

Freedom of Information Act 2000 (Section 48) Practice Recommendation

Devon County Council

30 August 2023

Summary

Devon County Council (“the Council”) has a poor level of performance in terms of its response times to FOIA requests. This has been highlighted following an introductory meeting between the Commissioner’s representative and the Council, when it was discovered that a backlog of overdue requests had accumulated and the number of requests not being responded to within the statutory timeframe had been consistently increasing month on month throughout 2023. The Information Commissioner has reached the view that the Council’s request handling practices do not conform to part 4 of the section 45 Freedom of Information Code of Practice, issued by the Cabinet Office in July 2018 (the Code).

Recommendations

The Council has drawn up an action plan and is in the process of implementing a number of improvements to its information request handling processes. The Commissioner has therefore designed the following recommendations to support and enhance the Council’s plans to improve its information rights practices.

In considering these recommendations, we expect the Council to ensure that it meets the requirements of all information rights legislation to which it is subject.

Area of Code	Non-conformity	Recommendation of steps to be taken												
<p>Part 4 – time limits for responding to requests</p> <p>Section 4.1 of the Code highlights the “clear” requirement that public authorities respond to requests for information promptly, and within 20 working days of receipt in accordance with section 10(1) of FOIA.</p>	<p>On 6 July 2023, the Council updated the Commissioner that it had a backlog of 93 overdue requests.</p>	<p>The Council should ensure that requests for information are responded to in a timely manner.</p>												
	<p>The Council provided the following statistics for the first six months of 2023, showing the poor level of FOIA requests responded to within the statutory time limit:</p>	<p>The Council should use the Commissioner's FOI self-assessment toolkit to improve its timeliness compliance.</p>												
	<table border="0"> <tr> <td>January</td> <td>40%</td> </tr> <tr> <td>February</td> <td>39%</td> </tr> <tr> <td>March</td> <td>22%</td> </tr> <tr> <td>April</td> <td>14%</td> </tr> <tr> <td>May</td> <td>21%</td> </tr> <tr> <td>June</td> <td>22%</td> </tr> </table>	January	40%	February	39%	March	22%	April	14%	May	21%	June	22%	<p>In accordance with part 8.5 of the Code, the Council should publish its information access request statistics and make these easily accessible on its website. The statistics should include the number of information access requests that have not been processed and the number of completed requests where the processing took longer than 20 working days.</p>
	January	40%												
February	39%													
March	22%													
April	14%													
May	21%													
June	22%													
	<p>The Council’s request handling procedures should include provision for when a response is late, or is likely to be late at any stage of the internal processes. It must be clear when and to who to</p>													

		<p>escalate, who is responsible for taking action, the action they will need to take, and by when.</p>
		<p>The Council must ensure that its information rights training is sufficient to ensure that it has adequate coverage in place in order that request handling times do not fall below a compliant level in the event of the departure of key staff members.</p>
		<p>The Action Plan which the Council is implementing should be published on its website for full transparency about the improvements it is making.</p> <p>The Council should ensure that the Action Plan incorporates appropriate processes being put in place to ensure that both the backlog of overdue requests is cleared and 90% timeliness is achieved by the end of December 2023.</p> <p>The action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan.</p>

Reasons for issuing this Practice Recommendation

The Commissioner is issuing a Practice Recommendation at this time due to the poor levels of timeliness in responding to information requests during the first six months of 2023. The statistics show the rate of responses provided within 20 working days reduced from a poor 40% in January 2023 to only 22% in June 2023, with an even lower dip of only 14% compliance in April 2023, being particularly concerning.

The Council's own figures show that, as at 6 July 2023, the Council had a caseload of 158 unanswered information requests, of which 93 were overdue.

This practice recommendation formalises the Commissioner's concerns and holds the Council accountable for improving its freedom of information request handling practices and, in turn, increase public confidence and trust in its information rights practices.

Failure to comply

A practice recommendation cannot be directly enforced by the Commissioner. However, failure to comply with a practice recommendation may lead to a failure to comply with FOIA, which in turn may result in the issuing of an enforcement notice.

Further, a failure to take account of a practice recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner.

The Council should write to the Commissioner by 31 December 2023 to confirm that it has complied with its recommendations above and how it has achieved this.

The Commissioner will have regard to this practice recommendation in his handling of subsequent cases involving the Council.