

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2012

Public Authority: Sutton Parish Council

Address: The Glebe
4 High Street
Sutton
Ely
Cambridgeshire
CB6 2RB

Decision

1. The complainant requested a range of information relating to the Community Development Team, the Multi-use Games Area and administration budgets.
2. Sutton Parish Council (the "council") provided the complainant with some information and, following the involvement of the Information Commissioner (the "Commissioner"), completed an internal review which resulted in more information being provided. The complainant alleged that further information was held.
3. The Commissioner's decision is that on the balance of probabilities, the council has provided all the relevant information that was held at the time the request was received. However, he finds that the council breached the FOIA by disclosing relevant information at a late stage.
4. The Commissioner requires no steps to be taken.

Request and Response

5. On 12 May 2011, the complainant sent two 'memos' to the council which contained a number of requests for information. The requests are summarized at the annex.
6. The Council responded on 11 July 2011 and provided the complainant with some information.

7. On 14 July 2011 the complainant wrote to the council to express dissatisfaction with its handling of the requests. In this request for internal review the complainant suggested that the council should have provided more information in response to their requests.

Scope of the case

8. The complainant contacted the Commissioner to complain about the Council's response to their request and its failure to complete an internal review.
9. The Commissioner contacted the council and advised it to complete the internal review. The internal review response was sent on 8 December 2011.
10. The Commissioner asked the complainant to identify the specific request elements which they considered had not been addressed. The complainant provided the Commissioner with a copy of their letter to the council (dated 19 December 2011) which expresses concerns about the inadequacy of the information provided. The letter also raises other issues which fall outside the Commissioner's remit.
11. The Commissioner has confined the scope of his investigation to a consideration of whether the council has provided all the relevant information that it holds.

Reasons for decision

Section 1 – duty to provide information

12. Section 1 of the FOIA requires that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to them.
13. Under section 10(1) of the FOIA, public authorities should usually fulfil this duty within 20 working days of the receipt of the request.
14. The Commissioner has considered whether the council has provided all the information it holds which falls within the scope of the request.
15. In addition to general concerns about the extent of information provided, the complainant identified (in his letter to the council dated 19 December 2011) specific concerns about the council's failure to provide a report, putatively produced to review of the financial and risk

implications associated with the Community Development Team ("CDT").

16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time a request is received, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"¹.
17. In order to make a determination in this regard, the Commissioner asked the council to confirm whether it was satisfied that it had conducted appropriate searches for and had provided all the relevant information it holds in relation to the two requests submitted on 12 May 2011.
18. The council confirmed that the matter was discussed at a meeting of the council on 10 January 2012. To assist in assessing the extent of relevant information held and to determine whether this had been provided to the complainant, councillors were, prior to this meeting, provided with all the relevant correspondence.
19. Following the meeting, the council contacted the Commissioner and confirmed that it was satisfied that appropriate searches for the information had been conducted and that all the outstanding relevant information held had been provided to the complainant on 8 December 2011.
20. In relation to the complainant's specific query regarding a report reviewing financial risks associated with the CDT, the council explained that discussions regarding this matter had been conducted at a closed session of the council and, beyond information provided to the complainant, no further recorded information was held.
21. In weighing the balance of probabilities the Commissioner has considered the explanations provided by the council and the likelihood of recorded information being held. In relation to the latter consideration, the nature of the information being requested is clearly relevant.
22. Although the requested information identifies matters relating to council expenditure and considerations regarding financial risk, the FOIA does

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

not provide a statutory requirement for authorities to record specific types of information. However, the code issued under section 46 of the FOIA contains certain recommendations regarding good practice in this regard. The Commissioner comments further on this issue in the 'other matters' section of this decision notice.

23. Having considered the council's explicit confirmation that it has provided all the relevant information it holds the Commissioner has concluded that, on the balance of probabilities, the council has correctly confirmed that no further relevant information is held.
24. In providing some of the requested information outside the statutory time limit the Commissioner has concluded that the council breached section 10(1) of the FOIA.

Other matters

25. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.
26. The code of practice issued under section 46 of the FOIA (the "section 46 code") provides guidance to all relevant authorities as to the practice which it would, in the opinion of the Lord Chancellor, be desirable for them to follow in connection with the keeping, management and destruction of their records.
27. Paragraph 8 of the section 46 code recommends that authorities should consider what records they are likely to need about their activities, and the risks of not having those records, taking into account the relevant factors. For example, paragraph 8.1(d) suggests that authorities should consider:

"d) The need to explain, and if necessary justify, past actions in the event of an audit, public inquiry or other investigation. For example, the Audit Commission will expect to find accurate records of expenditure of public funds..."²
28. The Commissioner considers that the council would benefit from following these recommendations and expects that, in its future handling

² The section 46 code is available online here:
<http://webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>

Reference: FS50405274



of requests, it will have regard for the codes of practice issued under the FOIA and the Commissioner's guidance.

Right of appeal

22. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

23. 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.
24. 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 – Summary of information requested

- (1) When did the full SPC agree to take on responsibility for the CDT?
Could I look at copies of the minutes of the relevant meetings?
- (2) Please provide a copy of any written proposal for members of the council to consider how the working and financial arrangements would work.
- (3) Was it clearly stated that CDT would be contracted with SPC and some would retain continuity of service with SPC?
- (4) Were the risks of this arrangement spelt out before and vote was taken? Was any conflict of interest declared either by staff or members of the council?
- (5) Why was continuity of service offered to the relevant personnel as I understand the latter were already in employment and were not transferred but chose to resign their positions?
- (6) In the minutes of the SPC meeting of 11 October 2010 a proposal was carried that continuation of the CDT for the current year would be subject to viability. In hindsight was this proposal ignored?
- (7) Is the CDT charged for its operation base in The Glebe and Admin costs for running the payroll and any other services it receives?
- (8) How does the financial arrangement work between SPC and CDT, from receiving funds into the CDT and SPC taking that which is owed? What controls are in place to ensure the funds received are transparent and visible to SPC?
- (9) (In relation to 2011/12 budget pay related costs increase) could you please advise me what are the options being considered by SPC, the likely financial cost and where the funds are to come from?
- (10) Please provide the reasons for the 7.8% pay increase in pay related costs for 2011/12.

In relation to Administration costs and income information provided on the budget schedule and with regard to the 2 columns 2010-2011 (budget 2010/11) and Estimate 2011/2012 (budget 2011/12) I would like the following information:

- (11) For the Staff section, a breakdown of these costs split between the CDT and the remaining staff into Pay, Inland Revenue, Local Govt Pensions and Other (if any other costs exist). I am not asking for individual salaries which I understand are confidential.
- (12) For the Income section, which is for the CDT the same analysis between Pay, Inland Revenue, Local Govt Pensions and Other costs.