

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 13th September 2007

Public Authority: Carlton-Le-Moorland Parish Council

Address: Elm Cottage
28 High Street
Carlton-Le-Moorland
Lincoln
LN5 9HT

Summary

The complainant submitted nine requests for information to Carlton-Le-Moorland Parish Council over a period of seven months. The requests concerned a meeting of the Council on 9 November 2005, and issues raised subsequently by the Council with the Charity Commission, regarding a charity in Carlton-Le-Moorland. The Council provided some information, confirmed that some information was not held, and failed to address other requests for information. The complainant asked the Commissioner to review the Council's handling of three of the requests. The Commissioner is satisfied that the Council does not hold any of the information requested by the complainant. As the complainant is now aware that the Council does not hold the information requested in these three requests, the Commissioner does not require any steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant submitted nine requests for information to the Council over a period of seven months. A full list of the complainant's requests is attached at Appendix 1. The requests are referred to throughout this Decision Notice using the numbering as in Appendix 1.

Request 1

3. Request 1 was made on 20 December 2005 and concerned an advice note prepared in advance of the Council's meeting of 9 November 2005. The Council responded on 14 January 2006 and stated that there were no advice notes held by the Council which related specifically to a particular issue raised by the complainant.
4. The complainant repeated request 1 on 29 March 2006. The Council responded on 3 April 2006 and stated that its letter of 14 January 2006 had "already dealt with" request 1 in accordance with the Act.
5. The complainant wrote to the Council on 3 June 2006 and again repeated request 1. On 29 June 2006 the Council wrote to the complainant and enclosed a copy of "supporting documentation" which was distributed to councillors prior to the Council meeting of 9 November 2005.

Request 2

6. Request 2 was for the agenda for the Council meeting of 9 November 2005. The Council provided the complainant with a copy of the information under covering letter of 14 January 2006.

Request 3

7. Request 3 was made on 20 December 2005 and concerned the minutes of both the open and closed sessions of the Council's meeting of 9 November 2005. The Council provided minutes of the open session on 14 January 2006 however stated that the minutes of the closed session were "exempt from disclosure".
8. The complainant reiterated the request for the minutes of the closed session on 29 March 2006. The Council wrote to the complainant on 3 April 2006 and advised that it had already provided a response to this request. The complainant wrote to the Council again on 3 June 2006 and repeated request 3. On 29 June 2006 the Council wrote to the complainant and provided the information requested in request 3.

Request 4

9. Request 4 concerned notes taken by the parish clerk at the Council meeting of 9 November 2005, and was made on 20 December 2005. The Council responded on 14 January 2006 and stated that the clerk's notes were the "draft minutes prior to approval by the Parish Council".
10. The complainant wrote to the Council on 29 March 2006 and repeated request 4. The Council responded on 3 April 2006 and stated that it had already responded to request 4.

Request 5

11. Request 5 concerned a report given at the Council's meeting of 9 November 2005 by one of its councillors. The complainant requested this information on 20 December 2005. In its letter to the complainant of 14 January 2006 the Council stated that the councillor's report was "made verbally".
12. On 29 March 2006 the complainant wrote to the Council and expanded request 5 to include "...the report or notes made of the report by [name redacted] during open or closed session at the 9 November 2005 Parish Council meeting..." The Council wrote to the complainant on 3 April 2006 and stated that it had already addressed request 5 in its earlier correspondence.
13. The complainant wrote to the Council again on 3 June 2006 and reiterated request 5. The Council's letter to the complainant of 29 June 2006 further explained that the councillor had made his own notes to assist in the delivery of his report and that these were sent to the Charity Commission by the Chairman of the Council under covering letter of 28 November 2005. The Council stated that "the Parish Council were not provided with a copy of these notes".

Request 6

14. Request 6 was made on 20 December 2005 and concerned correspondence sent to the Charity Commission in relation to a particular charity. The Council wrote to the complainant on 14 January 2006 and stated that the Chairman's letter to the Charity Commission would be withheld as the matter was "under scrutiny". The complainant reiterated this request on 29 March 2006. The Commissioner understands that the Council responded on 26 April 2006 and provided a copy of the letter it had sent to the Charity Commission.

