

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

**DATED: 13 September 2023**

**To: City of York Council**

**Of: West Offices  
Station Rise  
York  
YO1 6GA**

1. The City of York 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) of FOIA;
  - b. continuing breach of section 10(1) of 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 them, 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. 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) 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 FOI compliance performance when his representative made contact with it prior to August 2023. In August 2023 the Council provided the Commissioner with statistics which raised concerns about requests which it had not yet responded to which it had received prior to and during 2023.

9. The Council stated that it met the time requirements for responding to requests in 85.5% of requests received between January 2023 and June 2023.

10. It also specified that it has a significant backlog of overdue requests which have yet to be responded to, and that within this were a significant number of requests which were severely delayed. This raises concerns both in terms of the timeliness of its responses, and in the overall numbers of requests which have not yet been responded to:

- The Council stated that it has not yet responded to 96 requests received between April to December 2021.

- It further stated that it has not yet responded to 102 requests received during 2022.
- The Council also stated that it has not yet responded to 63 requests received between January and August 2023.

### **The Contravention and Reasons for this Notice**

11. 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.

12. Taking into account the significant volume of unanswered requests, their age profile including many requests subject to severe delay, and the need for significant and sustained improvement in timely responses, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice to the Council.

13. The Council contacted the Commissioner on 8 September 2023 to confirm that it is in the process of addressing the backlog of requests. It confirmed that it has responded to 49 of the remaining 261 requests and stated its intention to clear its entire backlog of unanswered requests by the end of October 2023. **Whilst the Commissioner acknowledges the work carried out by the Council, it is essential that the improvements that the Council has already achieved since the initial contact with the ICO are sustained.** The Commissioner therefore considers it appropriate to issue this Notice in order to formalise its steps to clear its backlog within an appropriate time limit.

14. 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.

15. The Commissioner also considers it a proportionate regulatory step to require the Council to devise and publish an 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 to responding to information requests, from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan.

16. 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**

17. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring the City of York 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.

Reference: ENF0988350

18. 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, City of York Council may be dealt with as if it had committed a contempt of court.

## **Right of Appeal**

19. 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.

20. 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](mailto:GRC@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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**

Reference: ENF0988350

**Cheshire**

**SK9 5AF**



## **Annex 1**

### **TERMS OF THE ENFORCEMENT NOTICE**

**THIS NOTICE REQUIRES CITY OF YORK 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 CITY OF YORK 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.