

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2022

Public Authority: South Hams District Council
Address: Follaton House
Plymouth Road
Totnes
TQ9 5NE

Decision (including any steps ordered)

1. The complainant requested information from South Hams District Council (the Council) on 23 December 2021 relating to a contract awarded to a particular waste management company. The Council has not responded to this request.
2. The Commissioner considers that the Council has breached section 10(1) FOIA as it has failed to respond within the statutory time for compliance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a response to the request in compliance with FOIA.
4. The public authority 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

5. On 23 December 2021 the complainant requested information of the following description:
 1. In my previous FOI request [RP/246595] I asked: 'How much of the total value of the contract awarded to FCC Environment (OJEC reference 2018/S 247-570127 – the Contract) was attributed to the collection of

household recyclable items in the area of South Hams District Council (SHDC)?' You answered with the scope and total value of the contract – information that was already in the public domain. This was not an answer to the request that I made. Clearly you misunderstood. Please provide the information that I requested or explain why you cannot do so.

2. In answer to my request 2 in RP/246595 you referred to 'weekly co-mingled collection'. Is 'weekly co-mingled collection' a permanent service under the terms of the Contract?

3. Please provide in electronic form a copy of the Contract awarded to FCC Environment (OJEC reference 2018/S 247-570127). For the avoidance of doubt, by Contract I mean the body of the Contract (sometimes known as 'terms and conditions') plus all schedules to the Contract and any modifications to the contractual agreement made in letters, emails, text messages, notes of meetings or any other record in any form following the date of signature.

4. Please provide copies of all papers, letters, emails, text messages, notes of meetings or any other record in any form that set out the 'understanding' (as referred to in your response to my FOI request RP/246595) between SHDC or its agents and FCC Environmental to keep secret the basis for the payment of compensation by FCC Environmental for failure to deliver some or all of its obligations under the Contract.

5. My request 5 in RP/246595 was: 'What tests, demonstrations or other methods of assurance were conducted during contract negotiation to ensure that the methods proposed by the contractor for the collection of household recyclable items would be feasible in the particular circumstances of the SHDC area?' a. Your response fails to identify any tests, demonstrations or other methods of assurance thus I infer that none were carried out. Please tell me whether my inference is correct. If incorrect, then please tell me:

i. what tests, demonstrations or other methods of assurance were conducted during contract negotiation, and

ii. why such tests, demonstrations or other methods of assurance failed to predict that FCC Environmental would be unable to deliver in full its obligations under the Contract.

6. The Council failed to respond to the complainant's request.

7. Due to the lack of response, the complainant submitted a complaint to the Commissioner on 2 February 2022.

8. The Commissioner wrote to the Council on 12 February 2022 reminding it of its obligations under FOIA to respond to this request.

9. The Council failed to provide a response to the complainant or reply to the Commissioner.

Scope of the case

10. The complainant contacted the Commissioner on 2 February 2022 as the Council failed to respond to his request.
11. The Commissioner has considered whether the Council complied with its obligations under section 10(1) FOIA in its handling of this request.

Reasons for decision

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 original request was made on 23 December 2021 and a response is yet to be provided by the Council. The Commissioner therefore finds that the Council breached section 10(1) in failing to provide a response within 20 working days.

Right of appeal

15. 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

16. 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.
17. 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.....

Gemma Garvey
Senior Case Officer

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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF