

Freedom of Information Act 2000 (FOIA)

Internal Review

Date: 21st January 2020

Requester: Dan Perkins

Decision (including any steps ordered)

1. The Council has correctly responded to Questions 4, 5 and 7 below

Request and response

2. On 14th November 2019 the Requester emailed the Council the following;

under foia

has scc council ever allowed any enforcement agent to issue a indemnity against prosecution for signature to a person under mental health care whilst concealing it from the council knowing this would be gross misconduct.

has scc council ever co signed a indemnity ap contract after a failed levy on goods against a business rate debt

Does scc allow a enforcement agent to make its own indemnities whilst not indemnifying scc

Does scc allow enforcement agents to break the human rights act and equality act by seeking to take a unfair advantage against a person in mental health care

3. Following an email correspondence between the requester and the Council, on 18th December 2019 the Requester clarified the request as follows;

1. Does your enforcement agent contract allow your enforcement agents to issue an indemnity against prosecution for themselves without the agreement of the council in cases where they have wrongfully/excessively seized goods to vulnerable people

2. Have you ever allowed bailiffs to make their own settlement agreements where goods have to be returned?

3. Would you allow enforcement agents to breach the equalities act by giving a protected party a disadvantage if it meant your business rates were collected?

4. How would you react if they did this without you knowing?

5. Would you class a secret indemnity which achieves a gain at the

cost to the vulnerable victim a material breach of contract .?

6. Must enforcement agents always report failed levies and a full report when dealing with vulnerable customers thank you for your public concern in answering these questions asap.

7.if you knew a bailiff agency had hidden a secret indemnity and a failed levy from a large council for years knowing the victim was vulnerable and that the failed levy had caused insurmountable issues would this concern you ?

4. On 02nd January 2020 the Council issued the following response;

Q1: Does your enforcement agent contract allow your enforcement agents to issue an indemnity against prosecution for themselves without the agreement of the council in cases where they have wrongfully/excessively seized goods to vulnerable people

Response:

Our Enforcement Agent:

Our contract clearly states when either party is liable to be indemnify and defend at its own expense. In this case stated, if they wrongfully/excessively seized goods then any costs or prosecution would be against Enforcement Agent.

Q2: Have you ever allowed bailiffs to make their own settlement agreements where goods have to be returned?

Response:

This has not occurred since I have been in post as Revenues and Benefits Manager (April 2015). I have checked with colleagues who have been in the service longer who confirm to their knowledge since our current Enforcement Agency in 2001 this have type of event has not occurred.

Q3: Would you allow enforcement agents to breach the equalities act by giving a protected party a disadvantage if it meant your business rates were collected?

Response:

No. An ethical Enforcement Agent would not engage in such activity.

Q4: How would you react if they did this without you knowing?

Response:

This is a hypothetical situation, whereby the answer would require the Council to provide an opinionated response. The Council would not be in a position to respond, as we can only provide specific recorded information in response to such requests. As such, this is not a valid request for information under the provisions of the Freedom of Information Act.

Our Enforcement Agent:

Our contract clearly states when either party is liable to be indemnify and defend at its own expense. In this case stated, if they wrongfully/excessively seized goods then any costs or prosecution would be against Enforcement Agent.

Q5: Would you class a secret indemnity which achieves a gain at the cost

to the vulnerable victim a material breach of contract?

Response:

This is a hypothetical situation, whereby the answer would require the Council to provide an opinionated response. The Council would not be in a position to respond, as we can only provide specific recorded information in response to such requests. As such, this is not a valid request for information under the provisions of the Freedom of Information Act.

Q6: *Must enforcement agents always report failed levies and a full report when dealing with vulnerable customers' thank you for your public concern in answering these questions ASAP.*

Response:

The Enforcement Agent – will send a full report on all cases

Q7: *If you knew a bailiff agency had hidden a secret indemnity and a failed levy from a large council for years knowing the victim was vulnerable and that the failed levy had caused insurmountable issues would this concern you?*

Response:

This is a hypothetical situation, whereby the answer would require the Council to provide an opinionated response. The Council would not be in a position to respond, as we can only provide specific recorded information in response to such requests. As such, this is not a valid request for information under the provisions of the Freedom of Information Act.

