

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 2014

Public Authority: Darlington Borough Council

Address: Town Hall
Darlington
DL1 5QT

Decision (including any steps ordered)

1. The complainant has requested information relating to a complaint made against a councillor. Darlington Borough Council ('the council') initially refused to provide some of the information citing the exemption for personal data at section 40(2) of the FOIA as its basis for doing so. However, during the course of the Commissioner's investigation, the council revised its position and provided the remainder of the withheld information. The Commissioner's decision is that the council has breached section 10(1) of the FOIA by failing to disclose all of the requested information within the statutory time limit of 20 working days. He does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 12 May 2014 the complainant made the following request for information:

"In my position as an elected member of Darlington Borough Council I made a complaint against Cllr [name redacted] following information coming to light regarding his misuse at Darlington Borough Council ICT with the borough solicitor on 3 April 2014. It would appear that my complaint has since then been passed onto a Sub-Committee to deal with the complaint; I would now formally request under the Freedom of Information Act 2000 that I am supplied with the following information:

1. A copy of the report and any supporting documents, reports and/or evidence given to the Sub-Committee by person or persons acting for Darlington Borough Council.
 2. A copy of the report prepared by [name redacted] acting in her role as the "independent person" in relation to this matter.
 3. A copy of the report prepared by [name redacted] for submission to the Sub-Committee.
 4. Copies of any advice given by [name redacted] as the monitoring officer during the meeting of the Sub-Committee or prior to the meeting being held to members of the afore mentioned Sub-Committee.
 5. Copies of any advice or information supplied by Darlington Borough Council to Cllr [name redacted] and or other members of Darlington Cabinet or Labour party in relation to this complaint.
 6. Confirmation of the exact wording of the complaint brought forward to the Sub-Committee."
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3. On 13 June 2013, the council informed the complainant that he would be entitled to an unredacted copy of the requested information under the 'Members need to know' but that that information obtained via such a route should not be shared with anyone else. The council asked whether the complainant would still like to progress the request under the FOIA.
 4. The complainant replied to the council on the same day requesting the unredacted version and also asking for the request to be processed under the FOIA.
 5. The council provided the complainant with the unredacted information under the 'Members need to know' on 16 June 2014.
 6. The council responded under the FOIA on 17 June 2014. It said that information is not held within the scope of requests 4 and 5 and provided some information within the scope of requests 1, 2, 3 and 6 but refused to provide the remainder citing the exemption for personal data at section 40(2) of the FOIA as its basis for doing so.
 7. The complainant requested an internal review on 18 June 2014. The council provided its internal review on 11 July 2014 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 22 July 2014 to complain about the way his request for information had been handled.

He accepted that the council does not hold information within the scope of requests 4 and 5.

9. During the Commissioner's investigation, the council revised its position and provided the complainant with the previously withheld information. It made minor redactions for the name and address of a third party who was not implicated in the complaint and for a private email address and telephone number. It apologised for not providing the withheld information in the first place and informed the complainant that the application of the personal data exemption when the request relates to elected members and other senior officials has been raised with the officers that were originally involved in the handling of your request and internal review.
10. Following the further disclosure, the Commissioner requested that the complainant withdraw his complaint on the basis that the withheld information had now been provided and that the Commissioner prefers to resolve complaints informally where possible.
11. The complainant wrote to the Commissioner on 7 November 2014 requesting a formal decision notice against the council for both the late supply of information and the initial refusal in order to avoid such problems in the future.
12. As the council clearly revised its position and supplied the information initially withheld under section 40(2) during the investigation, except for the minor redactions detailed in paragraph 9 which have not been complained about, the Commissioner does not deem it necessary to consider the application of the personal data exemption.
13. The Commissioner has therefore considered whether the council has breached section 10(1) of the FOIA in this case.

Reasons for decision

Section 10 – Time for compliance

14. Section 1(1) of FOIA requires a public authority in receipt of a request to confirm whether it holds the requested information, and if so, disclose it to the applicant. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request.
15. The request was submitted on the 12 May 2014. The council provided some information on 17 June 2014, 5 working days after the statutory time for compliance and did not provide the remainder of the information until 3 November 2014, almost 6 months after the request.

The Commissioner therefore finds that the council did not make the information available within 20 working days and consequently finds a breach of section 10(1) of FOIA.

Right of appeal

16. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
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