

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2012

Public Authority: Chelmsford City Council
Address: Civic Centre
Duke Street
Chelmsford
CM1 1JE

Decision (including any steps ordered)

1. The complainant requested information relating to internal reviews for Environmental Information Regulations (EIR) requests, and charges levied under the EIR by Chelmsford City Council (the council).
2. The Commissioner's decision is that the council did not deal with the request for information in accordance with the FOIA as it failed to provide a response to the request within the statutory time frame of 20 working days. After the intervention of the Commissioner, a response was provided. Therefore, the Commissioner requires no steps to be taken.
3. Additionally, the council breached its obligation under section 16(1) of the FOIA to offer reasonable advice and assistance. However, in view of the later provision of the information, the Commissioner does not require any steps to be taken.

Request and response

4. On 14 September 2011, the complainant wrote to the council and requested information in the following terms:

"Could you tell me what was (and is) this procedure in detail you had (and have) in place for an internal review of an Environment Information Regulation request."

He also asked the following:

Also why if any any procedure you had (and have) was in place was it not used in the case of CBC1007 as CBC was treating it as an EIR request Also could you tell me why your CBC EIR webpage had a minimum charge of £80 for ANY EIR request at all which had to be paid in advance before CBC would deal with it.

This obviously being an illegal charge if material is viewed at council offices for instance.

To pre empt your reply that this was corrected I know it was because I was the one who got it corrected by contacting the CBC web team.

Would you also tell me how many people you have illegally charged this fee." (sic)

5. On 13 October 2011, the council responded but appeared to have confused this request with another request that the complainant had made. The complainant therefore requested a review on 10 December 2011.

Scope of the case

6. The complainant contacted the Commissioner on 20 October 2011 to complain about the council's failure to respond to his request and he raised concerns about the council's failure to comply with the statutory timeframe.
7. On 26 January 2012, the council wrote to the complainant with the result of the internal review it had carried out. Some information was disclosed to him but the complainant was unhappy that it was not the council's internal review policy as it existed at the time of his request or prior to that request. The complainant wrote to the council:

" This has just been written this month. I asked for the one that existed when you put a refusal notice on the information and the internal procedure details (in place) should have been given to me at the same time. It is as it was at that time a legal requirement with an EIR request that is refused."

8. The council asked the complainant to identify the complaint where he had asked for a review that had not been completed and it would now do so. Additionally, the council asked him to identify the information he was seeking with regard to EIR charges. The information he sought that was described as an "*illegal charge*" was refused. The council exempted this as personal information that it would be unfair to release.

9. The Commissioner wrote to the council on 5 March 2012, asking it to outline its arguments as to what information was held or not held in relation to the request for information and its arguments under section 40(2), if it was applying that exemption.
10. After many subsequent emails from the complainant, the Commissioner considers the scope of this case to be the council's response to the request and its compliance under section 10 and section 16 of the FOIA.
11. On 14 May 2012, the council responded to the Commissioner. The council acknowledged that the 13 October 2011 and 26 January 2012 responses failed to deal fully with the actual requests made. It accepted that the 26 January 2012 response answered further points made by the complainant, rather than the original questions he put. The council stated that its refusal under section 40(2) concerning the number of people that had been "*illegally charged*" was untenable and it provided no further argument. The council then divided the request into 4 bulleted points:
 - The council's procedure for reviewing EIR decisions.
 - The use (or otherwise) of this procedure on a previous matter, CBC 1007.
 - The level of charging for EIR information.
 - The number of people who have been charged.
12. On 22 May 2012, the council wrote to the complainant with a full response to his request of 14 September 2011. The council provided a response under the first bullet point acknowledging that it had had no separate procedure from its FOIA procedures for dealing with EIR reviews at the time of the request or prior to the request and provided him with its subsequent review procedure (written in January 2012). Regarding the second bullet point, the council stated that CBC 1007 had eventually resulted in a decision notice (FER0378137). Though not in accordance with its current review procedures, the council stated that it did provide a reconsideration which resulted in the information being released. Under the third bullet point, the council provided the EIR web pages as at the time of the request. It subsequently provided all the web pages it held relating to this matter from July 2007 to April 2012. The complainant, however, has made it clear both to the council and the Commissioner that he had never requested this particular information and did not require it. Whilst not wishing to involve itself in the question of the legality or otherwise of the charges it had imposed under the EIR, the council provided the

number of people it had charged since the legislation was brought in, up to the date of the request. Additional information was also provided regarding how many people had been charged up to the end of April 2012.

13. The complainant does not accept that the response provided by the council answered his request. His fundamental concerns appear to lie with what he believed that the council had/has in place for internal reviews of EIR requests which had been the subject of dispute between the complainant and the council and the system of charges for EIR requests that the council had/has in place where he was seeking redress for the individuals involved. Although these matters cannot form part of this decision notice, the Commissioner wishes to draw the council's attention to the 'Other matters' section below.

Reasons for decision

Section 10

14. Section 10(1) of the Act provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1) requires a public authority in receipt of a request to confirm whether it holds the requested information, and if so, disclose it to the applicant.
15. The request was submitted on 14 September 2011, and the council did not disclose the information until 22 May 2012. Consequently the Commissioner finds that the council has breached section 10(1) of the FOIA.

Section 16

16. Section 16(1) imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance.
17. The council has acknowledged that the responses given to the complainant in October 2011 and January 2012 did not fully address the questions actually raised in the original request. On reflection, the council stated that a substantively better and different set of replies should have been given. Although the Commissioner considers that it was inappropriate for the complainant to have expected the council to accept his assertion about the legality or otherwise of its charges under the EIR, there was a potential for refinement or clarification at various

stages of its interaction with the complainant that was not taken by the council.

Other matters

18. Although they do not form part of this decision notice the Commissioner would draw attention to the following:
19. The Commissioner understands that the Council is in the process of reviewing its position on charging for information requested under the provisions of the EIR. In so doing, the Commissioner would expect the Council to take his guidance on costs and fees into consideration. This is available at:

http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx#costs

Right of appeal

20. 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

21. 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.
22. 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
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