

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2013

Public Authority: Scarborough Borough Council
Address: Town Hall
St Nicholas Street
Scarborough
North Yorkshire
YO11 2HG

Decision (including any steps ordered)

1. The complainant has requested information relating to the refurbishment of the Futurist theatre in Scarborough. Despite the intervention of the Commissioner, Scarborough Borough Council ('the council') has not provided a response to the request in accordance with the FOIA. The Commissioner therefore reminds the council of its obligations under the FOIA and requires that it either respond to the request in accordance with the legislation or issue a valid refusal notice under section 17(1).
2. The public authority must take this step 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

3. On 11 March 2013 the complainant wrote to the council and requested information in the following terms:

"I am writing to you on behalf of the people of Scarborough who are very concerned about the fate of the Futurist and the astronomical figures which are being made public related to your estimates on costs

of immediate refurbishment required to keep the theatre open and fit for purpose.

In April 2012 these were £2.2m, (see attached CIPFA estimates) by the end of 2012 £5m was being bandied about, and at the end of February 2013 £7m was the figure being made public by you. Therefore we require precise figures to demonstrate how this £7m is arrived at, and why this figure has escalated so much in less than one year...

We ourselves have derived open-market cost estimates on a "What must be done now", "What should be done" (to improve and enhance the ability to accommodate larger touring shows) and "What could be done" (to improve and enhance the whole area as a year-round cultural and leisure zone). Perhaps you could give us your own open-market costs under these headings so we can all compare and relate to each other's thinking."

4. Having received no acknowledgement or reply to the above letter, the complainant then emailed the council on 17 April 2013 requesting the same information. The complainant has explained that she has been unable to supply a copy of this email to the Commissioner because her computer was hacked and all her emails were lost.
5. Again, having heard nothing from the council, the complainant sent an email on 21 May 2013 chasing a response. The council replied by email on the same day stating that there was an outstanding request for information on the Futurist (reference FOIA2566) and the responding officer would be sent a reminder for his attention.
6. On 11 June 2013, again having received no response to her request, the complainant requested an internal review. The council acknowledged the review request on the same day stating that it would be passed to the appropriate officer for his attention.

Scope of the case

7. The complainant wrote to the Commissioner on 23 July 2013 to complain about the lack of response to her request.
8. The Commissioner has considered whether the council have responded to the request in accordance with the FOIA.

Reasons for decision

9. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days.
10. On 14 August 2013, the Commissioner wrote to the council recommending that it issue an internal review decision within 10 working days. He also recommended that if the council believed it had already responded to the complainant, it contact her to confirm receipt.
11. The Commissioner contacted the council again on 9 September 2013 and informed it that the complaint has been deemed eligible for formal consideration under section 50 of the FOIA.
12. To date, the council has not provided a response to the complainant. It is clear to the Commissioner that, in this case, the council has failed to respond to the request in accordance with the legislation.

Right of appeal

13. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

14. 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.
15. 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 – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF