

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2012

Public Authority: East Sussex County Council
Address: County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1UE

Decision (including any steps ordered)

1. The complainant made 12 requests to East Sussex County Council (the council) between 12 February 2012 and 15 May 2012. The Commissioner's decision is that the council did not deal with the requests in accordance with the FOIA. The Commissioner considers that the council has breached section 10(1) of the FOIA by failing to respond within the statutory time limit of 20 working days.
2. The Commissioner does not require the council to take any action.

Request and response

3. Between 12 February 2012 and 15 May 2012 the complainant made 12 requests to the council on 12 separate occasions and requested a variety of information broadly relating to the way the council had been dealing with matters surrounding his wife. The requests are listed in Annex 1 to this decision notice. The requests are numbered in relation to the order in which they were sent to the Commissioner.
4. On 12 April 2012, the council provided a partial response to the first request which was dated 12 February 2012.
5. The Complainant wrote to the Commissioner on 22 May 2012 to complain that he had not received responses to his requests.

6. On 18 June 2012 the council provided the complainant with the remaining information requested on 12 February 2012. On 6 July 2012 it then provided information in response to the third request which was dated 2 April 2012.
7. The Commissioner wrote to the council on 25 July 2012 requesting it to issue responses to the outstanding requests within 10 working days.
8. The council responded to the complainant's outstanding requests on 13 August 2012.

Scope of the case

9. The complainant contacted the Commissioner to complain about the lack of response to his requests. During the investigation and after he received the council's response, the complainant specifically requested that the Commissioner issue a decision notice to record the council's failure to provide responses to his requests within the statutory time frame.

Reasons for decision

10. Section 10(1) of the FOIA provides:

"...a public authority must comply with section 1(1) promptly and in any event no later than the twentieth working day following the date of receipt."

11. The council informed the Commissioner that the complainant had been advised that all his correspondence would be dealt with by its Adult Social Care Complaints Department. It also advised that due to an investigation that had been undertaken relating to the complainant, it considered it inappropriate to provide him with everything he requested.
12. The Commissioner acknowledges that there is a complex situation surrounding the complainant's request, but he does not consider that this negates the duty to respond to requests under section 1(1).
13. The requests were submitted between 12 February 2012 and 15 May 2012. The council did not respond in full to the first request until 18 June 2012, over four months later. Request number 3 dated 26 April 2012 was responded to on 6 July 2012, over two months later. The remaining requests were all responded to on 13 August 2012 which equates to response times of between three, and four and a half months.

14. The Commissioner has therefore recorded a breach of section 10(1) of the FOIA.

Right of appeal

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

Website: 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

Annex 1 The requests for information submitted by the complainant

Each request is numbered by reference to the order in which they were sent to the Commissioner. The date refers to the date on which the request was made and the reference number is that which the complainant assigned to each request.

1. 12 February 2012 – MP/J.d'A

Therefore, as an Income and Council Tax payer I, under the Freedom of Information Act, ask you

1. What is the net weekly cost to the Council for my wife's accommodation with yourselves.

2. The justification for providing such specialist and, I understand, much-in-demand accommodation for my wife.

I separately ask

3. Are instructions in place at the referenced establishment for the adherence to DOL procedures and are they, to your knowledge, correctly applied.

2. 30 March 2012 – MP/J.d'A

As I believe the investigation is now concluded I ask that you provide

a. A copy of the original documentation specifically identifying the justifications for so doing (ie a description of each action so 'prevented' and the manner, in each case, in which such prejudice was considered possible – ie the detailed justifications for exclusion)

In the event that such documentation does not exist I ask that the matters referred to are nevertheless addressed as part of your response to this FOI request.

b. Documentary evidence of the review and authorisation of the Project Manager's decision and subsequent actions.

