

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2013

Public Authority: Taunton Deane Borough Council
Address: The Deane House
Belvedere Road
Taunton
Somerset
TA1 1HE

Decision (including any steps ordered)

1. The complainant requested details of the legislation which a council officer referred to when stating that the council was unable to amend a Town Centre Area Action Plan without a consultation covering the entire plan.
2. The Commissioner's decision is that has failed to respond to the complainant's request as required by Regulation 1(1)(a) in that it failed to specify to the complainant whether it held information falling within the scope of his request. The council has also therefore breached Regulation 10(1) of the Act in that it has failed to fully comply with its obligations under section 1 within twenty working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To respond to the complainant as required by section 1(1) of the Act.
4. 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

5. On 4 December 2012 the complainant wrote to the council and requested information in the following terms:

"I was advised by [officers name redacted]... that it would be illegal to amend or add to the Town Centre Area Action Plan without a consultation covering the entire plan. Please advise which government legislation prevents Taunton Deane Council from making minor amendments or alterations to that plan, and quote specific paragraphs which [officers name redacted] believes are relevant."
6. On 4 January 2013 having received no substantive response from the council the complainant wrote to the council again asking for:

"Please advise which government legislation prevents Taunton Deane Council from making minor amendments or alterations to that plan, and quote specific paragraphs which [officers name redacted] believes are relevant."
7. The complainant also made a further request which the council responded to and which does not form part of his complaint to the Commissioner.
8. On 8 January 2013 the council responded. It provided a link to the Town and Country Planning (Local Development) (England) Regulations 2004 and said that these Regulations contain the rules controlling the preparation and amendment of development plans. The complainant considered however that this response did not fully provide the information which he had asked for.
9. Following an internal review the council wrote to the complainant on 13 May 2013. It referred the complainant to its response of 8 January 2013 as its response to his request.

Scope of the case

10. The complainant contacted the Commissioner on 26 February 2013 to complain about the way his request for information had been handled.
11. The Commissioner considers that the complainant's complaint relates to part of his request not being responded to by the council.

Reasons for decision

12. 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."

13. The councils response was that the relevant legislation is the Town and Country Planning (local development) (England) Regulations 2004. It provided a link to a website where the legislation could be found. It therefore responded to the part of the complainant's request which related to the question *'Which government legislation prevents Taunton Deane Council from making minor amendments or alterations to that plan'*.
14. However the complainant wrote back to the council asking it to review its decision. He pointed out that that he had also requested that the council identified which paragraphs in the legislation the council officer considered relevant. The council's review of its decision however did not highlight or quote any specific paragraphs.
15. The question for the Commissioner is therefore whether the complainant's request was properly responded to by the council as required by the Act.
16. The Commissioner recognises that the council could argue that it has complied with its obligations under the Act in that any information falling with the scope of the second part of the complainant's request would have been disclosed to him with the copy of the Regulations which it provided the link to. However it is clear from the complainant's request for review that in fact he wished the council to confirm which sections of

the Regulations were relevant to the council officer's statement that the development plan could not be amended, in addition to providing him with a copy of the relevant legislation. There were therefore two separate parts to the complainant's request, and this required two separate responses under the Act.

17. It is important to note that the complainant believes that the council will not be able to provide him with specific paragraphs as he believes no such paragraphs actually exist. He believes that the reason the council has failed to respond to this part of his request is that the Regulations do not prevent minor amendments being made to the plan and that the council officer was not telling the truth when he said that they did. The complainant's request is therefore seeking to prove that no information is held.
18. The complainant asked the council to quote specific paragraphs from the legislation which the officer 'believes are relevant'.
19. The Act does not require the council to interpret legislation on behalf of a complainant or to create legal advice which will answer the complainant's question. However the complainant merely asked the council to detail the paragraphs which the council officer believed were relevant. He did not ask for an explanation as to why they were relevant.
20. The Act does not require the authority to create information. It does not require the council to generate information in order to respond to the request. In other words, the Act does not require the officer to 'justify' his position to the complainant.
21. However section 1(1)(a) of the Act does require the council to confirm whether information is held in a recorded form which falls within the scope of the request and to consider that information for disclosure.
22. If information is held by the council in a recorded form which responds to this part of the complainant's request then the council is under a duty to confirm to the complainant that it holds relevant information and to consider this for disclosure as required by section 1(1)(a) and 1(1)(b). The council's response did not do that. In this instance, although the paragraphs will have been disclosed to the complainant in response to the first part of the request the council would be under a duty to identify which paragraphs fall within the scope of the second part of the request.
23. If no information is held in a recorded format which could answer that request then the council should have responded confirming that no information was held falling within the scope of the complainant's

request, again as required by section 1(1)(a). The council's response also did not do that.

24. The council's response did not therefore confirm whether specific paragraphs are held falling within the scope of the complainant's request. It therefore failed to respond to this part of the complainant's request as required by section 1(1)(a) of the Act.
25. The Commissioner therefore considers that the council's response failed to comply with the requirements of section 1(1)(a) of the Act.

Other matters

26. The Commissioner recognises that the council may not hold information in respect of the request because, following an objective reading of the request, it holds no information as regards the sections which the officer 'believes' are relevant. In other words, the officer may not have recorded that information.
27. Nevertheless the council may be correct to state that the Regulations prevent it from making amendments to the plan without carrying out a consultation on any proposed changes. Whether or not that is correct is not an issue which the Commissioner has the powers to consider under the Act.
28. Even if the council does not hold the requested information, if it is aware that specific sections of the Regulations do require that a consultation is carried out before amendments can be made to the development plan the council should consider informing the complainant which specific sections of the Regulations are relevant in order to facilitate greater trust in the council's actions or inactions in this respect.

Right of appeal

29. 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

30. 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.
31. 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
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SK9 5AF