

## **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 February 2015 the complainant wrote to the council. Within that letter, he made the following requests for information:

*"I am reporting what appears to be a breach of planning legislation and also a crime (I understand that one is within the jurisdiction of the Council and the other the Police). The breach of planning relates to the siting of an aerial by [named individuals] of the [specified business premises]. I have attached 2 recent photographs of that aerial which you will see blatantly overhangs the air space of the neighbours property of [specified neighbouring property] when all nearby aerials are fixed to the chimney stacks (or very near). It appears that a small surveillance device is fixed to the aerial which may have both audio and visual surveillance capacity and I am sure I do not need to explain what that means to the persons being effectively spied on by [named individuals]. You should be aware of the planning legislation (some of which is at the online site of <http://www.planningportal.gov.uk/permission/commonprojects/antenn> a/) relating to the siting of such aerial; in addition the blatant siting of that aerial in that overhanging position when all other nearby aerials are fixed to a chimney stack or nearby is also yet another act of harassment by [named individuals]. I have also noticed that they have recently refitted the cigarette box to the outside of the [specified business premises] which is in any event rarely used by their customers/visitors the pavement usually being littered (especially during the summer) with cigarette ends thrown their [sic] by the customers and visitors to the premises who often congregate outside during the summer months (and sometimes other times of the year) smoking and drinking and swearing in large groups often throwing used cans on the pavement for neighbours to have to clean up; such anti social behaviour [sic] has been a part and parcel of their use of those premises. Please let me know (within 48 hours and via e mail) what action you intend to take regarding all of this not least the siting of the aerial and if no action is being taken then please explain why not.*

*I should also point out that I have received some damning evidence concerning your Council (and your Councils inability to find the application that was made to your Council by [named individual] to [carry out specified activity] in your area in which he would have been asked if he had any criminal convictions) and [named individual] of the [specified business premises] not least a declaration in an application apparently made by [named individual] to another Council for a [specified activity] licence in which it is declared he has criminal convictions. Given that then please let me know within 48 hours whether you have suspended or withdrawn his licence to [carry out specified activity] in your area given that those convictions may be for offences of violence or sexual offences or other offences which out the public at risk.*

*[...]*

*I look forward to hearing from you via e mail within 48 hours of this e mail being sent not least whether the Council officer from your Council who lied has been suspended or sacked for gross misconduct; as regards [named individual] and his apparent convictions then you can either brazen it out or take prompt action to suspend/withdraw his [specified activity] licence as his apparent convictions are now a matter of public record as they were disclosed by another Council in relation to a formal information request*

6. The council acknowledged the request on 12 March 2015.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 23 March 2015 to complain specifically about the council's delay in responding to his request and to ask for a decision notice.
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**