

Reference: FPR0987664

# Freedom of Information Act 2000 (Section 48) Practice Recommendation

Three Rivers District Council

3 February 2023

## Summary

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Section 48 of the Freedom of Information Act (FOIA) empowers the information Commissioner (the Commissioner) to issue a practice recommendation where it appears to him that a public authority has failed to conform, specifically, to the FOIA Codes of Practice. These failures are addressed in the recommendations section below. Section 47 of FOIA also makes clear that the Commissioner has a duty to promote the following of good practice beyond just the requirements of the Codes of Practice. The wider concerns the Commissioner has in this case are addressed in the "Other matters" section below to keep them distinct from the Section 48 related recommendations he has made.

Three Rivers District Council (the Council) has had a consistently poor level of performance in terms of its response times to FOIA requests as well as demonstrating poor engagement with the Commissioner. This has been highlighted by the number of complaints about response times submitted to the Commissioner as well as the lack of communication from the Council when case officers, on behalf of the Commissioner, have been in contact to raise such issues. The 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

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The Council has noted that it is in the process of implementing a number of improvements to its information request handling processes. It has said it is making changes to the recording and processing of information requests and is making use of additional staff to carry out the administration and monitoring of requests in order to provide greater resilience and cover. 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><b>Part 4 – time limit for responding to requests</b></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>Between August 2020 and August 2022, the Commissioner has issued 12 decision notices which recorded a timeliness breach by the Council in the handling of information requests. This is in addition to a further seven complaints received during the same period about the timeliness of responses to information requests. These complaints were resolved informally without a decision notice.</p>	<p>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.</p>
		<p>The Council should use the Commissioner’s FOI self-assessment toolkit to improve its timeliness compliance.</p>
		<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>
		<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 whom the matter will be escalated, who is responsible for taking action, the action they will need to take, and by when.</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.
		The Council should create an action plan, incorporating any recovery plan already in development, with appropriate processes put into place to ensure 90% timeliness is achieved by the end of April 2023. This 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.

## Reasons for issuing this Practice Recommendation

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Through the evidence provided in a series of complaints, it appears that the handling of information requests within the Council had fallen significantly below the expectations set out in the Codes of Practice. The impression created by this evidence has been added to by the Commissioner's own experience of dealing with the Council. This is discussed in further detail in the "Other matters" section of this recommendation.

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

## Other matters

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The Council has consistently failed to engage with the Commissioner's Case Officers. In 12 cases brought to the attention of the Commissioner, it was necessary to issue decision notices compelling responses to requests for information because initial correspondence from the Commissioner's Case Officers had gone ignored by the Council. This is not usual and does not meet the standard of engagement the Commissioner expects from public bodies when he raises queries about its handling of information requests and the statutory obligations the Council is under in this regard. Compounding this repeated failure, of these 12 cases, five had to be passed to the Commissioner's solicitors as the decision notices were neither acknowledged nor complied with by the Council. Once the Commissioner's solicitors contacted the Council, in each case a response was then issued. This is a waste of the Commissioner's resources and adds further delay to the experience of those that have made the original request to the Council. Going forward, the Council should engage with the Commissioner's Case Officers in a timely and constructive manner. This will avoid using public resources unnecessarily.

## Failure to comply

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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 30 April 2023 to confirm that it has complied with its recommendations and how it has achieved this.

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

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With regard to the issues highlighted in the Other Matters section of this practice recommendation, the Commissioner notes that section 54 of FOIA allows him to make a certification to the High Court where a public authority has failed to comply with a statutory notice. The repeated failure to comply with Decision Notices until the prospect of such a proceeding had to be raised by the Commissioner represents a systemic frustration of FOIA by the Council. If repeated in a future case without sufficient justification, the Commissioner notes that he will consider whether the facts of that case mean that he should make a certification to the Court, irrespective of whether the Council has then complied, to seek its views on such a systemic failure.