

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2015

Public Authority: Plymouth City Council
Address: Ballard House
West Hoe Road
Plymouth
PL1 3BJ

Decision (including any steps ordered)

1. The complainant has requested details of policies and practices to evidence how Plymouth City Council (the "Council") has dealt with him. The Commissioner's decision is that the Council failed to provide a valid response to the request thereby failing to comply with section 1(1) and section 10(1) of the FOIA. During the Commissioner's investigation a Policy was identified which was provided to the complainant; as this was done outside the statutory time for compliance the Commissioner finds this to be in breach of section 10(1).
2. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - issue a response compliant with the terms of the FOIA (it does not need to re-provide the Policy referred to above) .
3. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 31 July 2014, the complainant wrote to the Council and requested information in the following terms:

"... request under the Freedom of Information Act the following:

- a. *Policy document / adopted practice details related to [name removed]'s refusal to progress a support planner, on the basis that she would not read the completed 'needs assessment' until she had spoken with [name removed].*
 - b. *Policy document related to ASC team standard operating procedure to progress access to adult support, which was refused to be disclosed by [name removed] on the basis of a complaint being considered against the Council.*
 - c. *A policy document / adopted practice details that identifies the requirement of a 'verbatim' account of the support plan meeting with [name removed] on the 3/3/13, which according to [name removed] would not allow the progression of the support plan based upon a verbatim account, rendering [name removed]'s notes invalid / obsolete / unusable.*
 - d. *An adopted practice details / policy document that allowed Plymouth City Council to place [name removed] in a Community Reablement Team under a set time limitation, without him being a party to the meeting that convened to make this decision and without the consent of the person of whom the decision was made for.*
 - e. *A procedure that prevented progression of access to adult support based upon three undisclosed PCC questions, it would not present to [name removed], in order to seek clarification.*
 - f. *A policy document / adopted practice details that required completed support plans to be shortened and altered to be able to fit onto the PCC Electronic system, on the basis of a word / character count.*
 - g. *A policy document / adopted practice details that would not allow for a completed support plan to be physically signed-off by managers (other than electronic approval / authorisation).*
 - h. *A policy document that enforced users of the DP Scheme to accept employer status.*
 - i. *A policy document that enforced users of the DP Scheme to accept PA services only from council contracted providers or agencies.*
 - j. *A policy document that refused to allow users of the DP Scheme to obtain PA services from self-employed / free-lance providers".*
5. The request was part of a much larger letter and the Council dealt with it as a complaint. It provided a response on 27 September 2014 which made no reference to the request being made under the FOIA. Instead it responded to the itemised request above as if the complainant had made a request under the terms of the Data Protection Act (the "DPA"). It provided some explanations but did not disclose any policies /

procedures and did not indicate, under the terms of the FOIA, whether any information was held. It did not inform the complainant of his right to request an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 17 September 2014 to complain about the Council's lack of response to his request for information (his complaint was received prior to the Council sending him the response referred to above, albeit that the response was sent prior to the commencement of the Commissioner's investigation). As he was not informed of his right to request an internal review the Commissioner has used his discretion and investigated the complaint in the absence of one.
7. Following initial enquiries the Council advised the Commissioner that it considered that it had responded to the various issues raised by the complainant and that it had therefore complied with the information request.
8. When asked whether or not it holds any information in respect of the request the Council provided the Commissioner with a copy of its Personal Budget Policy for Adult Social Care, which the Commissioner subsequently gave to the complainant (with the Council's consent). According to the complainant this had not been previously provided.

Reasons for decision

Section 1 – general right of access

9. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
10. The Council failed to issue a valid response under section 1 when responding to the complainant's request. The Commissioner therefore finds it in breach of section 1(1)(a).
11. The Commissioner therefore requires the Council to issue a formal response under the terms of the FOIA. It should either provide any information held, or advise that nothing is held, under the terms of section 1(1), or issue a refusal notice under the terms of section 17.

12. The Commissioner notes that in its response of 27 September 2014 the Council advised the complainant that it needed clarification in respect of part (e). The Commissioner does not consider that the letter is a proper response under the terms of the FOIA so, if it still requires such clarification, it should explain what is needed in its formal response.

Section 10 – time for compliance.

13. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
14. In this case it is evident that the Council did not respond to the complainant within the statutory time frame and so it is in breach of section 10(1) of the FOIA.
15. Section 1(1)(b) requires a public authority which holds the requested information to communicate that information to the applicant, subject, of course, to the application of any exemptions. In respect of the policy document which was found during the Commissioner's investigation and provided to the complainant outside the statutory time for compliance, the Commissioner additionally finds a breach of section 10(1).

Other matters

16. From the wording of this request it appears to the Commissioner that some of the requested information is likely to relate to the complainant personally. If this is the case then it would fall outside the remit of the FOIA and would need to be considered under the subject access provisions of the Data Protection Act. However, it remains unclear at this point as the Council is yet to issue a formal response under the terms of the FOIA so it is not possible to surmise what recorded information would fall to be considered under either access regime.

Right of appeal

17. 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

18. 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.
19. 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

Jon Manners
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Wilmslow
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