

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2016

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
Hampshire
PO1 2AL

Decision (including any steps ordered)

1. The complainant has requested a copy of legal advice from Portsmouth City Council (the "Council"). Outside the time limit for providing a response, the Council advised him that it was available to view at the Council Offices and was therefore exempt by virtue of section 21(1) (information accessible to applicant by other means). During the course of the Commissioner's investigation the Council provided the requested information directly to the complainant.
2. The Commissioner's decision is that the Council breached section 10(1) by failing to respond to the request within the statutory time limit. No steps are required.

Background

3. The request can be followed on the "*What do they know?*" website¹.

¹ https://www.whatdotheyknow.com/request/queens_counsel_advice_to_portsmo

Request and response

4. On 24 December 2015, the complainant wrote to the Council and requested information in the following terms:

"A recent decision has been made by Portsmouth City Council, supposedly based on an Advice from Queens Counsel, not to grant a Right of Way around the Camber Dock in Old Portsmouth, despite much public support for such, and, much evidence provided that this Right of Way has existed for decades. (This was stated by Councillor [name removed] at a recent Neighbourhood Forum meeting).

I request a full copy of this Queens Counsel Advice, without any redactions, to be provided via this website. Please also provide concrete evidence of the cost to the public purse for this Advice. My reason for this request is that the Advice is about a matter of great interest to the public and the funds for the Advice have been provided from the public purse.

There should be no reason whatsoever that this information should be withheld [sic] from the council taxpayers of this city".

5. The Council responded on 29 January 2016. It disclosed some information but advised that it need further time to consider the public interest in respect of section 42 (legal professional privilege).
6. On 6 February 2016, before receiving a further response, the complainant requested an internal review; this was acknowledged on 8 February 2016.
7. On 4 March 2016 the Council responded, advising that this was its internal review. It told the complainant that:

"... it has been agreed the advice should be made available for public inspection as part of the Right of Way Appeal Process. You are therefore able to view this and all evidence gathered by the council by contacting PCC's Strategic Transport Planner to arrange an appointment. His contact details are as follows ...

In accordance with Section 21 of the Freedom of Information Act (information accessible by other means) we are not therefore required to provide the information separately in response to individual requests."

8. On the same day the complainant responded. He stated:

"I wish these advices to be published on this website, not the least reason being there are others who wish to view these documents through this medium. Your original prevarication for not providing the information under section 42 of the Act has now been shown to be bogus as also is your reason for not publishing the information on this website, as you will be aware there is much precedent from the Information Commissioner ruling against public authorities who refuse to publish legitimate Freedom of Information documents on this website".

Scope of the case

9. The complainant contacted the Commissioner on 23 March 2016 to complain about the way his request for information had been handled. He did not accept that section 21 applied and did not consider the information to be accessible. His grounds of complaint were:

"I dispute this a number of extremely busy people who wish to view this information, including myself, do not have the time to visit the Civic Offices to view the information and article 21 is irrelevant anyway. The nature of my complaint is that this information should be published on the 'What do They Know' website".

10. The Commissioner wrote to the Council on 7 April 2016. On 13 April 2016 the Council disclosed the information in full, posting it on WDTK as requested by the complainant.
11. The Commissioner asked the complainant whether he was now satisfied but he advised that he still required a decision notice recording the delays.

Reasons for decision

Section 1 – general right of access

Section 10 – time for compliance

12. Section 10(1) provides that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

13. Section 1(1) provides 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. The request was made on 24 December 2015 and a response was not made until 29 January 2016. The Commissioner therefore finds that the Council breached section 10(1) in failing to respond within 20 working days.

Other matters

15. Although he has not considered the application of section 21 as the information has now been directly disclosed to the complainant, the Commissioner's provisional view is that the Council would have been entitled to rely on this exemption as the information was reasonably accessible to the general public.

16. Additionally, the complainant is of the opinion that the Council was required to make its disclosure on the WDTK website as he had specified that it did so. The Commissioner notes that in the end it did do so, but he would like to add that, alternatively, it could have published it on its publication scheme thereby giving potentially wider access to interested parties.

17. Although it has not been necessary for him to consider the matter because the information has been disclosed, the Commissioner is also of view that it is likely that this request should have been considered under the Environmental Information Regulations 2004.

Right of appeal

18. 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

19. 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.
20. 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

Carolyn Howes
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SK9 5AF