

Freedom of Information Act 2000 (Section 48)

Practice Recommendation

Date: 26 September 2022

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon CR0 1EA

Foreword

1. The Information Commissioner is aware that the London Borough of Croydon (the Council) has had a consistently poor level of performance in terms of its response times to FOIA requests. This has been highlighted by the substantial number of complaints about the timeliness of response times submitted to his office, as well as the high number of decision notices he has had to issue to the Council to compel it to respond to outstanding requests. Following engagement by his staff with the Council about the underlying reasons for these failings, the Commissioner has reached the view that the Council's request handling practices do not conform to the following part of the section 45 [Freedom of Information Code of Practice](#), issued by the Cabinet Office in July 2018 (the Code):
 - part 4 of the Code relating to time limits for responding to requests.
2. Therefore, in accordance with section 48(1) of the Freedom of Information Act 2000 (FOIA), the Commissioner has elected to issue this practice recommendation.

Summary

3. The Commissioner is aware that, since June 2021, he has received a disproportionately high number of section 50 freedom of information complaints about the Council when compared to similar sized public authorities. A very high proportion of these complaints have resulted in decision notices recording a breach of section 10 of FOIA for non-response to a request.

4. The Commissioner has noted that over the period of June 2021 to August 2022, despite his repeated issuing of decision notices to highlight the Council's poor adherence to the time limits under FOIA, the Council has not given any indication that this trend would be halted.
5. Having written to the Council on 22 July 2022 to seek further information about its performance, the Commissioner notes that its request handling statistics demonstrate a consistently poor performance over a sustained period of time in terms of its adherence to FOIA.
6. He has therefore decided to issue this practice recommendation to formalise his concerns and hold 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.

Nature of non-conformity

7. The Commissioner considers that the practices of the Council in relation to the exercise of its functions under FOIA do not conform with part 4 of the Code.

Part 4 – time limits for responding to requests

8. 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.
9. Compliance with the statutory timescales for handling requests is a key priority. It is evident from the information available that the Council is not exercising good practice in this area.
10. Between June 2021 and August 2022, the Commissioner had to issue 16 decision notices which recorded a section 10 breach, either requiring the Council to respond to outstanding requests or recording that the response or information was provided late. As the regulator of the Environmental Information Regulations 2004 (EIR), the Commissioner also had to issue 12 decision notices during this period which recorded a regulation 5(2) breach for timeliness.
11. The Commissioner notes that the Council's delays in responding to requests he has considered range from three months to over six months in some cases. This is in addition to the fact that, in all cases resulting in a section 10 or regulation 5(2) decision notice, the Commissioner first wrote to the Council to bring the request in question to its attention and asked it to respond within 10 working days, which is his standard case-handling practice. Only after that time has elapsed does he serve the section 10 or

regulation 5(2) decision notice compelling a response within 35 calendar days.

12. On 22 July 2022, the Commissioner wrote to the Council to seek further information about its performance in relation to FOIA requests. The Commissioner wishes to place on record his appreciation for the Council's detailed and timely response to his enquiries of 22 July 2022. This outlined that the Council acknowledges that its historic poor performance requires decisive action.
13. The Council provided the Commissioner with some of its historical performance data. This recorded that for the financial year 2020/21 it responded to 74% of FOIA requests within the statutory time limits. For the financial year 2021/22 this figure fell to only 59% compliance. As of 10 August 2022, the Council explained that it was still only operating at 59% compliance. Clearly such figures are below the standards which the Commissioner expects of a public authority.
14. The Council has drawn up an Action Plan to resolve its performance issues and has explained to the Commissioner that it aims to achieve at least 90% compliance with its statutory responsibilities for timeliness under FOIA by December 2022. The Commissioner notes that this would bring them broadly into line with the average usually achieved by central government departments.
15. The Council explained that, having spent a period of time under a Local Government Finance Act Section 114 (S114) notice previously, budgets across its various service areas had come under sustained pressure. Its FOIA team suffered from a lack of resources as a direct consequence of S114 spending constraints. With the S114 notice now lifted, the Council has approved further finances to strengthen its FOIA team.
16. The Commissioner acknowledges the obvious impact of the S114 spending constraints, as well as the inevitable disruption caused previously by the Covid-19 pandemic. However, he considers that the Council's consistent failure over a lengthy period of time to perform to statutory deadlines so far below the average performance of other public authorities now justifies issuing a practice recommendation in line with his recently published FOI and Transparency Regulatory Manual.¹

¹ https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf

17. The Commissioner is issuing a Practice Recommendation at this time rather than, for example, an Enforcement Notice because the Council has engaged openly with his office about the procedural problems it has faced and also on account of the clear impact that the S114 notice imposed, as indicated by the gradual decline in performance highlighted by the statistics.

Action recommended

18. The Commissioner is aware that the Council 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, and also to hold it accountable for the changes it has made and is planning to make.

19. In relation to part 4 of the Code, the Council should ensure that requests for information are responded to in a timely manner. When chased to issue responses by the Commissioner's Case Officers, the Council should respond in a timely and appropriate manner. This will avoid unnecessary decision notices and the subsequent further delays for the requesters.

20. The Council should consider using the Commissioner's FOI self-assessment toolkit to improve its timeliness compliance.

21. In accordance with part 8.5 of the Code, the Commissioner recommends that 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.

22. The Commissioner recommends that the Council's request handling procedures 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 whom the matter will be escalated, who is responsible for taking action, the action they will need to take, and by when.

23. The Commissioner further recommends that the Action Plan which the Council is implementing is published on its website for full transparency about the improvements it is making.

24. 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.

Failure to comply

25. 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.
26. The Council should write to the Commissioner by the end of December 2022 to confirm that it has complied with its recommendations and how it has achieved this.
27. The Commissioner will have regard to this practice recommendation in his handling of subsequent cases involving the Council.

Signed

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