

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2012

Public Authority: Broxbourne Borough Council
Address: Borough Offices
Bishops' College
Churchgate
Cheshnut
Waltham Cross
Hertfordshire
EN8 9XQ

Decision (including any steps ordered)

1. The complainant requested information relating to senior post holders at Broxbourne Borough Council ("the council"). The council supplied some information and withheld other information using the exemption under section 40(2) of the Freedom of Information Act 2000 ("the FOIA"), relating to personal data, and section 21, relating to information that is reasonably accessible by other means.
2. The Commissioner's decision is that the council breached section 10, and 17(1), 17(1)(a) (b) and (c) and 17(7)(b) of the FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 7 October 2011, the complainant requested information from the council in the following terms:

"Please provide the requested (1) appointment (2) appraisal and (3) remuneration decision information in respect of each postholder listed below.

- (1) *The requested appointment information is the specified information*

- about the postholder's appointment to that post (whether by promotion, transfer or externally)*
- (2) *The requested appraisal is the specified information about each of the two most recent employee performance appraisals finalised prior to 1 April 2011*
 - (3) *The requested remuneration information is the specified information about each of the two most recent remuneration reviews determined prior to 1 April 2011*

Please ignore any reviews solely consequential on general changes to employee terms and conditions such as those arising from amendments to the staff handbook.

Please ignore any extraordinary appraisal/review decisions relating to disciplinary, redundancy or dismissal proceedings.

The specified information, in respect of each such appointment, appraisal or remuneration, is

- (a) *The date of the decision*
- (b) *Any body or individual(s) (other than council officers) that made recommendations about the decision*
- (c) *The body or individual(s) that made the decision*
- (d) *Any body or individual(s) (other than the decision-maker and the postholder) present when the decision was made*
- (e) *Whether the postholder was him/herself present when the decision was made*

In the case of a body, please also state the membership of the body at the relevant time (unless the body was the full council) and which members of the body were present when the decision was made.

In the case of council officers (whether included as individuals or as members of a body) please state their post titles rather than their names.

The postholders are the current or most recent holders of the council posts listed below (as at 31 March 2011, or at the date of leaving if earlier)

- *Chief Executive Officer and head of paid service*
- *Director of Resources and chief finance officer*
- *Director of Environmental Services*
- *Director of Community Services*
- *Head of Legal Services and monitoring officer*
- *Head of Communications*

- *Head of Computing*
 - *Head of Personnel*
 - *Head of Support Services*
 - *Head of Community Planning*
 - *Head of Broxbourne Services*
5. The council responded on 2 December 2011. The council provided some information and said that other information was not held.
 6. The complainant requested an internal review on 22 December 2011 and requested clarification on a number of points. He also alleged that more information was held and expressed concerns about the handling of the request.
 7. The council completed its internal review on 2 March 2012. The council clarified that some information had been withheld using the exemption under section 40. The council said that it had not located all the relevant records and it asked the complainant whether he would be willing to pay for that work if it exceeded the 18 hours costs limit provided by section 12. The council referred to another request and said that it would aggregate the costs.
 8. The complainant wrote to the council again on 5 March 2012 and said that he did not consider that the council had correctly referred to the costs limit. He also continued to express a number of concerns about the handling of the request.
 9. The council sent a further response on 16 March 2012. The council responded to the requests for clarification and it appears that following discussion with the complainant, it had decided not to rely on section 12. However, it referred to the exemption under section 21 of the FOIA in respect of some information that it believed had been supplied to the complainant by the Audit Commission.
 10. In his response of 16 March 2012, the complainant disputed aspects of the council's response.
 11. On 22 March 2012, the council responded and said that no further information had been traced.
 12. The complainant replied on the same day and reiterated that he disputed the application of section 21.

