

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2013

Public Authority: Kirby Muxloe Parish Council
Address: Parish Council Office
Station Road
Kirby Muxloe
Leicester
LE9 2EN

Decision (including any steps ordered)

The complainant has requested information from the Council relating to clerks' expenses for attending meetings. The Council initially refused to disclose the information under section 22 of FOIA, however later disclosed it. The Commissioner's decision is that the Council has breached sections 10(1) and 17(3) of FOIA, however, since the requested information has now been provided to the complainant, the Commissioner orders no steps to be taken.

Request and response

1. On 12 December 2012, the complainant wrote to the Council and requested information in the following terms:

"Please therefore provide me with the dates and purposes for which the Clerk/RFO has been paid expenses for attending meetings (whether of council, committees, sub-committees, working groups or parties or any other description) outside her normal working hours. Additionally where these relate to meetings for which the minutes are not already on the website, please identify the councillor(s) present who have been able to confirm the validity of the Clerk/RFO's claim. This should be straightforward as it can be established from the Clerk/RFO's expenses sheets.

Please provide this information for the period from 1 April 2011 to 1 December 2012."

2. The Council responded on 3 January 2013. It stated that the requested information was exempt from disclosure under section 22 of FOIA (information intended for future publication) as the information would be made publicly available at some stage in 2013. The Council did not offer the complainant the opportunity to request an internal review. The complainant complained to the Commissioner on 7 January 2013.
3. Following the Commissioner's intervention, the Council wrote to the complainant on 14 February 2013, providing her with information in response to her request. The complainant informed the Commissioner at a later stage that she had not received that correspondence and the Commissioner sent her a copy of this.
4. The Council again wrote to the complainant on 11 March 2013 attaching a schedule of information and apologising for the delays which had occurred to date. The Council in that letter asked the complainant to peruse the schedule of information and to clarify what she had and had not received from the Council. This was treated by the Council as an internal review of its response to the complainant's request. The complainant then contacted the Commissioner and stated that the information she had been sent was not what she had requested.
5. The Commissioner again wrote to the Council, which then provided the complainant with some further information on 14 May 2013. The complainant informed the Commissioner that the information provided was incomplete and that some of it was outside the scope of her request. She had also written to the Council informing it of this. The Commissioner also wrote to the Council, requesting that it provide all information within the scope of the complainant's request which it held, within 20 working days, i.e. by 28 June 2013.
6. The Council provided the complainant with further information on 19 June 2013. The complainant asked the Commissioner to issue a decision notice regarding the procedural aspects of the Council's handling of her request for information.

Scope of the case

7. The complainant first contacted the Commissioner on 7 January 2013 to complain about the way her request for information had been handled. She has contacted the Commissioner since then to make further complaints about the handling of her request.
8. The Commissioner has considered the Council's handling of the complainant's request.

Reasons for decision

Section 10 of FOIA (time for compliance)

9. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
10. Section 10(1) requires that the public authority comply with section 1 promptly and in any event no later than 20 working days after the date of receipt of the request.
11. The Commissioner notes that the complainant's request for information was made on 12 December 2012. Although the Council responded to the complainant's request on 3 January 2013, providing a refusal notice, it later changed its mind and ceased to rely on the exemption specified in the refusal notice. The Council did not provide the complainant with a complete response to her request until 19 June 2013. From the information provided to the Commissioner in this case it is evident that the Council did not provide a complete response to the complainant under FOIA within the statutory time frame and therefore it breached section 10(1) of FOIA.

Section 17 - Refusal of request.

12. Section 17 of FOIA states that:-
 - (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—
 - (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
 - (3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection

(1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
 - (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
13. The Council's response to the complainant of 3 January 2013 stated that the information she had requested was exempt from disclosure under section 22 of FOIA (information intended for future publication. Although the Council specified that it was applying section 22 of FOIA as a basis for non-disclosure, it did not demonstrate that it had carried out a public interest test in which it balanced all the public interest factors for and against disclosure in all the circumstances of the case. Therefore, the Council was in breach of section 17(3) of FOIA.

Right of appeal

14. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

15. 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.
16. 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

Rachael Cragg
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Information Commissioner's Office
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