

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 July 2020

**Public Authority:** Sandwell Metropolitan Borough Council

**Address:** PO Box 2374

Oldbury

B69 3DE

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Sandwell Metropolitan Borough Council (the Council) about the recruitment process for specified senior roles at the organisation.
2. The Commissioner's decision is that the Council has 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. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
  - The Council must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. The Council must take this step 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

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5. On 15 January 2020, the complainant wrote to the Council and requested information in the following terms:

*"Re the Chief Officer Terms and Conditions Committee on 10/01/2020*

*The minutes state that a competitive recruitment process was undertaken for posts of chief exec and directors of adult social care and prevention and protection*

*Where were the posts advertised and for what period Please give dates*

*How many applications were received for each post*

*An anonymised list of scoring process*

*Record of decision process determining where and for how long posts were to be advertised for*

*[Name redacted] has previously stated that a countrywide bid to find the best candidate would be launched. If this did not happen reasons why and who made the decision."*

6. The Council acknowledged the request on 15 January 2020. To date, a substantive response has not been issued.

## Scope of the case

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7. The complainant contacted the Commissioner on 18 February 2020 to complain about the Council's failure to respond to their request.
8. The Commissioner has considered whether the Council has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

## Reasons for decision

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9. Section 1(1) of the FOIA states that:

*"Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
11. On 27 February 2020 the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. Despite this intervention the Council failed to respond to the complainant.
13. During the Covid-19 global health crisis, as a reasonable and proportionate regulator, the Commissioner took the decision to amend her casework approaches to reduce the burden on public authorities. On 1 April 2020 the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to the complainant as soon as it could, if it had the capacity to do so. The Commissioner also invited the Council to inform her if it was unable to comply with the FOIA due to any difficulties posed by the Covid-19 crisis.
14. On 3 April 2020, the Council replied to the Commissioner to apologise for the delay and said that it would aim to respond within a fortnight.
15. The Commissioner wrote again to the Council on 19 May and 3 June 2020 to repeat her enquiries about its capacity to respond to the request and to highlight that a response was still outstanding. The Commissioner received no further replies from the Council.
16. On 23 June 2020 the Commissioner attempted to contact the Council by telephone, but was unable to gain access to a relevant member of staff to discuss the case.
17. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the Council has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

## **Other matters**

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18. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.
19. The Commissioner notes, however, that a response to a request made on 15 January 2020 would be due several weeks before the worst of the coronavirus disruption began. This has been a necessary consideration in her decision to issue this notice.
20. When invited to do so by the Commissioner in May and June 2020, the Council did not submit any mitigating arguments to justify its continuing failure to comply with the FOIA in relation to this request. This lack of engagement by the Council has also informed the Commissioner's issuing of this notice.

## **Right of appeal**

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21. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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 .....**

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