Request 7

15. Request 7 concerned a response to the Chairman's letter of 28 November 2005 from the Charity Commission, and was made on 20 December 2005. The Council responded on 14 January 2006 and stated that that a reply from the Charity Commission had been received however this would be withheld until all councillors had been informed of the Charity Commission's advice.
16. The complainant wrote again to the Council on 29 March 2006 and repeated this request for information. The Commissioner understands that the Council provided a copy of the Charity Commission's letter on 26 April 2006.

Request 8

17. Request 8 concerned further letters written to, and replies received from the Charity Commission, since November 2005. This request was made on 29 March 2006. The Commissioner understands that the request was answered on 26 April 2006.

Request 9

18. Request 9 concerned an email sent to the Charity Commission by the Parish Clerk on 16 February 2006. The request was made on 3 June 2006. The Council wrote to the complainant on 29 June 2006 and stated that a copy of the email could not be provided as it "no longer exist[ed] on the computer system".

The Investigation

Scope of the case

19. On 10 July 2006 the complainant contacted the Commissioner to complain about the way the requests for information had been handled. In a letter dated 9 May 2007 the complainant specifically asked the Commissioner to consider Council's handling of requests 4, 5 and 9. The Commissioner's investigation has therefore focused on assessing whether the Council has complied with those requests.

The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

20. On 31 May 2007 the Commissioner wrote to the Council and asked it to provide information in relation to the requests he was investigating.
21. In relation to request 4, the Commissioner asked the Council whether it held the notes taken by the Clerk at the Council's meeting of 9 November 2005. He asked for the complainant to be supplied with a copy of the notes or an explanation as to why they were exempt from disclosure, if the notes were still held by the Council. If the Council no longer held a copy of the notes in question, the Commissioner asked the Council to explain when this information was destroyed, and to explain its standard procedures as regarding the disposal of this sort of information.
22. In relation to request 5, the Commissioner explained that the Council was obliged to disclose under the Act any information it held, or which was held on its behalf by a third party, which answered the request. The Commissioner asked the Council to confirm whether a copy of the notes of the report given by the councillor were held by or on behalf of the Council. The Council was asked to provide a copy of the notes to the complainant, to issue a refusal notice explaining why the information was exempt from disclosure or to explain to the Commissioner why the information was not held by or on behalf of the Council.
23. In relation to request 9, the Commissioner asked the Council to explain when the email in question was thought to have been deleted, and to explain the Council's standard procedure regarding the retention and disposal of email correspondence.

24. The Council's representative telephoned the Commissioner on 13 June 2007 and followed this with a letter of the same date. He stated that the information requested by the complainant was not held by the Council.
25. In relation to request 4, it was confirmed that once the minutes of the Council's meetings have been drafted the notes are no longer required and are therefore destroyed. The Council could not confirm the exact date upon which the notes were destroyed, however could state that they were destroyed within 5 days of the meeting on 9 November 2005.
26. In relation to request 5, it was explained that the councillor delivered a verbal report at its meeting on 9 November 2005. The councillor had made some notes to assist him in delivering the report and that these notes were placed in an envelope, with other information the Council wished to include with its letter and posted to the Charity Commission. The Council did not make a copy of the councillor's notes. The Commissioner expressed his surprise that the Council had not retained information which may have been useful to retain for its own business purposes (for example, when combined with the Chairman's letter and other supporting information sent to the Charity Commission, the notes form a complete record of the issues raised by the Council). The Council's representative acknowledged that it may have been wise for the Council to have made a copy of the councillor's notes, however it had not done so and therefore there was no information to be provided in response to this request.
27. In relation to request 9, it was explained that the Council usually retains emails for a period of 1 to 3 months, after which they are deleted from the Clerk's computer.
28. The Commissioner communicated the explanation put forward by the Council's representative to the complainant, in a letter dated 27 June 2007. The complainant was invited to withdraw the complaint, however declined to do so.

