

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 August 2016

Public Authority: Plymouth City Council
Address: Ballard House
West Hoe Road
Plymouth
PL1 3BJ

Decision (including any steps ordered)

1. The complainant has requested information from Plymouth City Council (the "Council"). The requested information relates to an investigation of a complaint which was made by the complainant. The Commissioner has considered the actions taken by the Council in respect of the complainant's information request. She has decided that the Council's response does not comply with the provisions of section 17 of the FOIA. In view of this decision, the Commissioner requires the Council to issue a fresh response.
2. The Council 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

3. On 13 December 2015 the complainant wrote to the Council and requested information in the following terms:

"... in accordance with the Freedom of Information Act I would like a copy of all the evidence you have collected and or produced,

including your diary of events and all of the evidence you have taken into consideration to make your decision".

4. The Commissioner understands that this request concerns a complaint he had raised with the Council.
5. The Council responded on 21 December 2016. No direct reference to the FOIA request was made but it included the following statement: *"I am more than happy to disclose the information you have requested ..."*.
6. On 13 January 2016 the complainant responded. He expressed displeasure at the way the Council had dealt with his request under the FOIA, which the Commissioner considers to be in line with a request for an internal review.
7. On 21 January 2016 the Council replied. It referred to information that had previously been provided and advised him that any other documentation is considered to be "privileged" and therefore it was under no legal obligation to disclose it. No reference to the FOIA was made and no exemptions were cited, although this would suggest that it had relied on section 42 (legal professional privilege).

Scope of the case

8. The complainant contacted the Commissioner on 10 June 2016 to complain about the way his request for information had been handled. The Commissioner required further information from the complainant which was provided on 15 August 2016.
9. The Commissioner will consider the Council's handling of the request.

Reasons for decision

Section 17 – refusal of request

10. The complainant has clearly made a request under the terms of the FOIA. The Council has responded to this, and his request for an internal review, without full provision of the information which has been requested.
11. When asked about how it had dealt with the request the Council advised the Commissioner that it:

"... was aware that an FoI request had been put in at the end of a complaint ... and believed [it] had answered the request ..."

The Council was not able to give privileged information such as witness statements which were taken as part of the investigation ... but supplied everything that was outside of this scope”.

12. Section 17(1) of the FOIA says that if a public authority is relying on a claim that the requested information is exempt from disclosure, it must give the applicant a notice that (a) states that fact (b) specifies the exemption in question, and (c) says why the exemption applies.
13. Had all the requested information been provided to the complainant in this case then clearly a refusal notice would not have been necessary. However, it is clear from the correspondence that information has been withheld. An appropriate refusal notice should therefore have been provided and is now required.

Right of appeal

14. 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

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

15. 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.
16. 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

Carolyn Howe
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF