

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2019

Public Authority: Manchester City Council

Address: Town Hall
Manchester
Lancashire
M60 2LA

Decision (including any steps ordered)

1. The complainant requested information about appeals relating to Penalty Charge Notices (PCNs). Manchester City Council ("the Council") required him to clarify elements of his original request (Request 1) but has failed to provide a response to the clarified request (Request 2).
2. The Commissioner's decision is that the Council has failed to discharge its duties under section 1(1) of the FOIA in respect of Request 2 and has therefore breached section 10(1) of the Act in the way it responded to that request. She also considers that the refusal notice which the Council issued in relation to Request 1 did not comply with section 17(5) of the FOIA and so the Council has also breached this section of the Act. Finally, the Commissioner does not consider that the Council provided the complainant with adequate advice and assistance in relation to Request 1 and so breached its section 16 duty.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to Request 2.
 - Provide the complainant with reasonable advice and assistance to help him refine element [4] of Request 1 such that it can be answered within the cost limit.
4. The Council must take these steps 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

Request 1

5. On 1 September 2018, the complainant wrote to the Council and requested information in the following terms:

"I am now therefore making a Freedom of Information Request from Manchester City Council on the following:

- [1] How many wrongful charge certificates has the Manchester City Council Parking services issued in the past few years;*
- [2] What action has ever been taken against the Council by anyone wrongly issued with a charge certificate;*
- [3] What laws cover unlawful conduct by the Council and what redress is open to the aggrieved person;*
- [4] Has Manchester City Council dealt with any cases involving reference to the Miah vs Westminster case as described above;*
- [5] Has Manchester City Council any knowledge of the law which governs the unlawful or wrongful issuance of a Charge Certificate in respect of its effect on an ongoing penalty charge case;*
- [6] How many PCN cases on their 'bus gates' has Manchester City Council lost or cancelled out of what totals and on what grounds?"*

6. The Council responded on 21 September 2018. It provided information in respect of element [5] and refused element [3] because it stated that the requested information was already reasonably accessible – therefore relying on the exemption at section 21 of the FOIA. In respect of element [4], it refused to provide the requested information because *"to do so would exceed the 18 hour limit."* In relation to elements [1], [2] and [6], the Council stated that it required clarification before it could process those elements of the request.

Request 2

7. The complainant contacted the Council again on 15 October 2018. He expressed dissatisfaction at the way the Council had responded to elements [3] and [5] of Request 1. He also chose to refine the remaining elements of his request as follows:

"[1] What is the total number of charge certificates issued by Manchester City Council Parking Services over the past two to three years, and out of the total number of charge certificates issued, how many of those were subsequently ruled by a Tribunal or other legal source to have been unlawful because the Council had no power to send them under regulation 32 of the Bus Lane Contraventions, Penalty Charges, Adjudication and Enforcement (England) 2005).

[2] What action has ever been taken against the Council by anyone issued with a charge certificate which the Council through a tribunal or other legal source, was ruled to have had no power to send under regulation 32 of the Bus Lane Contraventions ,Penalty Charges, Adjudication and Enforcement (England) 2005).

[3] [referring to element [4] of Request 1] how many cases can you look through in 18 hours?

[4] How many bus gate PCNs have been issued by Manchester City Council over the past two to three years for each of its bus gates, (I understand there are 6?) and how many of those bus gate PCNs have subsequently been cancelled by Manchester City Council due to a ruling against the Council by a tribunal or other legal source."

8. The Council does not appear to have sent a specific acknowledgement to this request but, in the course of corresponding with the complainant in relation to a separate service complaint he had lodged, it noted:

"As you have indicated that you consider this complaint premature, as you have not yet received the response to your FOI, I will treat this Stage two complaint as being withdrawn for now."

9. The Council had not issued any further response in respect of either request at the date of this notice.

Scope of the case

10. The complainant contacted the Commissioner on 3 March 2019 to complain about the way his request for information had been handled.

11. Given that the complainant's correspondence of 15 October 2018 contained both fresh requests for information and a request for a review of the way that the Council had handled Request 1, the Commissioner wrote to the Council on 10 May 2019 to suggest that the most efficient

way of moving the matter forward would be for the Council to carry out a full internal review whilst also considering the fresh requests.

