

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2017

Public Authority: Mendip District Council
Address: Council Offices
Cannards Grave Road
Shepton Mallet
Somerset
BA4 5BT

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific planning decision notice. Mendip District Council (the council) provided some information, but the complainant disputed that this was the correct information. During the course of the investigation, the council provided further information.
2. The Commissioner's decision is that on the balance of probabilities, the council has provided all the information it holds within the scope of the request. It has therefore complied with section 1 of the FOIA. However, in providing the requested meta-data outside the required 20 working days, the council has breached section 10 of the FOIA.
3. The Commissioner does not require the public authority to take the any steps.

Request and response

4. On 22 August 2016 the complainant requested information of the following description:

"Please supply me with any valid decision notice/record for 2014/2752. (for you information the decision notice advertised on your website is not valid as its dated before the planning board date ?)..."

Please reply by post to my address, if you have electronic records please send hard copies and I will arrange with someone to receive valid file by email including the meta data."

5. The council responded on 24 August 2016. It provided a copy of the decision notice held for 2014/2752, along with an accompanying note from the planning department explaining why the date for the notice pre-dates the planning board and that the council is not legally able to re-issue or amend a decision notice.
6. The complainant requested an internal review on 30 August 2016. The council sent him the outcome of this on 8 September 2016. It maintained its original position that the decision notice on the website, a hard copy of which it provided to the complainant on 24 August 2016, is the information it holds falling within the scope of the request. With reference to his request to have the information emailed to him, including meta-data, it advised that the council had not been provided with his email address until 30 August 2016. In addition to this, the council advised that the information requested was electronically available by other reasonable means on the council's website, and therefore it was not required to provide further electronic copies through the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 21 October 2016 to complain about the way his request for information had been handled.
8. The complainant informed the Commissioner that he required the requested meta-data, which the council had not yet provided to him. He believed that this would address his concerns regarding the validity and legality of the planning decision 2014/2752. The complainant informed the Commissioner that he considers the meta-data to be that which is *"normally integral with electronic produced records"*.
9. The Commissioner advised that the scope of the investigation therefore would be to determine whether the council had located all the information that fell within the scope of the request. She also stated that she was not in a position to make a finding as to the validity or otherwise of the information held by a public authority.
10. The Commissioner considers the scope of the case to be to determine whether the council has complied with the requirements of section 1 of the FOIA.

Reasons for decision

Section 1 – Information held

11. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
12. In scenarios such as this case where there is some dispute between the information located by a public authority and the information that a complainant believes may or should be held, the Commissioner follows the lead of a number of Information Tribunal decisions in applying the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints she must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
14. The complainant also disputed that the council had provided him with the meta-data he had requested. The Commissioner therefore brought this to the attention of the council. The council requested confirmation of the nature of the meta-data the complainant referred to. The complainant informed the Commissioner that he understood meta-data to be "*normally integral with electronic produced records*". The Commissioner passed this information on to the council.
15. The council advised the Commissioner that it could now supply the meta-data information. The complainant had contacted the council on 30 August advising that electronic information should be sent to a specific councillor on his behalf. On 22 March 2017 the council sent links and copies of the requested meta-data to the councillor as requested. This included the following information:
 - a link to and a screenshot of the meta-data for the pdf version of the decision notice which is available on the council's website,
 - a screenshot of the planning department's Uniform Spatial system showing further details of the publication of the decision notice,
 - a copy of the minutes of the 18 February 2015 Planning Board, with a description of how to access the meta-data.
16. The Commissioner has seen a copy of the cover email and the information disclosed. She has also checked that the meta-data within

the documents is available to view, which it is. For completeness, the Commissioner also forwarded a hard copy of the requested information to the complainant.

17. The complainant had said to the Commissioner that the meta-data would prove the validity of the decision notice, yet his response to receipt of the information continues to question this. As the Commissioner explained to the complainant in her first letter to him, it is not for her to determine the validity or legality of the council's planning decision notice. Her role in cases such as this is to determine on the balance of probabilities whether the public authority has complied with the FOIA in dealing with a request for information.
18. The council recognises that the date on the decision notice should read not read 2 February 2015, but 19 February 2015, which is the date it was actually issued. However, it has stated that the council is legally unable to re-issue a decision notice for a planning application once it has been issued. It explained that the date shown on the face of the notice is incorrect and is the result of human error. The council maintains that this is the legal and valid decision notice for application 2014/2752.
19. The focus of this case was to determine whether the council had provided all the requested electronic meta-data for the planning decision notice. The Commissioner is satisfied on the balance of probabilities that the council has provided the requested meta-data information and has therefore complied with the request. However, she recognises that this is unlikely to be to the satisfaction of the complainant as he seeks to prove his view that the decision notice is invalid.

Section 10 – time for compliance

20. Section 10 requires that a public authority must comply with a request promptly, and in any event, within 20 working days.
21. In this case, the requested meta-data was not supplied until 22 March 2017, well beyond the required 20 working days.
22. The Commissioner therefore finds that the council has failed to comply fully with section 10 of the FOIA.

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: 0870 739 5836
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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF