

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2013

Public Authority: The Council of the Isle of Scilly

Address: Town Hall
St Mary's
Isles of Scilly
TR21 0LW

Decision (including any steps ordered)

1. The complainant has requested information relating to the authorisation of a statement read out at a Policy and Resources Committee meeting. Despite the intervention of the Commissioner, the Council of the Isles of Scilly ('the council') has not provided an adequate response to the request in accordance with the FOIA. The Commissioner has found breaches of sections 1(1)(a), 17(1)(b), 17(7)(a) and 17(7)(b). He therefore reminds the council of its obligations under the FOIA and requires the council to state whether it holds the information requested and, if applicable, either provide any information it identifies as falling within the scope of the request or issue a valid refusal notice under section 17(1).
2. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. The complainant wrote to the council on 10 May 2012 and requested information in the following terms:

"This is a request under the Freedom of Information Act

Could you please supply me with an answer to the following request:

A statement was read out by Vice Chair of Council, Marian Bennett during Urgent Items in the Policy and Resources Committee Meeting on 26th April 2012.

The statement read: "The Council acknowledges that a comment was made at the meeting of this committee which took place on 21 July 2011. No offence was ever intended in relation to that comment and if any such offence was taken then the Council offers its sincere apologies."

Please could you tell me who, or what committee, authorised that statement to be read. Please provide me with dates on which that statement was authorised and, if by committee, the minutes of that committee.

To be clear, I am enquiring about the decision-making process involved in issuing this statement. I do NOT require confidential details on the parties involved in the incident referred to in the statement.

Please include copies of material which you hold in the form of paper and electronic records including emails

If I can help to clarify this request please telephone me on [telephone number] or contact me by email at [email address]"

4. The council responded to the request on 24 May 2012 and provided narrative information as follows:

"The statement refers to an Employment issue for an individual Officer of the Council and formed part of a legally binding agreement in resolution of this. This matter is now formally closed and, in accordance with the agreement which concluded the matter between the member of staff and the Council, we are unable to offer any further comment."

It further stated that the FOIA specifically excludes the council from providing personal information relating to an individual and it is therefore unable to comment further on the matter.

5. On the same day the complainant requested an internal review stating that his request was about the decision making process and that he did not want personal information on the parties involved in the matter. He also requested that the council state which section(s) of the FOIA were being applied to exempt the information.
6. Having received no acknowledgement of his internal review request, the complainant wrote to the council again on 7 June 2012 requesting a response or a date by when a response could be expected.

Scope of the case

8. The complainant initially contacted the Commissioner on 4 July 2012 to complain about the way his request for information had been handled. He specifically stated that the council failed to provide the information, failed to detail under which exemption of the FOIA the information was considered exempt, and failed to provide details of the internal review process or option to contact the ICO. That complaint was closed on 23 August 2012 when the Commissioner contacted the council and requested it conduct an internal review. This complaint was then opened following notification from the complainant on 21 September 2012 that he had not received the requested internal review response.
9. The Commissioner considers whether the council has responded to the request in accordance with the FOIA.

Reasons for decision

Section 1 – General right to access to information held by public authorities and Section 17 - Refusal of request

10. 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.”

11. Section 17(1) provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

12. Section 17(7) provides that –

“A notice under subsection (1), (3) or (5) must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

13. The Commissioner wrote to the council on 23 August 2012 noting that the response to this request did not fully comply with the provisions of the FOIA in that it did not:

- state whether or not the information was held in a recorded form;
- provide the applicant with a copy of the information, or;
- issue a refusal notice which complies with the provisions of Section 17 of the FOIA.

The Commissioner informed the council that section 17 requires a refusal notice to state any relevant exemptions or other exclusions from the duty to comply, why any exemptions or exclusions apply, and why, if applicable, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosing the information. He also stated that the refusal notice should include details of any appeal/internal review procedure the council has, as well as their rights to complain to the Commissioner under section 50.

14. Rather than ask the council to issue a further, proper response, the Commissioner stated that it would be more practical for all concerned for the council to provide an internal review response and specifically requested that it:

- inform the applicant whether the council holds the requested information;
- if it is held, provide the applicant with a copy of it, or;
- if the information is held but not being provided, state which exemptions in Part II of FOIA, or other exclusions, are being applied and explain why they apply.

15. The Commissioner informed the council that he considers that a reasonable time for completing an internal review is 20 working days

from the date of receipt of the request for review and provided a link to his guidance on the subject¹.

16. The Commissioner contacted the council again on 1 October 2012 and informed it that the complaint has been deemed eligible for formal consideration under section 50 of the FOIA.
17. To date, the council has not explicitly stated whether or not it holds the requested information either to the complainant or the Commissioner. Therefore, it is clear to the Commissioner that the council has breached section 1(1)(a) of the FOIA.
18. The Commissioner notes that whilst not specifically stating that the information is exempt, the council suggested that the request is for personal information relating to an individual. In not stating which exemption applies to the requested information, the Commissioner considers that the council has breached section 17(1)(b) of the FOIA.
19. The Commissioner notes that the council's website states that it has a set complaints procedure and any complaints about Data Protection or the Freedom of Information Act or other services generally may be dealt with by contacting the council office. The response to the request did not inform the complainant of the complaints procedure or of the right to complain to the Commissioner in breach of sections 17(7)(a) and 17(7)(b) respectively.

Other matters

Internal review

20. Paragraph 39 of the Code of Practice issued under section 45 of the FOIA (the 'Code') recommends that complaints procedures should:

"....provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."

21. Paragraph 40 of the Code states that in carrying out reviews:
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¹ [Good Practice Guidance 5: Time limits on carrying out internal reviews](#)

"The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint."

22. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that complainant first requested an internal review on 24 May 2012 but the council has not provided an internal review to date. The council should ensure that internal reviews are carried out promptly in future.

Right of appeal

23. 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

24. 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.
25. 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
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