Again, in the event that such documentation does not exist, I ask that you describe/provide a copy of the Procedure that covers the assessment/authorisation of such Project Manager decisions

c. The policy/procedures that ensured that, in such exclusion, my Human Rights under the Human Rights Act were at all times protected.

d. (1) The Policy under which the manner in which the cessation of the possibility of such 'prejudice' is determined and, in this specific case, (2) the date on which this was so determined and (3) documentary evidence demonstrating the manner in which all such restrictions (and associated restrictions) were set aside. In the event that such documentation does not exist I ask that the matters referred to are nevertheless addressed as part of your response to this FOI request

3. 2 April 2012 – 12.04.02/1

I ask under the above act and in reference to the letter received by yourselves on the 20th March 2012 from Messrs Heringtons (additional copy previously provided)

1. With regard to the 4th paragraph

- (i) Is the statement concerning the Council's concern confirmed?*
- (ii) What is the Council's justification?*

2. With regard to the 5th paragraph

- (i) Was the named member of the Council's staff "very anxious that these proceedings are commenced as soon as possible"*
- (ii) If so, what was the basis of the expressed anxiety and*
- (iii) Why did proceedings need to be commenced 'as soon as possible'*
- (iv) Was a statement made in support (if, so, please provide a copy)*
- (v) Did the Council provide any support and, if so, what (with copies of all supporting documentation, please?)*

3. Were the actions of the member of the Council's staff

- (i) within his job description*
- (ii) endorsed by the Council (given that he would ostensibly be acting in his 'official' capacity)*
- (iii) reliant upon and advising data held by the Council (and presumably subject to the DPA)*
- (iv) a breach of (a) Client confidentiality (b) Council Procedures/Regulations*
- (v) (given his previous actions) a breach of the Human Rights Act (given that there was no evidence warranting a chargeable offence)*
- (vi) That he relied on advice of claims elicited from a protected person certified as without mental competence*
- (vii) of questionable motivation (if not, please supply evidence to the contrary)*

4. 5 April 2012 – 12.04.05/1

Please be advised of the following requests for information

1 (my ref 12.03.05/1)

I am aware that the processing of a number of requests made by me under the FOI Act and the DPA (re SARs) is or has been suspended.

For all such requests please provide

- *a copy by way of identification*
- *your Request reference number*
- *the date upon which the request was received*
- *the latest date for response permitted under the relevant Act*
- *the date by which the Request will be met*
- *the identity of the person authorising the suspension*
- *the reason for the suspension*
- *the specific legal authority under the relevant Act for such suspension (and its specific reference within the Act)*
- *the current status*

2. (my ref 12.03.05/2)

For of requests made by me under the FOI Act and the DPA (re SARs) that are in process

- *a copy by way of identification*
- *your Request reference number*
- *the date upon which the request was received*
- *the latest date for response permitted under the relevant Act*
- *the date by which the Request will be met*

3. (my ref 12.03.05/3)

I am advised that the Organisation's [named council officer] (of Adult Social Services) provided in his official capacity a statement (possibly or otherwise on a COP24) to a [named individual]

In respect of this documents please provide

- *a copy (redacted if considered necessary)*

confirmation that

- *the issuing of such a document was entirely in accord with all Council Policies*
- *its contents were fully in accord with the Data Protection Act and the Human Rights Act*
- *its contents were fully in accord with Council's Policy on confidentiality of information*
- *that [named council officer] held all Council Authority for the issuing of the said Statement*

4. (my ref 12.03.05/4)

Advice and wording of Council Policy or Procedures governing or advising, for both Council Members and Staff, the time expectations (or other) for response and/or acknowledgement of written communications by the Public and/or outside Agencies.

5. (my ref 12.03.05/5)

Please advise if, and if so when, the above referenced suspension was lifted (or not)

5. 30 March 2012– 12.04.06/1

I wonder if you could provide some info on the internal review process please?

such as

- by who is it performed*
- is is governed by any Policy or procedural documentation (if so, how can I get to see it, please?)*
- to whom are the conclusions made available*
- what is the timescale for reporting*
- when did the one I write about commence*
- what were, in this case, the reviewer's terms of reference*
- can/does the reviewer make actionable recommendations*
- can disciplinary proceeding arise from the conclusions of the review*

6. 18 April 2012 – 12.04.18/1

Thank you for your email clarification in which you state:

'I believe that it is common ground that [complainant's wife] now lacks capacity to manage her own affairs'

'The issue of who will be responsible in future for looking after her welfare and finances is now before the Court of Protection and it will be for that court to decide what should happen'

