

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2015

Public Authority: Llanfachraeth Community Council

Decision (including any steps ordered)

1. The complainant requested from Llanfachraeth Community Council ('the Council') copies of correspondence between the Council and Hacker Young, an external auditor. In its initial response the Council stated that the correspondence was held but did not disclose it or issue a refusal notice. During the course of the Commissioner's investigation, the Council stated that it did not hold the information requested. The Commissioner is satisfied that on the balance of probabilities the Council does not hold the requested information. However, the Council breached sections 1(1)(a) and 10 of the FOIA by failing to deny that it held the information requested within 20 working days. The Commissioner does not require any steps to be taken.

Request and response

2. On 27 January 2014, the complainant contacted the Council and, in reference to the minutes of a Council meeting held on 25 June 2013, requested information in the following terms:

"Could I please have a copy of:

1) [name redacted] (Hacker Young auditors) letter to you asking for an explanation of the salary payment to the clerk.
2) [name redacted] letter requesting a response within 7 day [sic] (sent 24-9-13).
3) Your letter responding to these letters."
3. The Council responded on 22 February 2014. This response dealt with other requests the complainant had made to the Council, but did not refer to the information requested on 27 January 2014, namely letters between the Council and its auditors.

4. Following further correspondence with the complainant, the Council wrote to him on 29 April 2014 in relation to the request and stated:

“I have no documentation from Hacker Young, they are in the Chairman’s possession.”

Scope of the case

5. The complainant contacted the Commissioner on 5 May 2014 to complain about the way his request for information had been handled.
6. During the course of the Commissioner’s investigation, the Council informed him and the complainant that it did not hold the requested information.
7. The scope of the Commissioner’s investigation is to establish whether the Council has complied with its obligations under the FOIA in relation to the request.

Reasons for decision

Section 1 – general right of access

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
9. As stated earlier in this notice, the Council’s initial response to the request stated that “I have no documentation from Hacker Young, they are in the Chairman’s possession”. However, during the Commissioner’s investigation, the Council confirmed that it did not hold the information requested.
10. 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 arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider 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 is held; he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

11. In support of his contention that the Council held the information requested, the complainant provided the Commissioner with a copy of an email he had received from the external auditors, Hacker Young. The email confirmed that the two letters (referred to in parts 1 and 2 of the request) had been sent to the Council by the auditors.
12. The Council explained that its initial response indicating that the information was held by the Chairman was not issued as a result of any checks it had carried out to determine that the information was in fact held. The response had been issued based on an assumption that the Chairman would be the officer of the Council to hold the information.
13. The Council informed the Commissioner that the Chairman at the time the request was submitted had retired and a new Chairman was now in place. The Council initially confirmed that it was likely that the letters in question had been held by its former Chairman for a period of time, although the former Chairman had no recollection of receiving the letters. The former Chairman did, however, recall a telephone call with the auditors to discuss the letters.
14. During the course of the Commissioner's investigation, the Council contacted the auditors in relation to the letters. The auditors provided evidence to the Council that the letters were addressed to the then Chairman. However, the letters did not include a postcode or the name of the house although they did contain the house number and the name of the estate in which the house is situated.
15. The Council stated that the auditors confirmed they had telephoned the then Chairman after not receiving a reply to either of the letters, and it was during this call that the then Chairman gave his verbal response to the letters.
16. The Council stated that all Council documents are filed and stored by the Clerk, and that upon leaving the post any documentation in the possession of the previous Chairman would have been returned to the Clerk for filing and storage. The Council confirmed that it had searched through all the documentation it holds but was unable to locate the letters. It also confirmed that it had contacted the former Chairman who had undertaken a full search for any information remaining in his possession. These searches did not locate the requested information.
17. The Council confirmed that generally all official correspondence is kept for a minimum of seven years. It also advised that it does not keep any record of documents disposed of, nor of any disposal procedures. The Council was therefore unable to provide any evidence of disposal or destruction of the information requested.

18. The Council stated that its response to correspondence received from its auditors (item 3 of the request) was made verbally during a telephone call. In light of this, the Council confirmed that no written response had been issued and as such it did not hold any information relevant to part 3 of the request.
19. In light of the searches conducted, the fact that the auditors had used an incomplete address on the letter, and that the auditors telephoned the Council as they had not received a response to the two letters (parts 1 and 2 of the request), the Council now considers that it is most likely that it never received the letters in question and therefore never held them.
20. The Commissioner accepts that it is possible that the letters in question were never received by the Council as they contained an incomplete address. The Commissioner is also mindful of the Council's lack of response to the two letters, coupled with confirmation from the auditors that they needed to telephone the Council to discuss the letters' contents, which adds weight to this argument.
21. The Commissioner accepts that the Council has conducted appropriate searches of the places where the letters, if received, would be held, but was unable to locate them.
22. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold the information requested.
23. In failing to inform the complainant that it did not hold any information falling within the scope of his request at the time that it was made the Council breached section 1(1)(a) of the FOIA. The Council also breached section 10(1) by not complying with section 1(1) within 20 working days of receipt of the request.

Other matters

24. As covered under the "Scope of the case" heading above, it was only after the intervention of the Commissioner that the Council confirmed that the requested information was not, in fact, held. The Council should ensure in future that its first step upon receiving an information request is to identify any relevant information held. Only then should it consider to what extent this information may be covered by any exemptions. A failure to obtain or consider the actual information requested could, as occurred in this case, result in an incorrect or inaccurate response being issued. The Commissioner considers that this is extremely poor practice.

25. The Commissioner would recommend that the Council reminds itself of its obligations under the FOIA to ensure that any future requests are handled in accordance with the provisions of the FOIA.

Right of appeal

26. 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@hmcts.gsi.gov.uk

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

27. 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.
28. 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

Anne Jones
Assistant Commissioner
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