12. The Council acknowledged the Commissioner's correspondence but had failed to either issue a fresh response to Request 2 or conduct an internal review of either request at the date of this notice.
13. The complainant contacted the Commissioner again on 1 July 2019 to complain that he had not received any further response.
14. Given that she would not be able to progress a full investigation without being in possession of an unequivocal statement of the Council's position in relation to both requests and given that the Council has failed to cooperate with her informal approach thus far, the Commissioner considers that a decision notice is now appropriate to address the procedural elements of the way both requests were handled.
15. For the avoidance of doubt, the Commissioner makes no decision, in this particular notice, as to whether the Council is able to rely on any of the exemptions it has cited, or whether it has provided all the information it holds in respect of element [5].

Reasons for decision

Timeliness – Request 2

16. 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.*

17. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

18. The Commissioner considers that elements [1], [2] and [4] of Request 2 fulfilled these criteria and therefore constituted valid requests for recorded information under the FOIA.
19. The Commissioner also notes that, in respect of element [3] of Request 2, she does not consider that a request framed by the cost limits meets the definition of a valid request in section 8(1)(c) of the FOIA because it does not "describe" the information sought.¹ The complainant may wish to refine this element of his request – once he has been provided with the advice and assistance required by this notice.
20. 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.*"
21. From the evidence presented to the Commissioner in this case, it is clear that the Council has failed to respond to Request 2. It has therefore not discharged its duty under section 1(1) of the FOIA in relation to Request 2 and has thus breached section 10 of the FOIA.

Refusal notice – Request 1

22. Section 17(5) of the FOIA states that:

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

23. Having had regard to the Council's reference to the "18 hour limit," when responding to element [4] of Request 1, the Commissioner considers that the Council was attempting to claim that responding to this element of the request would exceed the appropriate limit and thus section 12 of the FOIA would be engaged.
24. In such circumstances, section 17(5) states that a public authority must make it obvious that it is relying on that section of the Act to refuse to comply with the request.

¹ See Page 16: <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

25. The Commissioner cannot consider that a vague reference to “the 18 hour limit²” fits the very specific requirement of section 17(5) and she therefore considers that the Council breached this section of the FOIA when responding to Request 1.

Advice and Assistance – Request 1

26. Section 16 of the FOIA requires a public authority to provide “reasonable advice and assistance” to those making or wishing to make a request.
27. In cases where a public authority considers that a request could not be answered within the cost limit, the Commissioner would normally expect advice and assistance to be provided to help the requestor bring their request within the cost limit.
28. As the Commissioner considers that the Council was attempting to claim that element [4] of the request would exceed the cost limit, it was therefore under an obligation to provide the complainant with advice and assistance, to help him submit a narrower request which could be answered within the cost limit.
29. The Council failed to provide the complainant with any advice and assistance which would have proved useful to the complainant in refining his request and, possibly as a consequence, the complainant ended up submitting a request which would not be valid under Section 8 of the FOIA.
30. The Commissioner therefore finds that the Council breached its section 16 duties in respect of this element of Request 1.

² The Commissioner also notes that section 12 relates to the *cost* of complying with a request and not the amount of *time* that would be required – although the two are often linked.

Other matters

Internal Review

31. Whilst there is no statutory time limit, within the FOIA, for carrying out an internal review, the Commissioner considers that internal reviews should normally take no longer than 20 working days and never longer than 40 working days.
32. The complainant's correspondence of 15 October 2018 contained clear expressions of dissatisfaction with the Council's response to Request 1. The Commissioner considers that the Council should have recognised this as a request for a review of the way Request 1 was responded to and carried out an internal review within a maximum of 40 working days. The fact that, more than a year later, the Council has still not done so strikes the Commissioner as extremely poor practice.
33. As there is no statutory requirement under the FOIA for a public authority to carry out an internal review, the Commissioner is unable to require the Council to undertake one. However, she would strongly advise the Council to review the way it responded to elements [3] and [5] of Request 1 and she also notes that she has discretion to accept complaints for investigation without an internal review having been carried out.

Engagement with the Commissioner

34. The Commissioner is extremely concerned at the Council's lack of engagement with her office in respect of this complaint. She considers that many of the matters set out in this notice could have been resolved informally and, in particular, via a thorough internal review.
35. When the Commissioner wrote in March 2019, the Council was already under an obligation to respond to the clarified request, the Commissioner suggested that an internal review could deal with both requests in one go – but the Council needed to do one or the other. In the event, despite acknowledging the Commissioner's correspondence, the Council did neither – and this decision notice is the inevitable consequence of that inaction.
36. Should either of these requests result in a substantive complaint to her Office, the Commissioner expects to see an improved level of engagement from the Council.

Right of appeal

37. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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
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