Scope of the case

13. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the following issues:
- The delays experienced and whether the council breached section 10, 16, and 17 of the FOIA (including whether the wording on the council's refusal notices was appropriate)
 - The council's failure to properly understand the exemption under section 12
 - Whether the exemption under section 21 was correctly applied
 - Whether the council has committed an offence under section 77 of the FOIA
 - To consider whether wider enforcement (beyond a formal decision notice under section 50) would be appropriate
14. For clarity, the complainant told the Commissioner that he now has access to the information that was withheld under section 21. This is because the council supplied it when responding to another requester. The complainant asked the Commissioner to make a decision on whether or not it was correctly withheld at the time as a matter of principle. The Commissioner considers that this element of the complaint has already been informally resolved as the information is now available. It has not therefore been considered any further by the Commissioner in this notice, except that the Commissioner has recorded that the information was disclosed at a late stage.
15. The Commissioner has also addressed some of the points above in the Other Matters section of this notice.

Reasons for decision

16. Section 10 of the FOIA provides that when a request for information is made, the authority should respond within 20 working days. The council failed to do this on this occasion and therefore breached this section of the FOIA. The Commissioner also wishes to record a separate breach of section 10 relating to the information that was withheld under section 21.
17. Section 17 details how a public authority should respond if it wishes to refuse to supply any information. It should comply with these provisions within 20 working days. The council failed to do this because it relied on exemptions at a late stage and therefore breached its obligations in respect of section 17(1). When the authority issued a refusal notice on 2

March 2012, it still failed to adequately explain why the exemption applied in respect of section 40(2), breaching section 17(1)(b), and it failed to rely on section 21 until a later stage, breaching section 17(1)(a), (b) and (c).

18. The complainant also asked the Commissioner to consider specifically whether the council had breached section 17(7)(b) of the FOIA which provides that when a refusal notice is issued, it must contain particulars of the right conferred by section 50. The Commissioner notes that in its follow up response to the request, the council referred to the right to appeal to the Information Commissioner and it provided contact details for the Commissioner if more information was required about the rights conferred by section 50. The Commissioner agrees with the complainant that this does not satisfy the obligation under this section to provide particulars of the right conferred by section 50 in the refusal notice itself and he has therefore found a breach of this section.
19. The complainant asked the Commissioner to consider whether the council breached section 16 of the FOIA, which relates to a public authority's obligation to provide reasonable advice and assistance. The provision of advice and assistance to requesters is dealt with in Part II of the Code of Practice under section 45 of the FOIA. The council did not actually rely on section 12 to withhold requested information and therefore the obligation to provide advice and assistance in terms of the costs limit was not triggered in this case. The Commissioner does not consider that any of the other relevant paragraphs of the Code are relevant to the handling of this request. He therefore has not found a breach of section 16.

Other matters

Time taken to conduct an internal review

20. The Commissioner's guidance provides that an internal review should not take longer than 20 working days, unless exceptional circumstances are involved. There were no such circumstances in this case. The Commissioner trusts that the council will improve its performance in the future in this regard.

Failure to understand section 12

21. The complainant highlighted that the authority did not appear to understand the factors that it may take into account when considering the application of section 12. The Commissioner was concerned to note that the authority tried to use section 12 to justify the failure to explain why information was exempt under section 40(2) on the basis that it

would take too much time to provide that explanation. Section 12 cannot be used in this way and explaining why information is exempt is an obligation under section 17 of the FOIA.

22. For clarity, the Commissioner would like to draw the council's attention to the guidance on his website at www.ico.gov.uk and the details of the activities that may be taken into account as set out in Statutory Instrument no 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Exemptions) Regulations 2004".

Enforcement action and section 77

23. The Commissioner did not consider that enforcement action would be appropriate in this case, although he does note that the complainant experienced significant delays. He has noted the issues that arose on this particular occasion in this notice. He trusts that the council will make improvements when handling requests in the future.
24. The complainant alleged that the council may have committed a section 77 offence by deliberately attempting to conceal information. The standard of proof is beyond reasonable doubt. The Commissioner did not consider that this standard was met in this case.

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Andrew White
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