



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated: 29 March 2006

Public Authority: Monmouthshire County Council

Address: County Hall
Croesyceiliog
Cwmbran
NP44 2XH

Summary Decision and Action Required

The Commissioner's decision in this matter is that Monmouthshire County Council has not dealt with the complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1), (General Right Of Access To Information Held By Public Authorities). However, given that the information has now been provided to the complainant on an informal basis, no remedial steps are required of the Council.

1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the Public Authority has not been dealt with in accordance with the requirements of Part I of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or

- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The complainant has advised that on 1 January 2005 the following information was requested from the Public Authority in accordance with section 1 of the Act:

- 2.2.1 "I would like to know the actual cost savings of the pilot scheme [*to do with administering payments for school dinners*]. Ms **** has stated "almost £5000 a year" costs savings in her letter of October 21, as savings due to the school administrators salary. I would like to know the exact figure – taking into account the salary of and staff who now undertake the school administrator's work, as this expenditure does not seem to be apparent in Ms ***** cost saving figure."

The Complainant alleges that the information was not supplied to her in accordance with her rights under the Act in that the Council applied section 22 of the Act (information intended for future publication) in response to her request. She has also complained that the manner of the Council's communication of the information to her was not as she had specified within her request, contrary to section 11 of the Act. The

Complainant requested that the information be sent to her by e-mail, in fact it was sent by letter.

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

General Right of Access to Information Held by Public Authorities

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

- (b) if that is the case, to have that information communicated to him.”

Section 11 provides that –

Means by which communication to be made

“(1) Where, on making a request for information, the applicant expresses a preference for communication by any one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.”

Section 22 states –

Information intended for future publication

22. - (1) Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1) (a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).

4. Review of the Case.

The complainant’s request was for the sum saved by introducing a pilot scheme to collect and administer school dinner money at a school in Raglan, Monmouthshire. The complainant made a request prior to the implementation of the Act but did not receive an answer which satisfied her. She therefore resubmitted the request in the terms provided above on the 1st January 2005.

The Council responded by providing an approximated figure of £5000, stating that this figure was based on the amount of salaried time that the school administrator no longer spent on dinner money collection duties. The complainant however wished to know the precise sum saved.

The Council's replied on the 18th January 2005. It explained that the figure of £5000 was rounded up from £4870. The latter figure constituted the difference in cost between a school administrator spending 16 hours per week collecting school dinner money and a contracted member of staff spending 7½ hours per week doing this.

The complainant remade her request on the 13 February 2005, stating that the figure she had been given did not take into account other staff now administering the scheme.

The Council responded on the 23 March 2005, saying that the requested information would be published in a report once the pilot had been completed. The Council applied section 22 of the Act (information intended for future publication) and did not disclose the information. The Complainant then resubmitted the request on the 4 April 2005 but he Council responded on the 5 April again claiming section 22.

The complainant wrote to the Information Commissioner on the 6 April 2005 requesting a decision about the Council's refusal to disclose the precise cost saving figure.

After the intervention of the Commissioner the Council disclosed the precise figure to the complainant on the 23 November 2005. It did this on an informal basis, (i.e. without the need of a ruling by Commissioner). However the complainant insisted that the Commissioner make a formal decision about her request.

The complainant also alleges that the Council has not fully complied with her request in that it has not:

- a) provided information as to the calculations used to achieve the figure provided, and
- b) published the information as it said it would when invoking the exemption at s.22 of the Act
- c) provided the information in the manner requested.

The Commissioner has however restricted his decision to the complainant's initial request and made a decision on the following points;

1. whether the information the complainant requested should have been disclosed to her in response to her request, and
2. whether the information, when it was finally disclosed, was provided in the manner requested by the complainant.

The actual cost savings figure

The Council stated that the information was exempt from disclosure under section 22 of the Act. In his letter dated 23 March 2005 The Council's Chief Executive stated that when the pilot was complete the Council intended to publish a report on it which would include the information she had requested.

He also stated that the Council would provide a copy of this report to the complainant at that time.

The exemption at s.22 of the Act has three criteria which must be met in order for it to be applicable:

1. the information is held with a view to its publication,
2. the information was already held with a view to such publication at the time the request was made,
3. it is reasonable in all of the circumstances that the information should be withheld from disclosure until the time of its publication.

This exemption is subject to the public interest test.

The exemption can be applied to information which is held with a view to its publication at some future date, (whether determined or not). There is no requirement within section 22 that the information must go on to actually be published. It must be held, though, with a view to publication at the time the request is received. Accordingly, if the Council did have the intention to publish the information then the criterion in section 22 (1) (a) has been met.

As regards the application of section 22(1) (b), the Commissioner notes the Chief Executive of the Council's assertion that there was an intention to publish the final version of the report once the pilot had been completed. He also notes that an interim report had been published to relevant Council staff in 2004. This report contained an appendix which provided an approximate cost savings figure, together with details as to how this figure had been calculated. The Commissioner considers the fact that this figure had been included in the interim report adds support to the Chief Executive's written assurances to the complainant that he intended to include this information within the final version of the report.

Given that the information has now been supplied to the complainant the Commissioner does not consider it necessary or appropriate to further investigate whether the Council did, in fact, hold the intention to publish the information at the time of the request. The Commissioner considers that the facts of the case strongly suggest that the Council did intend to publish the information. The Commissioner is satisfied, therefore, that the criteria in subsections 22(1)(a) and (b) were met.

However, for the exemption at s.22 to be applicable, the requirement of s.22(1), (c) must also be met: was it reasonable in all the circumstances of the case to withhold the information until the publication of the report?

The Chief Executive of the Council has stated that it would not be in the public interest to publish incomplete material. As the pilot had not been completed, the final report had not been completed either. However, the complainant was only seeking one part of the information – the actual cost savings figure. This figure was unlikely to change during the duration of the pilot or during the completion of the final report (other than through salary increases or changes to staff working hours etc).

For the following reasons, the Commissioner considers that it was unreasonable to withhold the precise figure from disclosure:

- it was unlikely that the figure would change,
- the method of calculation remained the same,
- the figure would not have provided misleading information
- disclosing this information would also not have affected the course of the pilot or completion of the report.

The Commissioner's decision is therefore that the exemption in section 22 of the Act is not applicable to the requested information as it was not reasonable in all of the circumstances of the case to withhold the precise cost savings figure from disclosure until the final report was published. The cost savings figure should therefore have been disclosed to the complainant in response to her request.

As the Commissioner has decided that requirement of subsection 22(1)(c) has not been satisfied, no public interest test is required.

The Manner of Communication

The Complainant also complained that she requested a copy of the relevant information by email but was provided with it by letter. She therefore alleges that the Council failed to provide her with the information in the format she requested it, in breach of section 11 of the Act.

The Commissioner notes that the Complainant's request of 1 January 2005 does not say what format the information should be provided in, although previous requests made before the Act came into force did. As the Complainant's request of the 1 January did not specify a preferred format, the Council was not under a duty to consider its manner of response and did not therefore contravene section 11 of the Act by failing to provide the information by e-mail.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 1(1) – in that it failed

to communicate to the Complainant such of the information specified in her request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the Public Authority to refuse access.

- 5.2. The Commissioner's decision in this matter is that the Public Authority has dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 11 – in that the Complainant did not stipulate a format for disclosure in her request. The Council was not therefore under a duty to provide the requested information in any particular format.

6. Action Required

No remedial steps are required from the Council.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 29 day of March 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**