

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2019

Public Authority: Armagh City, Banbridge and Craigavon Borough Council

Address: Craigavon Civic and Conference Centre
66 Lakeview Rd
Craigavon
BT64 1AL

Decision (including any steps ordered)

1. The complainant has requested a copy of a note issued to planning service staff.
2. The Commissioner's decision is that Armagh City, Banbridge and Craigavon Borough Council breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. As a response has now been provided the Commissioner does not require the Armagh City, Banbridge and Craigavon Borough Council to take any steps.

Request and response

4. On 12 December 2017, the complainant wrote to Armagh City, Banbridge and Craigavon Borough Council ('the council') and requested information in the following terms:

"I would be grateful if you could please provide me with a copy of the note to all Planning Service staff that issued from the then Chief Executive of the Planning Service (through Divisional Planning Managers), as recommended in the 2006 audit investigation of Planning Services Craigavon Division into procedural shortcomings, arising from the destruction of the remains of a rath to the rear of The Grange, Main Street, Waringstown, and which highlighted the importance and necessity in

- ensuring that the correct consultation procedures are followed at all times,*
- ensuring Consultee responses are actioned or that a clear record is kept on file if Planning Service considers it appropriate to act contrary to a consultation response,*
- reminding Authorised Officers of their responsibility to check that the appropriate conditions have been applied prior to signing decisions,*
- ensuring that all issues raised by correspondents/complainants to the Planning Service are fully and comprehensively addressed, and*
- ensuring file absence cards are completed when removing files from the filing system.*

I would also be grateful if you could confirm that the Planning Service Audit Team carried out a follow-up review in then Craigavon Division later in the year after the Audit Report was published, that was to ensure that the above-listed procedures with regards to consultations with appropriate bodies were being followed."

5. The council responded on 17 January 2017. It denied holding the requested information stating:

"The planning Department does not hold the information you have requested in hard copy. This information may be held electronically on the Tower Records Information Management (TRIM) system; however as the Council no longer has access to TRIM, by way of assistance I have sent a request to the Department for Infrastructure and asked that it searches for the information. This information will be forwarded to you when it has been received."

6. The complainant requested an internal review on 22 January 2018 due to the time elapsed waiting for a response to the request. Following a number of further emails from the complainant, the council advised on 25 May 2018 that it was awaiting a reply from the planning officer at the Department for Infrastructure ('the DfI').
7. The complainant made another request for an internal review on 1 June 2018 as the requested information had still not been received.
8. The council provided a response to the request on 12 June 2018. It stated that it did not hold the requested information and it had not been able to obtain the information from the DfI. The council advised the complainant to request the information directly, providing the contact email for the DfI.
9. Following an internal review the council wrote to the complainant on 21 June 2018. It upheld its position that the council does not hold the requested information. It acknowledged and apologised for the late information response and review response. The council stated it would be making internal recommendations regarding Regulation 16 (Duty to provide advice and assistance) and the Section 45 FOIA code of practice which states that public authorities should redirect applicants to the appropriate body at an early stage when the information is not held.

Scope of the case

10. The complainant contacted the Commissioner on 11 June 2018 to complain about the way her request for information had been handled. Specifically that the initial response was outside of the time constraints of the EIR and that the council officer had only requested the information from the DfI the day before the response was issued. Additionally the complainant raised the fact that she had not received an internal review response, however, the Commissioner notes that it was subsequently issued on 21 June 2018.
11. The complainant confirmed on 30 July 2018 that, following a direct request to the DfI, she had obtained the requested information from the DfI.
12. The complainant has referred to the Environmental Information Regulations 2004 (EIR) in her request and complaint. The Commissioner has considered whether the requested information is 'environmental information'. This would be the case if it met the definition set out in regulation 2 of the EIR being that: information about a plan or a measure or an activity that affects or is likely to affect the elements of

the environment is environmental information. The information in this case, however, relates to processes and procedures and as such does not constitute environmental information. In view of this, the Commissioner has considered the complaint in terms of the FOIA.

13. The Commissioner considers the scope of this case is to establish whether the council has complied with section 1(1) of the FOIA and the time for compliance at section 10(1). The Commissioner has also considered the timeliness with which the council provided its internal review response.

Reasons for decision

Section 1 of the FOIA – general right of access

14. 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.

