

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2017

Public Authority: Rugby Borough Council

Address: Town Hall
Evreux Way
Rugby
CV21 2RR

Decision (including any steps ordered)

1. The complainant has requested a copy of an email sent by Ansty Parish Council to Rugby Borough Council regarding objections received concerning his planning application. The Council failed to respond until requested to by the Commissioner.
2. The Commissioner's decision is that Rugby Borough Council has breached section 10(1) of the FOIA (time for compliance) by failing to respond to the complainant within 20 working days, and therefore also breached section 1(1)(a) by neither confirming nor denying it holds the requested information within the time for compliance.
3. As the Council has now responded to the complainant, the Commissioner does not require the Council to take any further steps.

Request and response

4. On 11 November 2016, the complainant wrote to Rugby Borough Council and requested information in the following terms:

'Please also can you provide a copy of the information request as received from Ansty Parish Council'

(in relation to a request made by Ansty Parish Council for comments on the complainant's planning application that were not visible via Rugby Borough Council's online portal).
5. The complainant failed to receive a response from the Council, despite chaser emails sent on 18 November 2016, 27 November 2016, 29 November 2016, 1 December 2016, 5 December 2016, 21 December 2016, and 27 January 2017. One of the reasons that the complainant sent so many chasers was due to the Council failing to acknowledge the first request or any of these further communications.
6. On 27 January 2017 the complainant contacted the Commissioner due to his request being ignored. On 7 February 2017 the Commissioner wrote to the Council reminding it of obligations under the FOIA and the EIRs and requested it respond to the complainant accordingly.
7. On 14 February 2017 the Council responded to the complainant's request, stating that it did not hold the information. It confirmed that Ansty Parish Council made a request for comments not available via its online planning portal, to which the Council responded, also supplying the complainant's agent with a copy. However, it did not have a copy of the parish council request itself.
8. On 29 March 2017 the complainant requested a review of the response, maintaining that the information request made by the parish council (in the form of an email) which he sought was held by the Council at the time of his request.
9. On 24 April 2017 the complainant contacted the Commissioner to inform her that he had received no response to his review request. On 4 May 2017 the Commissioner wrote to the Council asking it to undertake a review, referring to the section 45 Code of Practice which outlines the process for handling complaints about FOI responses.
10. On 5 May 2017 the Council provided a review response to the complainant, stating that the planning officer received an email from the parish council but that it was deleted as it was no longer required.

Scope of the case

11. The complainant first contacted the Commissioner on 27 January 2017 due to his request being ignored and then subsequently a number of other times to complain about the way his request for information had been handled. On 8 May 2017, having received a response to his review request the complainant contacted the Commissioner to say that he considered the Council's response unacceptable as he believed the email he sought was held at the time of the request, and should not have been deleted as it was part of a live planning application.
12. The Commissioner considers the scope of the case to be whether the Council held the email at the time of the complainant's request, the circumstances surrounding its deletion, and the failure of the Council to respond within 20 working days to the complainant's request.

Reasons for decision

13. Section 1(1) of the FOIA states that upon receipt of a request, a public authority must inform the requester in writing whether or not holds the information, and if the information is held then to communicate it to the requester.
14. Section 10(1) requires that a public authority must comply with section 1(1) within 20 working days of receipt of the request.
15. The complainant contests that the information he sought ('the email') was held at the time of his request, and was deliberately deleted by the Council. In its explanation to the Commissioner, the Council states that the email was received at some time in November and then deleted as part of normal housekeeping.
16. The complainant was notified of the response to the parish council's email on 11 November 2016, and immediately requested a copy of the email itself on the same date. Therefore it can be assumed, based on the Council's response to the Commissioner that the parish council email was received sometime between 1-11 November 2016.
17. The Council is unable to say when the email was deleted, but asserts 'the email was deleted as soon as it had been dealt with'. The email was dealt with by 11 November 2016. However, as the Council cannot say when the email was deleted, or give a window, the Commissioner has no

way of knowing whether 'as soon as' was by this date, or indeed some time after.

18. The complainant sent a further seven emails about his request to the Council asking for a response. The Commissioner has seen no evidence that the Council acknowledged either his original request or any of his chaser emails. The Council only responded to the request when asked to do so by the Commissioner.
19. As the Council cannot provide any evidence to support when exactly or approximately the email was deleted, it is possible, if not likely, that the email was held at the time of the request. Additionally, given the number of chaser emails sent by the complainant, there were other opportunities for the Council to search for the information sought way sooner than its formal response to the complainant on 14 February 2017.
20. The Council has stated that accidentally deleted emails can be recovered for a week, and full back ups, for the purpose of a system restore, are kept for a month. It is highly possible that had the Council recorded the request at the point it was made and responded in a timely manner, that the email, if deleted, could have been recovered.
21. The complainant maintains that the email should not have been deleted as it forms part of the statutory planning process. The Council says that it does not consider the email to form part of this process. For clarification, the documents that should or should not be kept as part of the statutory planning process is not a matter on which the Commissioner can decide.
22. The complainant asserts that the email was deliberately deleted. In as much as the email was deleted on purpose as part of normal housekeeping, it can be said this was deliberate. However, although it's probable that the email was deleted after the request was made, the Commissioner has seen no evidence to indicate that the Council deleted it with the intent of deliberately preventing the disclosure of the information.
23. When asked to explain why it took so long to reply to the complainant's request, the Council said that the complainant had submitted a number of requests and entered into considerable correspondence with council officers, and as a result this request had been overlooked. The Commissioner might ordinarily give some credence to this; however, as the complainant sent seven chaser emails about this request over approximately 11 weeks, it is hard to understand how all of these were genuinely overlooked.

24. In conclusion, the complainant made his request on 11 November 2016. The Council did not respond until 14 February 2017, over 3 months later, and only at the request of the Commissioner. Therefore the Commissioner finds that the Council breached sections 1(1)(a) and 10(1) of the FOIA by failing to respond within the statutory time for compliance. The Commissioner has seen no evidence to suggest that the information requested was deleted with the intention to prevent disclosure; however it is probable that the email sought was held at the time of the request and a timely response may have resulted in disclosure to the complainant.

Other matters

25. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
26. The complainant made his request for a review to the Council on 29 March 2017. The Council failed to respond to the complainant and only did so when requested by the Commissioner. She therefore recommends that in order to comply with the code, the Council ensures it has appropriate procedures in place for undertaking internal reviews of requests for information in a timely fashion.

Right of appeal

27. 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

28. 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.
29. 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
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