

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 14 March 2024

To: Bristol City Council

Of: City Hall

PO Box 3399

Bristol

BS1 9NE

1. Bristol City Council (the "**Council**") is a "public authority" listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 ("**FOIA**"). FOIA provides public access to information held by public authorities.
2. The Information Commissioner (the "**Commissioner**") hereby issues the Council with an Enforcement Notice (the "**Notice**") under section 52 FOIA. The Notice is in relation to the Council's:
 - a. Continuing non-compliance with section 1(1) FOIA;
 - b. Continuing breach of section 10(1) FOIA.
3. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that the Council is required to take are set out in **Annex 1**.

Legal Framework for this Notice

4. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in section 1(1) FOIA–

"(1) 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."

5. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:

"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt."

6. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain limited circumstances. The code of practice issued under section 45 FOIA recommends that, where those limited circumstances apply, an extension should be for a maximum of a further 20 working days. In all cases, the public authority must give the requester a written response within the standard time limit for compliance advising of reliance on the permitted extension.

7. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) FOIA states –

"If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an "enforcement notice") requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements."

Background

8. The Council has consistently been one of the public authorities within the local government sector about which the Commissioner has received the most FOI complaints in recent years. The Commissioner has received 62 complaints about the Council since 1 April 2023. Many of the complaints include a timeliness breach as the request had not been responded to within the statutory time limit.
9. On 30 August 2023, the Commissioner issued a Practice Recommendation to the Council under section 48 FOIA. In this the Commissioner recommended the Council to take specific steps to improve the timeliness of its responses to information requests (of which the compliance rate was 56% for June 2023), including that it should create an action plan which incorporated any recovery plan (relating to the Council's backlog of FOIA requests) already in development.
10. The Council provided an update to the Commissioner on 9 January 2024. In this the Council confirmed that its timeliness rate had improved, being 81% for November 2023. However it also informed the Commissioner of a backlog of 165 information requests.

11. The Commissioner wrote to the Council on 9 February 2024 to request a copy of its action plan for the clearance of its information request backlog, which the Council provided on 22 February 2024.

The Contravention and Reasons for this Notice

12. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request.

13. The Commissioner has reviewed the action plan provided by the Council on 22 February 2024. In this the Council confirmed that:

- The current FOIA backlog was 158 requests, the oldest of which was received on 17 January 2023. Of these 158 requests, 124 were received in the 2023 calendar year, and 34 were received between 1 January 2024 and 21 February 2024.
- An action plan had been devised, based on the allocation of staff resources. In this action plan the Council calculated that it would take 39 months to clear the FOIA backlog.

14. The Commissioner notes that there has been no improvement in the FOIA backlog since he issued a Practice Recommendation to the Council, on the contrary he notes that this is now higher than that cited in the Practice Recommendation (147 requests). Furthermore, the suggested action plan would require over 3 years to clear the backlog and ensure that requesters receive responses to their FOIA requests; the Commissioner does not consider this timescale to be reasonable.

15. Taking into account the significant volume of unanswered requests,

their age profile, the need for significant and sustained improvement in timely responses and that these improvements were not forthcoming following the issuing of the Practice Recommendation, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice to the Council.

16. This Notice requires the Council to comply with section 1(1) of FOIA in respect of each FOIA request, where the response is outside of 20 working days at the date of this Notice, and where a permitted extension of a maximum of a further 20 working days has not been applied.

17. The Commissioner also considers it a proportionate regulatory step to require the Council to devise and publish an action plan that details how it will comply with this Notice. This action plan should formalise measures to mitigate delays in responding to the requests it receives, in line with statutory requirements. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays to responding to information requests, from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan.

18. In complying with this Notice, the Commissioner reminds the Council that it should continue to ensure that appropriate resources are available so that it meets the requirements of all information rights legislation to which it is subject. This includes handling new information requests under the FOIA in a timely way, and its duties under the Data Protection Act 2018 including responding to subject access requests promptly.

19. The Commissioner also considers that the Council may benefit from

using his self-assessment toolkit which is designed to help public authorities assess their current FOI performance and provide indicators of where efforts should be focused in order to improve. Topic 1 is particularly relevant as it deals with timeliness.

Terms of this Notice

20. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring Bristol City Council to take specified steps to comply with FOIA. The specified steps are set out in **Annex 1** of this Notice.

21. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, Bristol City Council may be dealt with as if it had committed a contempt of court.

Right of Appeal

22. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

23. 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 9368963

Email: GRC@justice.gov.uk

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

24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Enforcement Notice is sent.

Phillip Angell
Head of FOI Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES BRISTOL CITY COUNCIL TO TAKE THE FOLLOWING STEPS BY NO LATER THAN SIX MONTHS FROM THE DATE OF THIS NOTICE:

- (i) In respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, to comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:
 - (ii) communicate it pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

THIS NOTICE FURTHER REQUIRES BRISTOL CITY COUNCIL TO TAKE THE FOLLOWING STEP BY NO LATER THAN 35 CALENDAR DAYS FROM THE DATE OF THIS NOTICE:

- (iii) Devise and publish an action plan formalising the measures it will take to ensure it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion, while also clearing its backlog of late requests as required by this notice.