Transferring requests for information

15. The Commissioner has produced a flowchart¹ for public authorities to refer to when dealing with a request. This clearly indicates that where a request is received which is not appropriate to the receiving public authority then it should inform the requestor that the information is not held and either transfer the request to the appropriate public authority or advise the requester to write to another public authority.
16. There is also a Code of Practice² issued under section 45 of FOIA. This includes best practice regarding the transferring requests for information at Part III.
17. The Code of Practice states:

¹

https://ico.org.uk/media/fororganisations/documents/1167/flowchart_of_request_handling_under_foia.pdf

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

"2.11 There will be occasions when a public authority is not able to comply with a request (or to comply with it in full) because it does not hold the information requested.

2.12 In most cases where a public authority does not hold the information, but thinks that another public authority does, they should respond to the applicant to inform them that the requested information is not held by them, and that it may be held by another public authority. The public authority should, as best practice where they can, provide the contact details for the public authority they believe holds the requested information.

2.13 Where the public authority who originally received the request wishes to ask a different public authority directly to deal with the request by transferring it to them, this should only be done with the applicant's agreement in case the requester objects to their details being passed on. This is because public authorities have a duty to respond to a requester and confirm whether or not they hold information in scope of the request as set out in paragraph 2.12 above."

18. In this case, the council's initial response of 17 January 2018 states that it does not hold the information *"in hard copy"*; that it may be held electronically on a system that it no longer has access to; that it has sent a request to the DfI to search for the information and that the information will be forwarded when received.
19. The request handling flowchart and code of practice clearly indicate that where a request is received which is not proper to the receiving public authority then it should inform the requestor that the information is not held and either transfer the request to the appropriate public authority or advise the requester to write to another public authority.
20. The Commissioner considers that the council introduced unnecessary delay in the progression of the information request by not following the code of practice, and indicating that it would continue to maintain responsibility for obtaining the information. The Commissioner notes that the council did not change this position in response to further emails from the complainant, continuing to advise on 25 May 2018 that it was awaiting a reply from the planning officer at the DfI.

Section 10(1) of the FOIA – Time for compliance with request

21. Section 10 (1) of the FOIA states that a public authority must respond to a request promptly and *"no later than the twentieth working day following receipt"*.

22. The complainant made her request for information on 12 December 2017. The council gave a response on 17 January 2018 and stated it did not hold a hard copy of the requested information. However the wording of the response appears to leave the request open with the council for the reasons previously discussed.
23. The council provided a response to the request on 12 June 2018, which in line with the code of conduct guidance, provided contact details for information held by another public authority. In the council's internal review of 21 June 2018 the council acknowledged the response of the 12 June 2018 as being the information request response.
24. The request was made on 12 December 2017, the response was provided 6 months later on 12 June 2018. The Commissioner therefore finds that the council has breached section 10(1) of the FOIA by failing to respond to the request within 20 working days. However, as the response was issued no steps are required.

Other matters

25. Although they do not form part of this decision notice the Commissioner highlights the flowchart for request handling and the relevant sections of the code of practice which states that public authorities should redirect applicants to the appropriate body at an early stage when the information is not held.
26. The council recognised these issues during its internal review of the request. The Commissioner notes that the council has stated it will be making internal recommendations regarding Regulation 16 (Duty to provide advice and assistance) and the Section 45 FOIA code of practice.

Section 45 – internal review

27. There is no obligation under FOIA for a public authority to provide an internal review process. However it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 FOIA sets out, in general terms, the procedure that should be followed. The code says that reviews should be conducted within reasonable timescales.
28. The Commissioner considers that internal reviews should not take longer than 20 working days in most cases, and no more than an additional 20

working days unless, exceptionally, there are legitimate reasons why a longer extension is needed.

29. The complainant requested an internal review on 22 January 2018 and again on 1 June 2018. The council reported the outcome of its review to her on 21 June 2018.
30. In this case the council explained that the *"The Internal Review was delayed as a direct consequence of a final response not being issued until 12 June 2018."* It did however acknowledge *"that this caused an unacceptable delay in fulfilling your Internal Review request."*
31. The Commissioner considers that an earlier review of the initial response could have resulted in a faster resolution for the complainant. However she concedes that the council is technically correct. Nevertheless it would be good practice for the council to adhere to the timescales set out in the code when conducting internal reviews in future.

Right of appeal

32. 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

33. 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.
34. 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
Wilmslow
Cheshire
SK9 5AF