

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 October 2011

Public Authority: Stamford Town Council
Address: Town Hall
St. Marys Hill
Stamford
PE9 2DR

Decision

1. The complainant requested various documents and information from Stamford Town ('the council')
2. The Commissioner's decision is that the council was not entitled to refuse to provide the requested information under sections 12, 14 or 42(1) of the Act. He consequently requires the council to either comply with section 1(1) of the Act, or issue a refusal notice compliant with section 17.
3. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. Between 1 December 2010 and 4 February 2011 the complainant made various requests for information. These are detailed at Annex A.
5. The council wrote to the complainant on 7 April 2011 and stated that the cost of compliance with her aggregated requests might exceed the appropriate limit. Following advice from the Commissioner that this response did not comply with the provisions of section 17, the council issued a refusal notice on 3 May 2011 citing sections 12, 14 and 42 of the Act.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way her requests for information had been handled. The Commissioner has investigated whether the council was entitled to withhold the information under the exclusions at sections 12 and 14 and the exemption at section 42.

Reasons for decision

Section 12

7. Section 12(1) provides that a public authority will not need to comply with section 1(1) if the costs of doing so would exceed the appropriate limit. For public authorities like the council, this limit is set at £450. It is calculated using a flat rate of £25 per hour and so equates to 18 hours work. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These factors are:
 8. Determining whether it holds the requested information
 9. Locating the information or a document which may contain it
 10. Retrieving the information or a document which may contain it
 11. Extracting the information from a document containing it
12. A public authority is entitled to aggregate the cost of complying with a request with the costs incurred by other requests made by the same individual within a six month period if they relate to any extent to the same or similar information.
13. The council has stated that the costs of complying with the complainant's aggregated requests exceeds the appropriate limit but has not provided the Commissioner with any further information about why this is the case, despite being invited to do so. The Commissioner consequently finds that the council has not demonstrated that it is entitled to rely on section 12.

Section 14

14. Section 14(1) of the Act provides that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

15. The Commissioner's approach to what constitutes a vexatious request is outlined in his guidance '[Vexatious or repeated requests](#)'. The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:
 - o it would create a significant burden in terms of expense and distraction;
 - o it is designed to cause disruption or annoyance;
 - o it has the effect of harassing the public authority;
 - o it can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
 - o it clearly does not have any serious purpose or value.
16. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for section 14 to be engaged.
17. In its response to the complainant, the council states that

"...the volume, length and overlapping nature of requests received from yourself is a distraction from the council's core functions and imposes a significant burden on its limited resources..."
18. However, despite being invited to do so by the Commissioner, the council has advanced no additional arguments about why the requests are vexatious. The Commissioner has therefore considered the correspondence between the council and the complainant that has been provided to him.
19. In this case the Commissioner accepts that the council is a small public authority with limited resources. However, as detailed above, the council has not been able to demonstrate to the Commissioner any reasonable estimate of the time that it has spent on handling the complainant's requests.
20. The Commissioner would also observe that some of the work that the council has had to undertake appears to be a result of its own failure to comply with the Act. For example, in this case the council initially issued a response which did not comply with section 17 of the Act. This led to a complaint to the Commissioner, and the council was required to revisit

the request and issue a valid refusal notice. Whilst the Commissioner appreciates that the process involved considerable work for the council he does not accept that the complainant can be held responsible for the additional work created by initial inadequate responses. The Commissioner also notes that the complainant has previously requested information that the council's publication scheme states should have been made available online. Similarly, the Commissioner does not accept that the additional work that was undoubtedly caused by complying with these requests can be taken into account when assessing the impact of the complainant's requests.

Section 42

21. The council also withheld the requested information under section 42 of the Act. The exemption at section 42(1) applies where information is subject to legal professional privilege. Legal professional privilege protects the confidentiality of communications between a lawyer and client.
22. The council has applied this exemption on the basis that it is planning to institute legal proceedings against the organisation represented by the complainant. However, the Commissioner notes that the withheld information does not appear to constitute communications from a lawyer. The Commissioner therefore does not accept that the exemption at section 42 is engaged.

Conclusion

23. The Commissioner has reviewed the council's responses to the complainant. He considers that the council has demonstrated a lack of understanding of the requirements of the Act. For example, it has failed to comply with section 1(1)(a) by confirming whether it holds the requested information. It has also misunderstood the scope of the exemption at section 42. During the course of the investigation, the Commissioner has written to the council with advice about its responsibilities. The council is also able to access the Commissioner's extensive [guidance](#) about the Act and its application.
24. The Commissioner therefore requires the council to examine the advice and guidance provided to it and reconsider these requests. It must either comply with section 1(1) of the Act by confirming whether the requested information is held, and if so disclosing it; or issue a valid refusal notice compliant with section 17. The Commissioner would emphasise that the Act does not require a public authority to create information in response to a request. However, if information within the scope of a request is not held then a public authority must state that this is the case. The council is not entitled to refuse to comply with the

Reference: FS50380744; FS50380881; FS50380860;
FS50380883; FS50380865



requests under sections 12, 14 or 42, because the Commissioner has already concluded that it has failed to demonstrate that these apply.

Right of Appeal

25. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.
27. 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

Annex A

FS50380744:

On 1 December 2010 the complainant requested:

" a)...all relevant documents including but not restricted to:

- all internal / external correspondence emails, reports etc
- any other relevant documents

...directly relating to or in any way relevant to the Riverside Association of Music & Arts Limited, the Riverside festival or the use by any organisation of the Meadows for the period 1 January 2008 to the present time

b) ...specific reasons why the press and public have been excluded from each and every meeting during the period 1 January 2008 to the present date where this is not already recorded in any of the documents provided above

c)access to copies of all relevant documents relating to the Town Council policy in relation to FOI issues including specifically but not exclusively the Extraordinary Town Council meeting held on Wednesday 16 December 2009".

FS50380881:

On 10 January 2011 the complainant requested:

"...a copy of the information pack including but not limited to the draft copies of the Minutes of Full Council and Committee Meetings due to be adopted, and the schedule of correspondence to be held on Tuesday evening....further information about what reports from outside bodies / organisations and matters for consideration are due to be discussed at items 9 and 10..."

FS50380860:

On 1 December 2010 the complainant requested:

"a copy of the council's publication scheme including the date this was adopted".

FS50380883:

On 4 February 2011 the complainant requested:

"...a copy of the information pack for a council / committee meeting"

FS50380865:

On 17 December 2010, after receiving details of the council's complaints procedure, the complainant requested "further details" including:

"...will the council be following the procedure set out in the National Association of Local Councils (NALC) Legal Topic Note 9 Handling Complaints...If not exactly what procedure will be used when the complaints are considered especially between stages 3 and 4 of the procedure outlined below; including but not restricted to our ability to:

- present the issues set out in our formal submissions to the panel / committee
- to see the documents on which the council intend to rely in considering the complaints

Also can you confirm whether this process will be the end of the matter or...there is an internal appeals procedure if needed"