Analysis

Procedural matters

29. The Commissioner has considered whether the Council has complied with section 1 of the Act.
30. Section 1(1) of the Act provides –

“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.”

Whether the information is held

31. Request 4 was made on 20 December 2005. The Council responded on 14 January 2006 and stated that "the Clerk's notes are the draft minutes prior to approval by the Parish Council". This statement did not explicitly confirm whether the information requested was held by the Council, nor did the Council address the issue of the Clerk's notes in any subsequent correspondence with the complainant.
32. Request 5 was made on 20 December 2005. The Council responded on 14 January 2006 and stated that the councillor's report had been made "verbally", however it did not explicitly confirm that no recorded information was held until 29 June 2006.
33. Request 9 was made on 3 June 2006. On 29 June 2006 the Council confirmed to the complainant that a copy of the email requested had not been retained by the Council.
34. The Commissioner has considered whether the Council has complied with section 10 of the Act.
35. Section 10(1) of the Act provides –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Whether the response was timely

36. Request 4 was made on 20 December 2005. The Council has not confirmed to the complainant whether it holds the requested information. The Commissioner will consider this failure to respond in paragraph 40, below.
37. Request 5 was made on 20 December 2005. The Council provided a full response to this request on 29 June 2006.
38. Request 9 was made on 3 June 2006 and answered by the Council on 29 June 2006.

The Decision

39. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

Request 5

The Council has confirmed to the complainant that it does not hold the information requested. The Commissioner is satisfied that the information

requested is no longer held by the Council, as there is no evidence to suggest a copy of the withheld information was retained. The original version of the councillor's notes was sent to the Charity Commission prior to the complainant's request for information being made. The Council has therefore complied with section 1 of the Act in respect of this particular request for information.

Request 9

The Council has confirmed to the complainant that the requested information is no longer held by the Council. The Commissioner is satisfied that the information was deleted in line with the Council's standard procedures regarding emails, and that the deletion took place prior to the complainant's request being made. The Council has therefore complied with section 1 of the Act in respect of request 9. The complainant requested information on 3 June 2006 and received a response from the Council to state that the information was not held on 29 June 2006. By responding within twenty working days of the date of the request the Council has complied with section 10 of the Act in relation to this request.

40. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

Request 4

The Council did not confirm to the complainant that it did not hold the information requested, and therefore it has failed to comply with section 1 of the Act. The Commissioner is, however, satisfied that the information requested was destroyed by the Council prior to the request for information being made and does not see any practical purpose in requiring the Council to notify the complainant of this at this stage.

Request 5

The complainant requested information on 20 December 2005 however a full response was not provided until 29 June 2006. The Council has therefore failed to comply with section 10 of the Act.

Steps Required

41. In view of the fact that the complainant is now aware the Council does not hold any of the information requested, the Commissioner requires no steps to be taken.

Right of Appeal

42. Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk

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

Dated the 13th day of September 2007

Signed

**Jane Durkin
Assistant Commissioner**

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

Appendix 1

On 20 December 2005 the complainant wrote to the Council and requested the following information:

1. Advice note for Council meeting of 9 November 2005.
2. Agenda for Council meeting of 9 November 2005.
3. Minutes of the Council meeting of 9 November 2005.
4. Notes taken by the Parish Clerk at the Council meeting of 9 November 2006.
5. Copy of the report given by [name redacted] at the Council meeting of 9 November 2005. [On 29 March 2006 the complainant expanded this request to include any "notes made of the report".]
6. Copy of the letter to the Charity Commission and any accompanying documents.
7. Copy of any reply received by the Charity Commission.

On 29 March 2006 the complainant wrote to the Council and requested the following information:

8. Copies of all other letters written to the Charity Commission, and its replies, since November 2005.

On 3 June 2006 the complainant wrote to the Council and requested the following information:

9. Copy of an email from the Parish Clerk to the Charity Commission dated 16 February 2006.

Legal Appendix

General Right of Access

Section 1(1) provides that –

“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 1(2) provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner."

Section 10(6) provides that –

"In this section –

"the date of receipt" means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."