices.
21. The complainant accepted that this 'technically' responded to the second part of his request, but argued that this was not an appropriate way to publish the policy because it does not take into account individuals who do not have access to the web.
22. It is not the Commissioner's role to consider whether the council's publication of this information via the web is suitable to inform all members of the community about its fairness policies as regards its regulation of parking laws. Therefore the Commissioner has not considered this point further.
23. The Commissioner considers that the council's response did provide the complainant with the information which he asked for as regards this part of the request. The Commissioner therefore recognises that the council has now complied with the requirement to disclose the requested information.
24. However the initial request for information was made on 17 January 2011 whilst the council's response was dated 15 April 2011. The Commissioner's decision is therefore that the council did not respond to this request within the 20 working days required by the Act.

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: 0300 1234504
Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

**Andrew White
Group Manager
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Cheshire
SK9 5AF**