

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2023

Public Authority: Monmouthshire County Council
Address: County Hall
The Rhadyr
Usk
NP15 1GA

Decision (including any steps ordered)

1. The complainant submitted an information request to Monmouthshire County Council (the Council) requesting the organisational chart for those employees handling FOIA and subject access (SAR) requests.
2. The Council did not provide a response to the complainant's request, relying on section 17(6) of FOIA.
3. The Commissioner's decision is that the Council was not entitled to rely on section 17(6) in this case.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Either provide the requested information, or issue a refusal notice in accordance with FOIA.
5. 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.

Background

6. On 16 June 2023, the complainant submitted the following information request to the Council:

“Please state the FOIA employee’s MCC joining date to assist me in only making FOIA requests for data post her arrival”.
7. On 19 June 2023, the Council provided a response in which it withheld the information under section 40(2) of FOIA. It also informed the complainant that further requests regarding the personal details of staff will be considered exempt under section 14(1), and that it will not be issuing further refusal notices relating to staff members personal details in line with section 17(6) of FOIA.

Request and response

8. On 5 July 2023, the complainant wrote to the Council and requested information in the following terms:

“Please provide the Organisation Chart for employees handling FOIA and SAR requests, including job titles and with the names of public facing employees within the chart.”
9. The Council did not respond to this request.

Scope of the case

10. The complainant contacted the Commissioner on 1 September 2023 to complain about the Council’s failure to respond to the request.
11. In line with his usual practice, the Commissioner wrote to the Council to highlight the outstanding response.
12. The Council confirmed that it had relied upon section 17(6) of FOIA to decline to issue a refusal notice. As the Council considered that the request was vexatious, it therefore believed it was unreasonable in the circumstances for it to have issued a fresh refusal notice.
13. The Commissioner considers that the scope of his investigation is to determine whether the Council was able to rely on section 17(6) of FOIA to refuse to provide a response to the complainant’s request of 5 July 2023.

Reasons for decision

Sections 17(5) and 17(6)

14. Section 17(5) of FOIA requires a public authority that wishes to refuse a request as vexatious to issue a refusal notice, stating that fact within 20 working days.
15. However, section 17(6) of FOIA contains an exception to this rule. It states:

“Subsection 17(5) does not apply where-

 - a) the public authority is relying on a claim that section 12 applies,
 - b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request”.

The Complainant's view

16. The complainant's position is that they are unsure as to “what the circumstances are” for the Council to state that it was unreasonable in the circumstances for it to have issued a fresh refusal notice.

The Council's view

17. In submissions to the Commissioner, the Council explained that it has spent a lot of time and resources providing substantive information in response to previous requests but the complainant “refuses to believe the information provided”, and will not productively engage with the Council's service.
18. The Council further explained that the complainant has shown a “clear pattern of harassing its staff”, such as reposting information from Council staff's social media accounts on to their own and making “repeated threats about complaints or escalation to court as a means of bullying staff”.
19. The Council confirmed that the complainant “scatterguns requests” to individual members of staff, rather than following the appropriate information request process known to the enquirer, and then makes complaints about those members of staff for responding as normal course of business, instead of under FOIA.

The Commissioner's decision

20. The Commissioner accepts that section 17(6) exists to give public authorities some form of protection against those who continue to make information requests, however he is also conscious that it is not, and should not, be used as a 'blanket ban' on an individual exercising their rights under FOIA.
21. The Commissioner's [guidance](#) states that section 17(6) removes the obligation to issue a refusal notice when both the following conditions are met:
 - The public authority has already given the same person a refusal notice for a previous vexatious or repeated request.
 - It would be unreasonable to issue another one.
22. Whilst the Commissioner recognises the reasons for which the Council relied on section 17(6) of FOIA, he cannot ignore the fact that the original request made in June 2023, was refused under section 40(2) of FOIA, and that although there was a forewarning of future requests relating to personal data being refused under section 14(1), there has been no actual refusal notice issued under section 14(1) of FOIA.
23. The Commissioner is also conscious of the fact that if the Council were able to rely on section 17(6) in this case, it could lead to a situation whereby it could ignore future requests from the complainant, despite there never having been a section 14(1) refusal notice issued in relation to their requests.
24. Therefore, the Commissioner is of the view that the Council cannot rely on section 17(6) of FOIA in relation to the request of 5 July 2023 and must now issue a response, either:
 - a) Providing the requested information, or
 - b) Explaining why it will not be doing so, including an explanation of the exemption or exemptions it is relying on to refuse the request (i.e., issue a valid refusal notice under section 17 of FOIA).

Right of appeal

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF