

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 22 April 2015

**Public Authority:** Newcastle Under Lyme Borough Council  
**Address:** Civic Offices  
Merrial Street  
Newcastle Under Lyme  
ST5 2AG

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Newcastle Under Lyme Borough Council (the council) relating to a specified business premises. The council has acknowledged the request, but not provided a substantive response.
2. The Commissioner's decision is that the council has failed to comply with section 10 of the FOIA as the response was not provided within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Comply with the request or issue a valid refusal notice as set out in section 17 of the FOIA
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. On 12 January 2015 the complainant wrote to the council. The letter contained the following which could be considered to be requests for information:

*"I received no response from you (despite one being requested by me) but in November 2014 a photograph was put on social media sites by [Specified individuals] of [specified business premises showing photographs of the licences granted by your Council (both dated the 4 November 2014) to a [1<sup>st</sup> named person] and [2<sup>nd</sup> named person]. Obviously those licences are only valid from the dates they are granted (and are not retrospective). This raises a number of separate issues which I require the Council to promptly answer (within 7 days of the date of this letter):*

*(1) Was anyone prosecuted in connection with this and if so who and when and if not why not.*

*(2) Why was a licence granted by the Council to [1<sup>st</sup> named person] when the Council were made aware that he had (or had intended) to [carry out specified activity] in the Council area before having applied for or being granted a licence by your Council.*

*(3) [...] I asked you to confirm via e mail within 24 hours of my e mail being sent what action you had taken to prevent the unlawful and/or unauthorised [specified activity] taking place and if no action was taken by your Council then why not and in the absence of such confirmation it would be assumed no action was taken. You chose not to answer however I am repeating (in this letter) the request in connection with the action taken so please answer.*

*(4) [...] Please therefore confirm whether the Council are going to promptly request a change of use application to be submitted to the Council in respect of the upstairs of [specified business premises] (given the information supplied in this letter) and also notify residents of adjoining terraced properties of that application and give those residents the option of lodging objections to such an application (no such option having been previously given by the Council to such residents when the previous change of use application was made in 2010 in relation to the upstairs of that address). [...] Please therefore confirm whether the Council are going to promptly request a planning application to be submitted in respect of the downstairs of [specified business premises] (given the information supplied in this letter) and also notify residents of adjoining terraced properties of that application and give those residents the option of lodging objections to such an application (no such option having been previously given by the Council to such residents when a previous change of use application was made in 2010 in relation to the upstairs of that address).*

*(5) Please explain why a licence to [carry out specified activity] at the upstairs of [specified business premises] was granted by the Council to [specified individual] in March 2010 when the Council knew that no*

*requisite change of use planning application had then been made to the Council to use those premises as [specified business type] premises.*

*(6) Please explain what action the Council took to stop [carrying out specified activity] continuing to be carried out by [specified individual] at the upstairs of [specified business premises] until a change of use planning application had been made and granted (the submitted change of use planning application was apparently not made until nearly 4 months later in July 2010). If no action was taken by the Council then please explain why.*

*(7) Please explain why a licence to [carry out specified activity] was apparently granted by the Council to a [1<sup>st</sup> named person] on the 4 November 2014 to [carry out specified activity] at the upstairs of [specified business premises] when the Council knew that the change of use planning application made in 2010 for the upstairs of those premises was limited to 2 persons carrying out [specified activity] there.*

*(8) Has the Council has been accessing my e mails (either via its employees or servants or agents or third parties); please note that if you refuse to deny this (within 7 days of the date of this letter) then I will assume it has been taking place."*

6. The council acknowledged receipt of the letter on 12 March 2015.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 26 February 2015 to complain specifically about the council's delay in responding to his request.
8. The Commissioner considers the scope of this case to be to formally record the delay.

### **Reasons for decision**

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9. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "no later than the twentieth working day following the date of receipt".
10. The Commissioner's decision is that the council did not deal with the request for information in accordance with the FOIA. It breached section 10(1) of the FOIA by failing to provide a substantive response to the request within the statutory timeframe of 20 working days.

## Right of appeal

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11. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

12. 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.
13. 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**