

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2018

Public Authority: Hampshire County Council
Address: The Castle
Castle Avenue
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant requested data regarding the handling of Stage Two Complaints.
2. The Commissioner's decision is that Hampshire County Council ("the Council") did not breach its duties under either Section 10 (Time for Compliance) or Section 16 (Advice & Assistance).
3. As the Commissioner is satisfied that the complainant now has the information he required, she does not require the Council to take any further steps.

Request and response

4. On 9 July 2018, the complainant wrote to the Council and requested information in the following terms:

"Could you provide answers to the following Freedom of Information requests?"

[1] How many complaints do you currently have being investigated at Stage Two?

[2] How many complaints are waiting to commence Stage Two?

[3] What is the longest time that a current complaint has been waiting to commence a Stage Two?

[4] What is the average time delay for a Stage Two to commence each year for the last three years?"

5. The Council responded on 6 August 2018. It provided information for elements [1], [2] and [3] of the request but, in respect of element [4], stated that it did not hold the requested information.
6. The complainant replied to the Council on the same day and asked "could you therefore provide the number of Stage Two investigations that commenced during each of the three years together with the length of time each was delayed." The complainant argued that the Council should have provided him with this information under its Section 16 duty.
7. The Council logged this correspondence as a fresh request but the complainant asked for an internal review as well. The Council carried out an internal review and informed the complainant of the outcome on 21 August 2018. The internal review only dealt with the timeliness of the Council's response.
8. The complainant contacted the Council again the same day. He again argued that the Council had breached its Section 16 duty.
9. The Council carried out a further internal review which covered both the original request and the fresh request it had logged in respect of the complainant's correspondence of 6 August 2018 (in response to which it had now provided the information). It stated that it had recently compiled information regarding Stage Two Complaints as part of a separate project and it therefore now held information within the scope of the second request – and that information could be used to derive the average requested in element [4].

Scope of the case

10. The complainant contacted the Commissioner on 24 September 2018 to complain about the way his request for information had been handled.
11. Whilst the complainant did not dispute that he now had the information he originally requested, he insisted that the Commissioner look at whether the Council met its responsibilities under Sections 10 and 16 of the FOIA.

12. The Commissioner has considered the Council's compliance with Sections 10 and Section 16.

Reasons for decision

Timeliness – Section 10

13. 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.*

14. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
15. The complainant does not dispute that the initial request was answered within 20 working days but argues that the request was not responded to promptly. The Council has argued that it responded on the twentieth working day and therefore met its responsibilities under Section 10.
16. The wording of the FOIA (promptly and within 20 working days) makes it clear that where a public authority can respond to a request sooner than the twentieth working day, it should do so. The Commissioner's guidance on the matter suggests that the twentieth working day should be seen as a "long stop."¹ However, in practice, there are very few occasions where the Commissioner would consider a response that had been provided within 20 working days to not also have been provided promptly.
17. The day the response was provided (6 August 2018) was a bank holiday in Scotland. Section 10(6) of the FOIA states that a day cannot be a working day if it is a bank holiday² in any part of the United Kingdom. As

¹ <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

² As defined by the Banking and Financial Dealings Act 1971

the request would have been received on 9 July 2018, the response was therefore provided before the 20th working day following the date of receipt.

18. Taking into account all the circumstances the Commissioner therefore concludes that the request was answered both promptly and within 20 working days. She therefore finds that the Council did not breach Section 10 in responding to the request.

Advice & Assistance – Section 16

19. Section 16 of the FOIA states that:

- (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.*
- (2) *Any public authority which, in relation to the provision of advice or 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.*

20. Given the Council's position that it did not hold the requested information at the time the request was responded to and did not come into possession of relevant information until after the request was responded to, it is difficult for the Commissioner to see what advice and assistance could reasonably have been offered to the complainant.

21. Whilst the Council could perhaps have been more forthcoming as to the way that information was recorded on its systems, this would not amount to more than poor practice. It would not qualify as a statutory breach of Section 16.

22. The Commissioner therefore finds no breach of Section 16.

Other Matters

23. The complainant in this case made an allegation that the Council had deliberately attempted to conceal requested information which it held and thus committed an offence under Section 77 of the FOIA.

24. As Section 77 defines a criminal offence, it is not appropriate to address such matters within a decision notice – however, the Commissioner has considered the matter and concluded that there is no evidence to suggest that a criminal offence has taken place.

Right of appeal

25. 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

26. 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.
27. 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
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**