(For the sake of correctness I presume I need to make the following request for information under the Freedom of Information Act - my reference being 12.0.18/1 - therefore)

with regard to your above statements will the Council confirm or deny (or alternatively provide the information requested)

1. *That the Council considers themselves permitted, (i) to date (ii) in the future intervening period, to disregard my written authorisation to make decisions on her behalf with regard to her financial affairs, her health and personal welfare (ie as granted by her LPOA)*

2. *That the Council have, to date disregarded my written authorisation to make decisions on her behalf with regard to her financial affairs, her health and personal welfare (ie as granted by her LPOA) and, if so, the specific resultant requests so disregarded.*

3. *and, if so, to advise (i) to date and (ii) for the future intervening period their authority for such disregard*

4. *Do such requests so disregarded include requests (i) in respect of SAR requests under the Data Protection Act (ii) under the Freedom of information Act (iii) under the Council's Complaints procedures*

5. *Does the Council (1) intend to continue such disregard, if so (ii) their authority for such continued disregarded (iii) the purpose or reason for such continued disregard.*

7. 17 April 2012 – 12.04.17/1

In a written statement submitted to the Tunbridge Wells County Court on the 29th March 2012 the Council stated

"17 January 2012 [named council officer] reported concerns that [named individual] appears to have no access to her money and [complainant] had not returned her calls"

Under the above act I ask that you advise:

1. *(i) The dates and times of the unreturned calls and, for each such alleged call, the nature of any message that was left.*

2. *If [named council officer] aware that I was required to attend emergency appointments on the 17th, 18th and 19th of January at the King's College Hospital's Liver Transplant Unit in London?*

3. *What was meant by (i) 'her money' and (ii) 'appears to have no access to'*

4. *What moneys have been volunteered to Social workers by myself – indicating for each occasion (i) to whom it was paid (ii) the date on which paid (iii) if a receipt was provided and by whom (iv) if on each*

occasion an assurance was given that an accounting would be provided.

5. Please provide a copy of each such accounting provided, indicating the manner and date of its provision, its author and a confirmation that it is a copy of the Mount Denys official records of such matters.

8. 12 May 2012 – 12.05.12/1

Having eventually become aware from Social Benefit documentation addressed to my Wife at Mount Denys (which appears to have been handed to her son, [named individual]) I have initiated certain enquiries.

To assist and inform these enquiries I ask, under the above Act, bearing in mind that I hold my Wife's LPOAs and her Social Services 'Appointment to Act' :

1. Why such documentation was (a) not provided to me (b) why it was provided instead to [named individual].

2. I have now been made aware that this documentation is a result of an application made on-line – given that my Wife, even at a time of full mental capacity, was not computer literate

(a) (i) Who made this Application(s) (ii) under what authority

(b) Why such application was made in the knowledge that I hold (i) my Wife's LPOAs and (ii) an Appointment to Act with regard to State Benefits (iii) without advice or notification to me

3. I have now been made aware that payment was made by Giro voucher, encashable at a local Post Office – given that my Wife does not have (1) the capacity to sign her name (2) visit a Post Office

(a) Who signed the Giros and (b) under what authority

4. I am advised by Mount Denys management that no such funds have been lodged in (what I believe it is referred to as) a 'a Secure Account' in my Wife's name I therefore ask

(a) Where these funds are held

(b) Under whose control are they held

(c) The current balance of these funds

(d) The use to which any utilised funds have been put

- (e) *Why I, as holder of her (1) LPOAs (2) Appointment to Act have not (i) been informed of these funds (ii) had these funds made available to me*

9. 11 April 2012 – 12.04.17/3

Under the above Act I ask that you confirm or deny (by a simple "Yes" or "No" with the provision of, as appropriate, supporting documentary evidence, redacted as considered necessary).

