

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 May 2014

Public Authority: City of York Council
Address: West Offices, Station Rise
York, YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested information relating to emails sent to and from specified email addresses.
2. The Commissioner's decision is that City of York Council (the council) has breached section 10 and section 17 of the FOIA.
3. The Commissioner does not require any remedial steps to be taken in this case. However, he does feel it necessary to remind the council of its obligations under section 17 of the FOIA, and that future responses should be dealt with accordingly.
4. These breaches will be recorded for future monitoring purposes.

Request and response

5. On 16 August 2013, the complainant wrote to the council and requested information relating to emails sent to a councillor's email address from four individuals and, emails sent from the councillor to those four individuals, since 1 January 2013.
6. The council responded on 21 January 2014.

Scope of the case

7. The complainant contacted the Commissioner on 17 December 2013 to complain about the way his request for information had been handled.

8. The Commissioner considers the scope of this case to be to determine if the council has complied with its duties under section 1 and section 10 of the FOIA.

Reasons for decision

Section 10(1) – time for compliance

9. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

10. Section 10(1) of the FOIA requires that a public authority must provide a substantive response within the time for compliance, which is 20 working days following the date of receipt.
11. In correspondence with the Commissioner the council acknowledged that it had failed to comply with section 10(1) of the FOIA. The Commissioner has recorded this breach accordingly.

Section 17 – Refusal of request

12. Section 17(1) states:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

13. In order for the council to have complied with this, it should have responded to the complainant by 16 September 2013. The Commissioner notes that the council did not respond until 21 January 2014 and has therefore breached section 17(1).

14. In this case, the council's response stated '*the two councillors have personal data on council supported devices but that is their data and not available to the council*'
15. In its submission to the Commissioner the council explained that two responses were sent to the complainant. The first one provided the information and stated that a formal reply would be sent later detailing exemptions. The council stated that this reply did not constitute a correct refusal notice.
16. However, it also stated that a second formal reply was sent a day later. Although this did not quote the section number of the FOIA, it did state that some personal data had been withheld from disclosure. It also included details on how to request an internal review and how to contact the Commissioner. The council therefore considered this was a formal refusal notice.
17. The Commissioner has reviewed the response provided to the complainant on 21 January 2014. He has also referred to his own guidance¹ which states if a public authority has decided that a Part II exemption applies then its refusal notice will usually need to include the following information:
 - The exemption(s) on which the authority is relying, including section, subsection, and wording of the exemption concerned.
 - The reason why the exemption applies.
18. In this case the council has stated that there is '*personal data on council supported devices but that is their data and not available to the council*' The Commissioner does not consider that this is an adequate explanation as it is unclear which exemption is being applied here.
19. The information may be exempt by virtue of section 40(2) – third party personal data, or by virtue of section 3(2) – not held by the council for the purposes of FOIA.
20. The Commissioner therefore considers that the council has contravened the requirements of section 17(1)(a),(b) and (c) of the FOIA.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/refusing_a_request_writing_a_refusal_notice_foi.as_hx

21. The Commissioner does not require any remedial steps to be taken in this case. However, he does feel it necessary to remind the council of its obligations under section 17 of the FOIA, and that future responses should be dealt with accordingly.

Right of appeal

22. 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

23. 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.
24. 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

Pamela Clements
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