

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 April 2012

**Public Authority:** Wigan Metropolitan Borough Council

**Address:** Town Hall  
Library Street  
Wigan  
WN1 1YN

#### Decision (including any steps ordered)

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1. The complainant requested information relating to statements of SEN at a particular school. Wigan Metropolitan Borough Council ("the council") refused to provide the information on the basis of costs under section 12(1) of the Freedom of Information Act 2000 ("the FOIA") however it subsequently withdrew its reliance on this exclusion following the Commissioner's investigation.
2. The Commissioner's decision is that the council breached section 1(1) and section 10(1) of the FOIA because it failed to respond to the request within 20 working days and when it did respond, it relied incorrectly on section 12(1).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the requested information to the complainant.
4. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### Request and response

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5. Following an initial refusal of an earlier request under section 12 of the FOIA, on 14 July 2011 the complainant requested information in the

following terms:

*"In view of the 18 hour limit, please could you provide me with the age at which the 50 youngest pupils at Hope Special School, Wigan, had their first statutory assessment, resulting in a statement of SEN".*

6. The council responded on 26 September 2011. It said that it still considered the compliance with the refined request would exceed the 18 hour time frame provided by section 12 of the FOIA.
7. On the same day, the complainant wrote to request an internal review. She said that she did not accept that section 12 applied.
8. The council failed to conduct an internal review.

### **Scope of the case**

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9. The complainant asked the Commissioner to determine whether the council had correctly applied section 12(1) and she expressed dissatisfaction with the way in which her request had been handled. She alleged that the council had not "cooperated".
10. During the Commissioner's investigation, the council decided to withdraw its reliance on section 12(1). The Commissioner's decision therefore relates to the procedural breaches that arose as a result of the public authority's handling of this request. The Commissioner has also made some comments about the way in which the request was handled in the "Other Matters" section at the end of this notice.

### **Reasons for decision**

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#### **Procedural issues**

11. The Commissioner's decision is that the council breached section 1(1) and section 10(1) of the FOIA because it failed to respond to the request within 20 working days and when it did respond, it relied incorrectly on section 12(1).

## Other Matter

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### Internal reviews

12. When a requester expresses dissatisfaction with the refusal to provide information, this should trigger the authority's internal review procedure in accordance with the Code of Practice under section 45 of the FOIA. While there is no statutory time frame relating to internal reviews, the Commissioner's position is that an internal review should not take longer than 20 working days unless exceptional circumstances are involved. In this case, the authority failed to conduct an internal review even when prompted to do so by the Commissioner. The Commissioner would like to remind the council of its responsibilities in this regard and trusts that it will make appropriate improvements in the future.

### Section 16(1)

13. Although the authority conceded that in this case it had incorrectly relied on section 12(1), the Commissioner was concerned to note that the council did not appear to understand its obligations under section 16(1) to offer reasonable advice and assistance to the requester when such a refusal is made. The Commissioner trusts that the authority will consider appropriate guidance on his website at [www.ico.gov.uk](http://www.ico.gov.uk) and ensure that it considers section 16(1) in the future whenever making a refusal under section 12(1).

### Section 77

14. It is an offence under section 77 of the FOIA for an authority to deliberately attempt to conceal information. The complainant alleged that the council's actions in this case had represented a deliberate attempt to withhold information. For clarity, the Commissioner did not consider that there was sufficient evidence to justify this allegation.

## Right of Appeal

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15. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

16. 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.
17. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**