

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 July 2020

Public Authority: Chilton Town Council
Address: Hutton House
Durham Road
Chilton
Ferryhill
DL17 0HE

Decision (including any steps ordered)

1. The complainant has requested information from Chilton Town Council ("the council") in relation to its allowances over a two-year period.
2. The Commissioner's decision is that the council failed to respond to the request within 20 working days and has therefore breached section 10(1) of the FOIA.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - The council must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. 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

5. On 5 January 2020, the complainant wrote to the council, and requested information in the following terms:

*"1. Which Councillors have claimed an allowance over the past 24 months?
2. Who has claimed a telephone allowances over the past 24 months?
3. Who has a council owned mobile phone? What is the criteria to qualify for a council owned mobile phone? Is there a limit/cap to how much can be claimed each month? Are the phones pay as you go or contract?
4. Who has claimed mileage/travel costs over the past 24 months and how much does this equate to? What is the allowance per mile?
5. Have any councillors claimed sustenance allowances, if so who and how much was claimed?"*

6. The council acknowledged receipt of the request on the same date. The complainant contacted the council on 1 February requesting a response. To dat, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 3 February 2020 to complain about the council's failure to respond to their request.
8. The Commissioner has considered whether the council has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. Section 1(1) of the 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 states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.

11. On 14 February 2020, the Commissioner wrote to the council reminding it of its responsibilities and asking it to provide a substantive response to the complainant.
12. The complainant contacted the Commissioner on 3 March 2020, to advise that they had still not received a response from the council, in relation to their request.
13. During the Covid-19 global health crisis, as a reasonable and proportionate regulator, the Commissioner took the decision to amend her casework approaches to reduce the burden on public authorities. On 28 May 2020 the Commissioner wrote to the council again, reminding it of its responsibilities and asking it to provide a substantive response to the complainant as soon as it could, if it had the capacity to do so. The Commissioner also invited the council to inform her if it was unable to comply with the FOIA due to any difficulties posed by the Covid-19 crisis.
14. The Commissioner has contacted the council on several occasions by telephone and was informed that a response would be provided. However, despite these interventions, the council has yet to respond to the complainant or to provide the Commissioner with any information on its ability to process the request.
15. From the evidence provided to the Commissioner in this case, it is clear that the council did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the council has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Other matters

16. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.
17. The Commissioner notes, however, that a response to a request made on 5 January 2020 would be due several weeks before the worst of the coronavirus disruption began. This has been a necessary consideration in her decision to issue this notice.

18. When invited to do so by the Commissioner, the council did not submit any mitigating arguments to justify its continuing failure to comply with the FOIA in relation to this request. This lack of engagement by the council has also informed the Commissioner's issuing of this notice.

Right of appeal

19. 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@justice.gov.uk

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

20. 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.
21. 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
Head of FOI Casework and Appeals
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SK9 5AF