5. On the same day in an email the Requester expressed his dissatisfaction with Council's response as follows;

these are matters of public interest and therefore the answers are not sufficient. you use the word hypothetical. hypothetically in a public interest matter the answer can be yes or no or under xx circumstances many other councils have answered using their code of ethics and their contract as a guide. for example does southampton allow their agents to indemnify themselves in secret

i believe you can answer these questions like other councils and i reiterate this is not a complaint about you

responses that fail to show clarity in your control of enforcement agents would give light to the public perhaps believing the agents have more control than they should

6. The Council interpreted this to be dissatisfaction with the Council's response to Question 4, 5 and 7. Responding on 02nd January 2020 the Council said that it was satisfied that it was not obliged to answer Questions 4, 5 and 7 because the information is not held as the question require the Council to comment on a situation that has not arisen or required the Council to provide an opinion.
7. On 06th January 2020 the Requester further express his dissatisfaction with the Council's response. The Requester said that over 40 Council had positively responded to his requests.
8. The Council considered whether to answer the questions voluntarily. On 08th January 2020 the Council informs the Requester that it declined to make any further comment on Questions 4, 5 and 7
9. On 08th January 2020 the Requester asked the Council to conduct an internal review

Scope of the case

10. Whether Question 4, 5 and 7 are request for information capable of being held by the

Council.

11. Whether the Council holds information requested in Question 4, 5 and 7

Reasons for decision

12. Question 4 - How would [the Council] react if [an Enforcement Agency] [breached the Equalities Act by giving a protected party a disadvantage if it meant your business rates were collected] without [the Council] knowing?

13. This question asks how the Council would react in a particular situation. On the face of the question, it is not a request for information.

14. The Council should, where reasonable to do so interpret a question to be a request for information. I have been unable to interpret this to be a request for information.

15. I am satisfied that the Council does not hold any information that sets out how the Council must react in the situation set out.

16. Question 5 - Would [the Council] class a secret indemnity which achieves a gain at the cost to the vulnerable victim a material breach of contract?

17. This question is a request for a comment rather than a request for information held.

18. Question 6 - If [the Council] knew a bailiff agency had hidden a secret indemnity and a failed levy from a large council for years knowing the victim was vulnerable and that the failed levy had caused insurmountable issues would this concern [the Council]?

19. This question is a request for a comment rather than a request for information held.

Obligation to assist the requester.

20. Under the Freedom of Information Act 2000 section 16, it is the duty of the Council to provide advice and assistance to a person to make a requests for information, so far as it would be reasonable to expect the Council to do so.

21. I am satisfied that at the time it issued its response, the Council would have needed more insight into the motivations of the Requester in order to provide assistance in making the request.

22. However, subsequent communication from the Requester has suggested that they are seeking details of controls within the Council's contract that stop unethical and unlawful actions. It is therefore likely that the Council does hold information that might assist the Requester in their ultimate objective.

23. The request may wish to consider requesting;

- 23.1. Copies of all contracts with Enforcement Agencies
- 23.2. Details of clauses in contracts relating to compliance with the Equality Act
- 23.3. Council Policies relating to dealing with breaches of contract
- 23.4. Council Policies relating to alleged misconduct on the part of a contractor

24. I am not in a position to comment on whether the Council actually hold any of the information suggested above or whether all or part of those documents might be withheld under an exemption.

25. I am satisfied that the Council does not hold information requested in relation to Questions 4, 5 and 7 above.

Conclusion

26. The Council has correctly responded to Questions 4, 5 and 7 above

Other matters

27. I am believe that it is likely the Council does hold information that could aid the Requester to determine the Council's options in the scenarios they set out in Question 4, 5 and 7.
28. However, at this stage the Council can only suggest amendments to the request so that it relates to information that Council might reasonably be expected to hold.

Right of appeal

29. If you are dissatisfied with this review into your request for information, please be aware that you have the right of appeal to the Information Commissioner's Office.

The Office can be contacted by email at casework@ico.org.uk or by post at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Signed ...Robert Greenaway...

Robert Greenaway
Information Governance
For Service Director – Legal and Governance