

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

DATED: 26 June 2023

To: London Borough of Croydon

**Of: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA**

1. The London Borough of Croydon (“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 of FOIA recommends that, where those limited circumstances apply, an extension should be for a maximum of a further 20 working days.¹ In all cases, the public authority must give the requestor a written response within the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

standard time limit for compliance.

7. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of 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 Commissioner became aware of the Council's poor FOIA compliance between June 2021 and mid-2022 when he issued a disproportionate number of decision notices which recorded a breach of section 10 of FOIA. He contacted the Council in July 2022 to seek further information about its compliance with FOIA.
9. The Council provided to the Commissioner information about its compliance with FOIA. This demonstrated a sustained period of poor adherence to FOIA, with 74% of requests responded to within the statutory time limit of 20 working days for the financial year 2020/21. For the financial year 2021/22 the performance declined further to only 59% of requests being answered within the time limit.
10. On 26 September 2022, the Commissioner issued a Practice Recommendation² to the Council to direct it to improve its compliance with FOIA. The Commissioner chose not to issue an Enforcement

² <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4021726/fpr0987660.pdf>

Notice at that point, in recognition of the Council's time spent under a Local Government Finance Act Section 114 (S114) notice, as well as its recent engagement with his office.

11. In January 2023, the Commissioner contacted the Council to ascertain whether it was improving its compliance with FOIA and implementing the steps outlined by the Practice Recommendation. The Council explained that it had invested additional resources to meet the demands of FOIA requests, implemented an Action Plan to address weak performance and pledged to embark on what it termed a "big push" to be at 90% compliance for the timeliness of its responses by Easter 2023. It said that its latest timeliness figures for December 2022 indicated 76.7% of requests were answered on-time.
12. In light of the improvements, the Commissioner decided not to pursue further regulatory action at that point. He determined instead that he would assess the Council's progress after Easter 2023, to review if it had been able to deliver its stated ambitions.
13. Having chased for finalised data regarding its FOIA compliance, the Commissioner received an update from the Council in June 2023. This showed that the Council's progress had not been maintained, with its performance having actually declined. Having responded to 72.41% of requests on-time for Q3 (October-December) of the financial year 2022/23, it was only able to respond to 63.64% of requests on-time for Q4 (Jan-March 2023).
14. Of further concern, the Council also explained that it had a number of open requests which were significantly over the 20 working day time limit for compliance:

Age profile of overdue request	FOI / EIR
Number of requests open over a month old	63
Number of requests open over three months old	47
Number of requests open over six months old	44
Number of requests open over nine months old	38
Number of requests open over a year old	35

15. The Commissioner is also deeply disappointed that having highlighted the high volume of decision notices issued to the Council prior to issuing the Practice Recommendation, there appears to have been no discernible improvement from the Council in this regard. Between September 2022 and April 2023, he issued a further 21 decision notices to the Council which recorded a breach either of section 10 of FOIA or regulation 5(2) of the Environmental Information Regulations 2004 (EIR). Given that for all complaints of this nature, the Commissioner writes firstly to a public authority to seek an informal resolution, it is concerning that the Council appears rarely to engage with this approach.

The Contravention and Reasons for this Notice

16. 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.

17. Taking into account the significant volume of unanswered FOI requests, their age profile including many requests subject to severe delay, and the need for significant and sustained improvement in timely FOI responses, the Commissioner considers it a proportionate

regulatory step to issue an Enforcement Notice to the Council. This Notice requires the Council to comply with section 1(1) of FOIA in respect of each FOI 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. It is essential that the improvements that the Council has already achieved since the initial contact with the Commissioner are sustained.

18. The Commissioner also considers it a proportionate regulatory step to require the Council to devise and publish an up-to-date action plan, which formalises 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 in responding to FOI requests, with mitigations for any recurring problems addressed specifically in the plan. The Commissioner has produced a range of resources, including a template Action Plan, which should support the Council in complying with this step.³

Terms of this Notice

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

20. 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

³ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/guide-to-freedom-of-information/resources-toolkits-and-training/>

Reference: ENF0987657

inquiry by the High Court, the Council may be dealt with as if it had committed a contempt of court.

Right of Appeal

21. 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.

22. 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

23. 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 Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES THE LONDON BOROUGH OF CROYDON 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 REQUIRES THE LONDON BOROUGH OF CROYDON TO TAKE THE FOLLOWING STEPS 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.