

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 July 2014

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

Decision (including any steps ordered)

1. The complainant has requested information relating to the use of Portsmouth Civic offices by masonic lodges. The Commissioner's decision is that, on the civil standard of the balance of probabilities, Portsmouth City Council does not hold the requested information. He does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 13 February 2014, the complainant made the following request via the WhatDoTheyKnow website¹:

"Please under the Freedom of Information Act provide the following information:

1. The names of the two masonic Lodges that meet in the Portsmouth Civic offices.
 2. The names and professions (if retired please state) of the Freemasons attending these meetings in both Lodges, in Portsmouth Civic offices.
 3. Evidence of payment by these masonic Lodges to Portsmouth City
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https://www.whatdotheyknow.com/request/masonic_lodge_meetings_in_portsm#incoming-484404

Council for use of premises paid for by the taxpayer.

4. The name and position of the accountable Council Officer who has given permission for these masonic Lodge meetings to take place in Portsmouth Civic offices.

Under public sector rules and regulations, the details of 1 and 2 above should be held by Portsmouth City Council for security reasons.”

3. The council responded on 14 February 2014. It provided some narrative information regarding the booking of public rooms within Civic Offices and also stated that it is not aware of any such organisation having approached the council to book Civic Offices meeting space in the last 4 years and that no information is held.
4. Following further correspondence from the complainant, the council confirmed on 17 February 2014 that the request was processed as 'Business as Usual rather than through formal FOI process' and that no recorded information was held in relation to the specific points of the request.
5. On 18 February 2014, the complainant informed the council that he did not wish the request to be processed as business as usual but for a response to be provided under the FOIA.
6. The council replied on 19 February 2014 stating that;

"PCC has in place a process for handling any request for information be it under legislation or general enquiry. If it can be answered by an appropriate service without the formalised process of the Freedom Of Information legislation then that is the appropriate course of action. In this case the service determined it could be answered through the business as usual (BAU) process. The Information Governance (IG) Team acted as the conduit to provide the services' response back to you...PCC considers this request for information has been answered."
7. The complainant requested an internal review on 19 February 2014. The council responded on the same day stating that as the enquiry was dealt with as 'business as usual' there is no internal review process.

Scope of the case

8. The complainant contacted the Commissioner on 20 February 2014 to complain about the way his request for information had been handled. He said that the council has refused to answer the request, or carry out an internal review of their refusal to answer it under the FOIA.

9. The Commissioner has considered whether the council holds the information requested.

Reasons for decision

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
12. The Commissioner enquired as to the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. He asked the council to bear in mind that in response to a previous request², it said that;

"I have checked with the Guildhall and can confirm the Freemasons have around 2 annual dinner evenings a year for a Sociable Functions and confirm the Guildhall is not used as a regular meeting place of the Freemason or the group "Libertine FreeMasons".
13. The council explained that the Guildhall is not a Portsmouth Civic office. The Guildhall is managed by an external organisation, The Portsmouth Cultural Trust ('PCT'), which is not associated in any way to the council. The PCT, which the Commissioner notes from its website is a 'Company Limited by Guarantee, which is a not-for-profit organisation overseen by a Board of Directors', manage bookings and hold this information in

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https://www.whatdotheyknow.com/request/membership_of_libertine_lodge?unfold=1#incoming-479893

their own right and not on behalf of the council. It explained that although the PCT provided the council voluntarily with verbal information relating to the annual dinners they are not bound by the FOIA, being a private organisation. The council confirmed that PCT did not provide it with any recorded information regarding regular Freemason meetings held at the Guildhall and said that its statement regarding the annual dinner evenings in response to the earlier request did not imply that regular Lodge meetings are held.

14. The council said that a search was conducted by Landlord Services who are responsible for the booking of public rooms in 'Portsmouth Civic offices' using keywords provided in the request ('Freemason', 'Masonic Lodge' etc) but no information was found. It stated that if information were held it would likely be electronic and manual records and that, as it could find no reference to lodge bookings, it is unlikely that information had ever been held which had since been deleted or destroyed or held in other locations.
15. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council stated that if information was held, it would be held to determine room bookings, health and safety and security, and for finance reasons. It confirmed that there are no statutory requirements for the council to hold the information.
16. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. The complainant did not provide the Commissioner with any arguments as to why it believes the council do hold the requested information and he has not identified any reason or motive to conceal the requested information.
17. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any information relevant to this request. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Other matters

18. Under the FOIA, there is no obligation for an authority to provide a complaints process. However, it is good practice (under the section 45 code of practice) and most public authorities choose to do so. If a public authority does have a complaints procedure, also known as an internal

review, it should ensure the procedure is triggered whenever a requester expresses dissatisfaction with the outcome³.

19. In this case, the council explained that it has always been mindful of the Commissioner's 'Guide to Freedom of Information'⁴ especially the section which states;

"Any letter or email to a public authority asking for information is a request for recorded information under the Act.

This doesn't mean you have to treat every enquiry formally as a request under the Act".

20. It said that with the guidance in mind it processed this request as business as usual and was able to provide a response more promptly than formal FOIA processing, but the salient point is that the response would have been the same. It explained that when asked for an internal review it advised that as it had not managed the request under formal process, an appeal process did not apply.

21. The Commissioner considers that the council has incorrectly interpreted his guidance and draws attention to the following section;

"The provisions of the Act need to come into force only if:

- you cannot provide the requested information straight away; or
- the requester makes it clear they expect a response under the Act.

22. As the complainant made his request via the WhatDoTheyKnow website, and specifically stated that he wanted the request dealt with under the FOIA, the council should not have dealt with the request as normal course of business and should have provided an internal review response.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/guide_to_freedom_of_information.pdf page 52

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/guide_to_freedom_of_information.pdf

Right of appeal

23. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Andrew White
Group Manager
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