(Reference to "my Wife" is to be construed as relating to [name], also known to the Council as [name] who now resides at the Council's Mount Denys facility)

1. *Did the Council in late December 2012 commence an investigation under the Sussex Multi-Agency Policy and Procedures for Safeguarding Adults at Risk in respect of my Wife*
2. *Was this investigation in relation to an allegation of violence.*
3. *Was any contact made with the person against whom the allegation was made in reference to the allegation (i) prior to the commencement of the investigation (ii) during the progress of the investigation (iii) subsequent to the conclusion of the overall process?*
4. *Was any concern (i) identified (ii) expressed (iii) noted with regard to the mental capacity under the Mental Capacity Act of any party associated with investigation?*
5. *Did any such concern inform the (i) commencement of the investigation (ii) continuation of the investigation (iii) the outcome of the investigation*
6. *Was the outcome of the investigation (i) 'substantiated' (ii) 'not substantiated' or (iii) 'inconclusive' (iv) the only the outcomes permitted under the Policy*
7. *Did the (i) decision to initiate the investigation (ii) any decision during the course of the investigation (iii) at the conclusion of the investigation have a decisive impact upon the civil rights or obligations of the person against whom the allegation was made*

(see <http://www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/right-to-a-fair-trial/>)

8. *Did the failure to contact the person against whom the allegation was made (i) during the investigation (ii) subsequent to the investigation comply with the requirement for 'Fair treatment'*

(para 4 of <http://www.equalityhumanrights.com/human-rights/what-are-human-rights/being-treated-fairly-and-with-dignity/> refers)

9. *Does the failure to (a) respond to (b) suspend action in respect of requests made by the person against whom the allegation was made in relation to (i) Subject Access Requests under the Data Protection Act (ii) the Freedom of Information Act (iii) Complaints made in accordance with Council Policy comply with the requirement for 'Fair treatment' (same reference applies)*

10. *Do any of the responses to (i) 7 (ii) 8 and (iii) above constitute a breach of the Equality Act 2010?*

11. *If so, what remedial action (i) has been taken (ii) has been proposed to be taken.*

10. 25 April 2012 – 12.04.25/1

Under the above Act I ask that you:

1. *Provide in writing the (a) Council Procedure(s) or (b) the Council's expectations in respect of the actions to be taken by a Council Carer when dealing with an attempt to abscond (ie run away) made in the open street by a vulnerable, protected person in their care and under their responsibility.*

2. *Ensure that such information includes (a) the actions to be taken by the Council Carer when the vulnerable, protected person cannot be dissuaded from absconding (ie running away) and (b) if such action involve an element of risk assessment, the criteria for such risk assessment*

11. 11 April 2012 – 12.04.25/2

It has been reported to the Court of Protection that "staff (at the 'Mount Denys Nursing Home') have been unhappy about the pressure she has been seen to be under from [complainant]"

Under the above Act I therefore ask that you provide details of the number of times (and the dates) when I have actually visited my Wife

I also, under the above Act, I ask that you confirm or deny (by a simple "Yes" or "No

1. (i) Is this reported statement true and, if so, (ii) please provide for each such circumstance (a) the date and (b) the nature of the pressure engendering such 'unhappiness'

2. Does the Council therefore either recommend or so advise that I desist in

(i) Visiting my wife at all times

(ii) Leaving or providing

(a) Gifts and creature comforts for my wife

(b) Letters or notes

(c) Formal correspondence addressed to my Wife that cannot be dealt with under her LOPA.

12. 15 May 2012 – 12.05.15.1

I refer to the recent investigation held under the Sussex Multi-Agency Policy and Procedures for Safeguarding at Risk in respect of my Wife, [name] (AKA to yourselves as [name]).

If, where appropriate, you decide, for legal purpose, not to supply names I am willing to accept the appropriate fully descriptive job title.

1. I was entirely excluded from this investigation. I therefore ask

a. For a copy of the procedure that provides authority for such action

b. The identity of the member of staff that initiated such action

c. The specific authorised reasons for such initiation of this action

d. For each concern requiring the initiation of such action

(i) A detailed description of each specific concern identifying (1) who presented the concern (2) in what manner the concern would be evinced (3) the consequence of the concern being realised

(ii) A detailed description of what would be considered as giving rise to the concern

(iii) (a) the start date of the concern and (b) the end date of the concern and (c) the reason why the concern ceased to exist

2. Please provide an organisation chart for the management responsibility for the procedure (eg initiator – supervisor – manager – director)

3. Please, for each such level, provide the relevant procedural instructions for (i)control/(ii)authority/(iii)supervision