

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 16 August 2010**

**Public Authority:** West Rainton and Leamside Parish Council

**Address:** 92 Wantage Road  
Carrville  
Durham  
DH1 1LR

### Summary

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The complainant submitted a request to West Rainton and Leamside Parish Council ('the Council') for copies of minutes and agendas, and all correspondence since May 2007. The Council disclosed copies of minutes and agendas and eventually issued a fees notice in relation to the provision of the correspondence. The Commissioner's decision is that the Council breached sections 9(1) of the Act in failing to issue a fees notice within the statutory time for compliance.

### The Commissioner's Role

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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

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2. On 20 September 2009, the complainant submitted the following request to the Council:

"Please supply me with copies of all agendas and minutes of the Council from its start of office in May 2007 to the present day, also copies of all correspondence to and from the Council over the same period of time".

3. The Council responded to the complainant on 12 October 2009 and stated that it would not be able to disclose copies of all documents due to data protection and confidentiality issues. The Council requested that the complainant simplify his request by informing the Council:  

“exactly what correspondence you require and the reason for this request”.
4. On 13 October 2009, the complainant reiterated his original request.
5. The Council provided copies of all minutes and agendas to the complainant on 29 October 2009, and stated that as clarification of the request for all correspondence had not been provided, it was unable to disclose any further information.
6. Following the intervention of the Commissioner, the Council responded to the complainant on 13 March 2010 and 15 April 2010. These responses stated that the information would be communicated to the complainant upon payment of a fee to cover the cost of photocopying.

## **The Investigation**

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### **Scope of the case**

7. On 9 November 2009, the complainant contacted the Commissioner to make a complaint about the way his request for information had been handled. The complainant specifically asked the Commissioner to investigate the Council's refusal to provide copies of the correspondence. Following the response from the Council, the complainant contacted the Commissioner again and asked him to consider whether the Council could lawfully request payment for complying with the request. As the minutes and agendas were provided to the complainant prior to his complaint, the Commissioner has excluded this issue from the scope of the investigation and has focused only on the request for correspondence.

### **Chronology**

8. On 19 January 2010, the Information Commissioner's Office wrote to the Council and explained that as the Act was 'motive-blind', the applicant was under no obligation to explain why he required the requested information.

9. The Information Commissioner's Office contacted the Council again on 22 January 2010 to reiterate this point. The Council agreed that the requested information could be provided to the complainant.
10. On 5 February, the Information Commissioner Office contacted the Council to enquire when the requested information would be disclosed to the complainant. The Council stated that it would be collated over the following two to three weeks, and explained it intended to issue a fees notice setting out the cost of disbursements such as photocopying and postage. Alternatively, the complainant would be invited to inspect the documents in situ.
11. The Commissioner contacted the Council to ask when this action would be taken on 25 February 2010. The Council responded on the same day and confirmed that it expected to respond to the complainant on 26 February 2010.
12. The Council provided a response to the complainant on 13 March 2010 regarding part of the information. This stated that it would provide the information upon receipt of a fee to cover the costs of photocopying.
13. The Council confirmed it would provide the remainder of the information to the complainant on 15 April 2010. Again, a fees notice was issued to cover the costs of photocopying.

## Analysis

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### Procedural Requirements

#### Section 9

14. Section 9(1) provides –

“A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).”

15. The Council has now issued a fees notice setting out charges levied for the cost of photocopying the information. The complainant serves as a parish councillor on the Council. He therefore contended that he was entitled to this information free of charge in order to allow him to participate in Council business. However, the Commissioner notes that the Act is applicant-blind. Therefore, the complainant's position as a

councillor does not affect the way in which the Council is obliged to deal with his request under the Act.

16. The fees notice issued by the Council states that a charges of ten pence per page is payable. The cost of photocopying is an activity that can be taken into account by a public authority when charging a fee under regulation 6 of the Fees Regulations. The Commissioner considers that ten pence per page is a reasonable charge for this activity.
17. However, the Commissioner considers that the Council breached section 9(1) of the Act as it did not issue a fees notice within the statutory time for compliance.

## **Section 10**

18. 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”

19. The complainant submitted his request for information on 20 September 2009. The Council responded to the complainant requesting clarification of this request on 12 October 2009 in order to “simplify the onerous task of photocopying”. The Commissioner considers that this was an implicit confirmation that the Council held the requested information.
20. The Commissioner therefore considers that the Council complied with section 10(1) of the Act as it confirmed that the requested information was held within twenty working days following the date of receipt.

## **The Decision**

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21. The Commissioner’s decision is that West Rainton and Leamside Parish Council has breached section 9(1) in failing to issue a fees notice within the statutory time for compliance.

## **Steps Required**

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22. As the fees notice has now been provided to the complainant, the Commissioner requires no steps to be taken by the Council.

23. If the complainant wishes to proceed with his request and pay this fee, the Council should ensure that, where appropriate, personal data is redacted from the information before it is provided to the complainant.

## Right of Appeal

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24. 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  
Arnhem House  
31 Waterloo Way  
Leicester  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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

**Dated the 16th day of August 2010**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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

## Legal Annex

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### Fees

**Section 9(1)** provides that -

"A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1)."

### 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."

"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."