

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2012

Public Authority: Flintshire County Council
Address: County Hall
Mold
Flintshire
CH7 6NB

Decision (including any steps ordered)

1. The complainant requested copies of six pages from the Log Book of a particular school, held within the Flintshire County Council's ('the Council') Record Office. The Council stated that the information was exempt under section 21 of the FOIA. The Commissioner's decision is that the Council correctly refused the information under section 21(1) of the FOIA as the information is reasonably accessible to the complainant via the Council's Records Office.

Request and response

2. On 23 April 2012, the complainant wrote to the Council and requested information in the following terms:

"I refer to the Log Book for Hawarden VP Infants School (closed) held at the County Record Office. Please send a copy of the last 6 pages in the chronological entry (1974)".
3. The Council responded on 15 May 2012, confirming that the information requested information was held and could either be collected from the Record Office, or posted at a cost of £5.00.
4. The complainant wrote to the Council on 27 May 2012 disputing the charge of £5.00 which the Council stated was payable for posting the copies in question. He advised that he understood that, under the FOIA, the Council could only charge for costs actually incurred. He also asked

the Council to confirm that a copyright declaration form was not required.

5. The Council responded on 2 July 2012 stating that the charge of £5.00 was referred to in its publication scheme. The Council confirmed that information contained within closed records was, "in effect provided via the archive service and any information provided under the exemption S21 not under the Act". The Council also confirmed that it was seeking further clarification regarding copyright declarations, and that other than the copyright information contained within its original response, it would not be requiring the complainant to sign a copyright declaration.
6. The complainant wrote to the Council on 2 July 2012 and requested a review of its handling of the request.
7. The Council provided the outcome of its internal review on 20 July 2012. The Council stated that it was relying on section 21(3) of the FOIA in relation to the request as the information requested was accessible via its publication scheme, and the relevant charges listed within the publication scheme applied. The Council also stated that it was still seeking clarification on copyright declaration forms, but in the meantime, it would continue to send them to applicants to remind them of their copyright responsibilities, but confirmed that it would not be insisting they are completed.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the charges levied for provision of the requested information were appropriate, and whether the Commissioner could prevent the Council from sending out copyright declaration forms even if it were not insisting they were completed.
9. The Commissioner wrote to the complainant on 23 October 2012. He advised that when information is disclosed under the provisions of the FOIA, a public authority cannot place any conditions or restrictions on that access. However, the Commissioner advised the complainant that under section 16 of the FOIA, he would expect a public authority to inform a requestor, where appropriate, that the information being provided may be subject to copyright. As such, the Commissioner confirmed that he would be unable to insist that the Council stops sending the copyright declarations to him.
10. Whilst in this case, the Council is not insisting that copyright declarations it sends out are completed, the Commissioner considers

that, if the information requested is exempt under section 21, the matter of any requirement for the complainant to sign a copyright declaration form in order to be provided with a copy of the requested information is outside his remit as this relates to application of the Copyright, Designs and Patents Act 1988 (CDPA).

11. The Commissioner therefore considers the scope of this complaint to relate to the Council's application of section 21 of the FOIA to the request.

Reasons for decision

Section 21

12. Section 21(1) can be applied when all the relevant requested information is reasonably accessible to the applicant. It is an absolute exemption and so there is no public interest test.
13. The Commissioner's guidance on section 21 explains that charges may be made in two circumstances: where there is a statutory scheme under which information is provided for a fee, or where the information is provided under the public authority's publication scheme and the scheme indicates that a charge may be made.
14. The Commissioner has determined that there is no statutory charging scheme to access the information held by the Council in its Records Office, although he notes that other local Records Offices have similar schedules of fees and charges. Therefore, the Council may only charge a fee if this is outlined in its publication scheme.
15. The Council advised the complainant that the information requested could either be collected at its offices, free of charge, or posted at a cost of £5.00. It explained that the cost of £5.00 was in line with its Records Office schedule of fees, as referred to within its publication scheme.
16. The Commissioner has considered the Council's publication scheme¹. Provision is made in the scheme for accessing information held in its Records Office. Further to this, there is specific provision in the publication scheme regarding the costs for accessing information held

1

http://www.flintshire.gov.uk/wps/portal/english/services?WCM_GLOBAL_CONTEXT=/web+content/flintshire/english/services/100004/200031/flintshires+publication+scheme

within its Records Office². The Records Office list of charges clearly indicates that a minimum charge of £5.00 for copies plus postage will be made. Reference is also made to the Records Office charges within the Council's Guide to Readily Accessible information under the heading of "Charging regimes and policies"

17. The Council is providing a public service in its Records Office and it allows the inspection of the information held there free of charge. It is entitled to charge for the costs of providing a copying and postage service. It is transparent about these charges and refers to them in its publication scheme. Full details of the charging regime are provided on its website. The Commissioner does not consider the charges to be so high that they inhibit public access to the information, particularly as inspection is free.
18. The Commissioner is therefore satisfied that the Council's publication scheme is clear that charges may be made for certain services. The Council's website is also clear as to the fees that will be charged and it provides a breakdown of how the charges are calculated.
19. The Commissioner therefore concludes that the information the complainant requested is reasonably accessible via other means. The requested information can be inspected for no charge at the Council's Record Office or hard copies can be provided by post on payment of a reasonable fee.

2

<http://www.flintshire.gov.uk/wps/wcm/connect/9e0bfd004c1b2dc7b1fef779eb8813fa/Record+Office+Charges+%28English%29.pdf?MOD=AJPERES>

Right of appeal

20. 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

21. 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.
22. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF