

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2018

Public Authority: Sandwell Metropolitan Borough Council

Address: Sandwell Council House
Oldbury
West Midlands
B69 3DE

Decision (including any steps ordered)

1. The complainant has requested information from Sandwell Metropolitan Borough Council ('the Council') about ballot papers and votes cast regarding a business development plan for Wednesbury.
2. The Commissioner's decision is that:
 - The Council has breached section 10(1) of the FOIA as it has not complied with section 1(1) within 20 working days with respect to the complainant's request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Respond to the complainant's request of 14 August 2017 by issuing a substantive response that meets the requirements 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

5. On 14 August 2017 the complainant wrote to the Council and requested information in the following terms:

"I have an urgent question regarding the Wednesbury BID please can you provide a full list of all the traders/businesses that the ballot papers were supposedly sent out to, assuming they were all entitled to vote, and also provide a list of all the traders/businesses that made up the full total of 79 votes that were said to have been cast. I would expect that this ought to be a fairly easy matter to sort quickly.

I am concerned that the BID process has thrown up a number of "Material Irregularities" which have been drawn to my attention by traders/businesses. It would serve us all well to ensure that the process is open, transparent, fair & equal, I don't think from conversations I have had it has been.

I look forward to your early response in this matter and urge you to suspend the BID until matters have been thoroughly looked in to. I shall be contacting others about more issues/matters that have arisen."

6. On 17 August 2017 the Council acknowledged the request. It advised that the Electoral Reform Service (ERS) conducted the ballot in question and that the complainant should contact that body.
7. In continuing correspondence, the complainant queried this response and the Council suggested that, in order to receive an accurate list, he should contact the ERS.
8. On 23 August 2017 the complainant appears to have received an email from the ERS who advised him that it had referred his enquiry to the Council and that the Council would deal with it under the FOIA.
9. On the same day the Council acknowledged the request and gave it the reference FS-Case-57674294.
10. Despite further contact from the complainant, the Council did not provide a response to the request.
11. On 4 December 2017 the Commissioner wrote to the Council and required it to provide a response to the complainant's request within 10 working days. On 11 March 2018, the complainant advised the Commissioner that the Council had not done so.

Scope of the case

12. The complainant contacted the Commissioner on 14 November 2017 to complain about the way his request for information had been handled.
13. The Commissioner's investigation has focussed on whether the Council has met its obligation under section 10(1) of the FOIA.

Reasons for decision

Section 10 – time for compliance

14. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled (a) to be told whether the authority holds the information and (b) to have it communicated to him or her if it is held.
15. Section 10(1) says that a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
16. The complainant submitted his request to the Council on 14 August 2017. To date the Council has not provided a response to the request that meets the requirements of section 1(1) and it has breached section 10(1) of the FOIA in this regard.

Right of appeal

17. 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

18. 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.
19. 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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