

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 4 March 2021

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
Northumberland
NE61 2EF

Decision (including any steps ordered)

1. The complainant requested information relating to the Council's duties under the Housing Health and Safety Rating System (HHSRS) Operating Guidance. The Council refused the two requests because it said they were not valid requests for recorded information.
2. The Commissioner's decision is that both requests were valid under section 8 of FOIA. Consequently the Commissioner finds that the Council has failed to comply with section 1(1) and section 10(1) of FOIA in failing to issue substantive responses.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's requests: Firstly, confirm or deny that the requested information is held (or, if the public authority decides to refuse to confirm or deny that any of the requested information is held, then a refusal notice should be issued that complies with the requirements of section 17 of FOIA).
 - Secondly, and subject to the above, if the requested information is held the public authority must either disclose the requested information or, if it wishes to withhold any information, issue a refusal notice in relation to the information it wishes to withhold and disclose the remainder.

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 FOIA and may be dealt with as a contempt of court.

Request and response

5. The complainant in this case had previously exchanged correspondence with the Council on the subject of its duties under the HHSRS Operating Guidance.
6. The complainant asked the Council the following questions by email on 11 May 2020:
 - If a bath installation failed, and a tenant could not use, would that be a cat 1 hazard? and,
 - If water supply failed, faulty landlord plumbing, would that be a cat 1 hazard if a tenant had no water supply because of that failure?
7. The Council responded to the complainant on 11 June 2020. It considered that the request did not fall under FOIA because it was for "opinions and detailing potential scenarios".
13. The complainant wrote to the Council on 11 June 2020 and stated that he had asked for "the criteria of an HHSRS inspection and its application" [sic], rather than asking for an opinion. The complainant also asked further questions:
 - Is point 17 "person hygiene sanitation drainage , mental health affected by defective facilities ___if breached is it a cat 1 hazard?
 - Is point 18 water supply for domestic purposes adequacy ___if breached a cat 1 hazard ?
 - Is Council required by law to enforce Cat 1 HHSRS hazards ?
14. The Council responded to the complainant on 10 July 2020. It maintained that the complainant's questions did not fall within the scope of FOIA.

Scope of the case

15. The complainant contacted the Commissioner on 10 July 2020 to complain about the Council's refusal to consider his two requests under FOIA. The complainant argued that he had asked general procedural questions and had not requested specific opinions.
16. The Commissioner wrote to the Council on 22 September 2020 for an explanation of its handling of the requests. Following several chasers the Council responded to the Commissioner on 24 December 2020. The Council advised that it did not have sufficient capacity to deal with the complainant's correspondence at that time.
17. The Council explained that it had been required to redeploy resources in response to the Covid-19 pandemic. It was also in the process of recruiting additional staff to deal with information governance matters.
18. The Commissioner has published a position paper setting out her regulatory approach in the context of the pandemic.¹ This acknowledges that many public authorities have had to deal with unprecedented demands as a result of the pandemic. The Commissioner has accordingly committed to taking a pragmatic and proportionate approach in her regulatory role.
19. The complainant in this case specifically requested that the Commissioner issue a decision notice regarding his complaint. Therefore the Commissioner's decision has focused on whether the complainant's request was valid under section 8 of FOIA.

Reasons for decision

Section 8: has the complainant made a valid request for information?

20. Section 8 of FOIA states:

"(1) In this Act any reference to a "request for information" is a reference to such a request which-

¹ <https://ico.org.uk/media/about-the-ico/policies-and-procedures/2617613/ico-regulatory-approach-during-coronavirus.pdf>

*(a) is in writing,
(b) states the name of the applicant and an address for correspondence, and
(c) describes the information requested”.*

21. In this case, the complainant made both requests in writing, stated his name and gave an address for correspondence. Therefore the requirements of section 8(1)(a) and (b) were satisfied in each case.
22. The Commissioner considers that a request will meet the requirements of section 8(1)(c) as long as it contains a sufficient description of the information required. Each request has to be judged on its individual merits as to whether there were sufficient indicators provided to enable the information requested to be adequately described for the purposes of section 8. As long as a request attempts to describe the information it is likely to meet the requirements of section 8(1)(c) as it is always open to the public authority to seek further clarification to identify the information.
23. The Commissioner’s published Guide to FOI² states:

“Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way....

This is not a hard test to satisfy. Almost anything in writing which asks for information will count as a request under the Act. The Act contains other provisions to deal with requests which are too broad, unclear or unreasonable”.
24. The Commissioner has considered the wording of the requests under consideration in this case. She is satisfied that, although phrased as questions, the wording of the requests was sufficiently descriptive to allow the Council to identify the information sought. For example, it is reasonable for the Council to check whether it holds relevant information in guidance or policy documents.

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/#1>

25. The Commissioner is also mindful that the complainant in this case had previously exchanged correspondence with the Council on the subject of its duties under the HHSRS Operating Guidance. The Commissioner is therefore of the opinion that the Council ought to have taken the background and context of the correspondence into account when considering how to respond.
26. Accordingly the Commissioner finds that the complainant's requests were valid requests for information as per section 8 of FOIA, and that the complainant was entitled to receive a response to each request. The Commissioner would remind the Council that it is not required to create or generate information in response to a request, however it must consider whether or not it holds recorded information that would answer the request.

Section 1: general right of access
Section 10(1): time for compliance

27. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
28. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
29. Since the Council did not accept that either of the two requests was valid, it did not confirm or deny that it holds the requested information, and has neither disclosed information nor provided a valid refusal notice.
30. The Commissioner therefore finds the Council in breach of section 1(1) and section 10(1) of FOIA.

Right of appeal

31. 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

32. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
33. 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

**Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**