

Freedom of Information Act 2000 (Section 48)

Practice Recommendation

Date: 1 December 2021

Public Authority: Bicester Town Council
Address: The Garth
Launton Road
Bicester
OX26 6PS

Foreword

1. This Practice Recommendation is issued in relation to actions taken by a representative of Bicester Town Council (the Council) during an investigation carried out by the Information Commissioner under section 50 of the Freedom of Information Act 2000 (FOIA). In light of this event, the Commissioner has reached the view that the Council's request handling practices do not conform to the section 45 [Freedom of Information Code of Practice](#), issued by the Cabinet Office in July 2018 (the Code).
2. The Commissioner considers that the Council's practices do not conform to the following sections of the Code:
 - Part 1 of the Code relating to right of access.
 - Part 4 of the Code relating to time limits for responding to requests.
 - The Commissioner also finds that the Council's actions did not meet her reasonable expectations as to how public authorities will engage with her office during section 50 investigations.
3. Therefore, in accordance with section 48(1) of the FOIA, the Commissioner has elected to issue this practice recommendation.

Summary

4. On 16 October 2020 an individual (the complainant) contacted the ICO to raise the issue of non-response to an information request they had submitted to the Council on 25 June 2020. On 4 November 2020 the ICO contacted the Council and asked it to respond to the complainant's information request, or else confirm that a response had already been sent.
5. On 18 November 2020 the Council replied to the ICO and indicated that it had issued a response to the complainant's information request on 22 July 2020. The reply from the Council to the ICO did not include a copy of the 22 July 2020 response to the complainant. The ICO reverted to the Council to ask for a copy of that response to be supplied. On 27 November 2020 the Council responded and attached a pdf version of a letter from the Council to the complainant bearing the date 22 July 2020.
6. The complainant subsequently questioned when the letter dated 22 July 2020 had first been sent to him. The ICO wrote to the Council on 11 December 2020 seeking confirmation and evidence that the 22 July 2020 letter had been sent to the complainant on that date. The Council responded on 17 December 2020 and provided a scan of paper versions of an email dated 22 July 2020 and the letter of the same date.
7. The complainant continued to dispute the date on which the Council had first responded to his information request and requested that the Commissioner issue a decision notice. On 22 February 2021 the Commissioner issued a decision notice finding that, on the basis of the evidence supplied by the Council, the Council had responded to the complainant's information request of 25 June 2020 within 20 working days of receipt.
8. The complainant appealed the decision notice to the First-tier Tribunal (Information Rights). The grounds for appeal were that the complainant continued to dispute that the Council had responded to him on 22 July 2020 and that the Council's evidence of this response appeared to have been fabricated.
9. The Tribunal at paragraphs 12 to 14 of its written judgement referenced EA/2021/0115P described the course of the appeal as follows:

'12. At this point the case took an unexpected turn. The Response to the appeal from the Commissioner states that the Commissioner had invited the Council to provide further evidence that the response to the

request had been sent on 22 July 2020. The reply from the Council now was that the meta data on the response letter indicated that the earliest it could have been sent to the Appellant was 27 November 2020 (in fact the date that the Council had responded to the Commissioner), and that there was no trace of the email believed to have been sent on 22 July 2020.

13. On that basis the Commissioner accepted that the prescribed periods in s10 and s17 FOIA had not been complied with, and the decision notice had been wrong to find otherwise.

14. The Commissioner's view was that the appeal should be allowed but no further steps are necessary because the request had been replied to, albeit over four months late.'

10. The Tribunal went on to state at paragraph 15:

'Inevitably, and somewhat incredulously, we are left with the strong impression that an officer of the Council has fabricated an account to the Commissioner that the response was sent on 22 July 2020 to avoid criticism that this was not, in fact, done.'

11. And at paragraph 16:

'It is important for both the Commissioner and the Tribunal that the veracity of responses from public authorities in FOIA cases can be relied upon. Moreover, we note the sheer waste of resources in terms of time and money brought about by the Council's actions: for the Appellant, the Commissioner and the Tribunal.'

Nature of non-conformity

12. The Commissioner considers that the practices of the Council in relation to the exercise of its functions under the FOIA do not conform with parts 1 and 4 of the Code.

Part 1 – Right of access

13. Section 1.1 of the Code sets out the right of a requester to be informed whether or not the public authority "holds information meeting the description set out in the request".

14. In this case it became apparent during the Tribunal case that the Council had not taken the necessary steps to give effect to the complainant's right of access, prior to the complaint of non-response being made to the Commissioner.

Part 4 – time limits for responding to requests

15. 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.
16. In this case the complainant did not receive any response to his information request from the Council until during the Commissioner's investigation, well after 20 working days had elapsed.

Action recommended

17. In relation to parts 1 and 4 of the code, the Council must ensure that it has appropriate procedures in place to record information requests, and to ensure that responses that give effect to the requester's right of access are issued within 20 working days of receipt of the request. The Council must endeavour to meet the statutory timescales on every occasion that it receives an information request.
18. Clearly it is of particular concern to the Commissioner in this case that a deliberate attempt to mislead her office appears to have been made. It appears to the Commissioner that chief amongst the factors that permitted this situation to come about was a lack of oversight of the FOI function within the Council. This allowed that function to be subverted by an individual intent on deception.
19. The Council must strengthen the oversight of its FOI function, so that it is confident that the individuals within that function are appropriately supervised.
20. The Council should also ensure that it takes appropriate steps to review any evidence it is aware of that suggests other incidents of malpractice in its request handling function, and take remedial action where this has occurred.

Other matters

21. As well as the formal findings of this notice, the Commissioner wishes to also stress the basic principles that she expects all public authorities to follow when handling requests made under the FOIA and when engaging with her office.
22. These are set out succinctly in the foreword of the Code:

'For any Freedom of Information regime to be truly effective it is important that both its users and those subject to it have faith in it.'

As well as in paragraph 1.1.3 of the separate code of practice issued under section 46 of the FOIA:

'The three principles of value, integrity and accountability provide a high-level framework for authorities to manage information and maintain a record of their activities.'

23. The faith that the Commissioner, along with the complainant and the Tribunal, can have in the integrity and accountability of the FOI function of the Council has been severely harmed by the actions of the Council referred to in this notice. The Council must now seek to restore that faith.

Failure to comply

- 24. 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 under section 49 of FOIA.

- 25. The Commissioner will have regard to this practice recommendation in her handling of subsequent cases involving Bicester Town Council.

Signed

**Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**