

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

### **Decision notice**

**Date:** 28 September 2021

**Public Authority:** Isle of Wight Council  
**Address:** County Hall  
Newport  
Isle of Wight  
PO30 1UD

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

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1. The complainant has requested information with regards to hearing loss. The Isle of Wight Council (the council) provided its response but the complainant believed that it had not complied with section 16 of the FOIA – Advice and Assistance.
2. The Commissioner's decision is that the council has complied with section 16 of the FOIA and conformed to the section 45 Code of Practice.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 6 October 2020 the complainant made a verbal information request to the council. The request was recorded by the council as:
5. Action on Hearing Loss - FOI request
  - "1. Number of emergency visits requested under sensory contract*
  - 2. Number of new clients/emergency visits seen within 7 days*
  - 3. Number of new clients added to home visit register"*
6. The complainant contacted the Commissioner on 30 October 2020 as he had not received a response from the council.
7. The council posted its response to the request on 20 November 2020.

## Scope of the case

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8. The complainant contacted the Commissioner further, disputing the process in which the council had dealt with his request. He does not consider it has complied with its duty to provide advice and assistance under section 16 of the, and in particular believes that it failed to comply with the section 45 Code of Practice<sup>1</sup>.
9. The scope of the case therefore, is for the Commissioner to determine whether the council has complied with section 16 of the FOIA in line with section 45 Code of Practice.

## Reasons for decision

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### Section 16 of the FOIA – Advice and Assistance.

10. Section 16 of the FOIA states:

*"(1) it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*

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<sup>1</sup> [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](https://publishing.service.gov.uk/2018/09/26/foi-code-of-practice-minor-amendments-20180926)  
([publishing.service.gov.uk](https://publishing.service.gov.uk))

*(2) Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."*

11. In this case the complainant states that he expects, as a reasonable adjustment made in line with the Equality Act 2010, the council to take his information request verbally over the phone then post a large font copy of a written version of his request to him to sign and return, in order to confirm that the council has accurately recorded his request.
12. Then on receipt of the signed and returned written request, the council should respond in large font within the required 20 working days.
13. The Commissioner is aware that this is an established process that has been followed in relation to previous information requests made by the complainant.
14. The Commissioner's guidance on section 16 of the FOIA<sup>2</sup> gives this process as an example of how a public authority may assist an applicant where this is necessary in order for them to form a written request. Stating at paragraph 30:

*"take a note of the application over the telephone, and then send the note to the applicant for confirmation and return, at which point the statutory time limit for reply would begin"*

15. Paragraph 31 of the Commissioner's guidance also goes on to say that this is not an exhaustive list and public authorities need to consider what advice and assistance is most appropriate in the circumstances.
16. Section 45 Code of Practice at point 2.5 states:

*"There may be circumstances where a person is unable to frame their request in writing, for example owing to a disability. In these instances the public authority should make sure that assistance is given to enable them to make a request for information. For example, advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf. Public authorities may also consider, in exceptional circumstances, offering to take a note of the application over the*

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<sup>2</sup> [duty-to-provide-advice-and-assistance-foia-section-16.pdf \(ico.org.uk\)](https://ico.org.uk/duty-to-provide-advice-and-assistance-foia-section-16.pdf)

*telephone and sending the note to the applicant for confirmation. Once verified by the applicant this would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received."*

17. In this case, the council took a different approach in relation to the complainant's request and as part of this did not post a copy of the written request to the complainant for his approval. The council has explained its reasons for this.
18. It has told the Commissioner that, due to the pandemic, at the time the request was made staff had been instructed to work from home.
19. The council therefore took the position that it was not appropriate or necessary to ask its officers to place themselves at risk by visiting the council office in order to print out and post a written version of the complainant's verbal request.
20. It had instead put a new process in place to lessen any risk to its officers. The new process involved writing down the request and then reading it back to the complainant over the phone to ensure the request had been recorded correctly. It would then respond to the request, without taking the step of sending out a written copy of the request to be signed and returned by the complainant.
21. The council also explained that this was done by two nominated members of staff which the complainant had been given the extension numbers of in order for him to be able to contact them directly should he have required further assistance.
22. The council does not consider it reasonable, during the pandemic and whilst the work from home requirement was in place to arrange for an officer to go in to the office to type up and print out the request, then go back in to the office a second time to deal with it once it had been signed and returned.
23. The council considers it more reasonable to verify the request verbally via telephone and to then arrange for someone to attend the office once to prepare the response.

### **The Commissioner's decision**

24. The Commissioner recognises that the complainant requires assistance to be able to make information requests.
25. Prior to the pandemic, the process of the council posting out a written version of the request to be signed and returned was in place. At the time of the request in question in this case, that approach had been

amended with the aim of continuing to provide appropriate assistance to the complainant, whilst also adjusting to the circumstances of the pandemic.

26. The Commissioner has balanced the needs of the complainant against the safety of the council's officers who deal with the information requests. The pandemic has been an unprecedented national and global issue that has caused severe disruptions in every day work and life.
27. As section 16 of the FOIA states, a public authority should provide advice and assistance *"so far as it would be reasonable to expect the public authority to do so"*.
28. The section 45 Code of practice states *"the public authority should make sure that assistance is given to enable them to make a request for information"*.
29. On this basis, the Commissioner is satisfied that, in consideration of the pandemic and the restrictions in place due to it, the council has provided reasonable assistance in order to enable the complainant to make an information request and to respond to it.
30. In relation to any information request the complainant chooses to make to the council in the post-pandemic future, it may be that the council is able to revert to its previous method of handling those requests. However, in this case the view of the Commissioner is that the council handled the request above appropriately given the restrictions that were in place at the time that it was made. Her decision is, therefore, that the council has complied with section 16 of the FOIA and conformed with the section 45 code of practice in this case.

## Right of appeal

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31. 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: 0203 936 8963

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)

32. 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.
33. 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 .....**

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