

Freedom of Information Act 2000 (Section 51)

Information notice

Date: **4 December 2019**

Public Authority: **Royal Borough of Kingston Upon Thames**
Address: **The Guildhall
High Street
Kingston upon Thames
Surrey
KT1 1EU**

Section 51

Under section 51 of the Freedom of Information Act 2000 (the Act), which is set out below, the Information Commissioner (the Commissioner) has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference FS50847772, for a decision whether a request for information made by the complainant to the Royal Borough of Kingston Upon Thames (the Council) on 11 February 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 11 February 2019, the complainant requested information of the following description:

"Query 1: I would like to request a copy of all policy and guidance documents that are available to council officers who are tasked with considering the question of whether a Penalty Charge Notice should be cancelled. For avoidance of doubt, this request covers any policy that is published or otherwise publicly available, plus any internal council guidance or policy that is only available internally to council staff (such as any internal policy that outlines in what circumstances the council may exercise its discretionary powers to cancel a PCN)."

"Query 2: Please could you also disclose the training material that is used to train the council officers who make decisions regarding the cancellation of PCNs. This should cover only training material that is directly relevant to their role in deciding whether a council PCN should be cancelled, any other training material (such as generic council training, health and safety, GDPR or training related to other roles or functions) is not within the scope of this request."

Again for the avoidance of doubt, both queries above cover policies and training material available to council officers who deal with informal representations, formal representations and appeals to the tribunal."

3. On 12 March 2019, the Council responded and confirmed that it considered the information was exempt from disclosure on the basis of section 31(1)(g) with regard to the purpose set out in section 31(2)(c).
4. On 12 March 2019, the complainant wrote to the Council and requested an internal review. He explained that section 17(1)(c) and section 17(3) had not been complied with.
5. The Council provided its internal review on 12 July 2019. It upheld its reliance on section 31 but accepted that the initial refusal letter did not comply with section 17.
6. The Council explained that it considered the information to be exempt under section 31(1)(g) as the release of the information would lead to an increased number of 'false' representations and challenges. The Council considers that in providing the requested information, an individual would have knowledge of the criteria to be met when challenging the Council's enforcement. The Council explained that if

the information was publicly available, it would be likely to lead to challenges misrepresenting the facts and worded in line with its policies in an attempt to have a legitimate PCN cancelled. The Council considers that this would prevent it from applying a fair, equitable and consistent approach when assessing PCN challenges.

7. The Council did not provide its public interest test considerations.

The Commissioner's investigation

8. The Commissioner wrote to the Council on 21 October 2019. She asked the Council to provide her with a copy of the withheld information, and further details of its application of the exemptions cited.
9. The Commissioner asked the Council to provide its response by 18 November 2019.
10. The Council responded on 13 November 2019 and requested an extension of the deadline to 25 November 2019, to which the Commissioner agreed.
11. On 2 December 2019, the Commissioner wrote to the Council to request the overdue submissions.
12. The Council responded on the same day to explain the difficulties it was experiencing and requested a further extension to 16 December 2019.

Information required

13. The Commissioner requires that the Council shall, within 30 days of the date of this notice, furnish her with the following information:
 - (i) A full response to the Commissioner's letter dated 21 October 2019 and provide the withheld information.

Failure to comply

14. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the FOIA, and may be dealt with as a contempt of court.

Right of appeal

15. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Terna Waya
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF