

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 May 2015

Public Authority: Aberystwyth Town Council
Address: 11 Baker Street
Aberystwyth
SY23 2BJ

Decision (including any steps ordered)

1. The complainant requested a copy of the minutes of the staffing panel meeting in May 2013. Aberystwyth Town Council ('the Council') stated that it did not hold the information requested which the complainant subsequently contested. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information. He does not require any steps to be taken.

Request and response

2. On 8 July 2013, the complainant wrote to the Council and requested information in the following terms:

"I formally request under the Freedom of Information Act 2000 a copy of the Minutes of the Staffing Panel meeting which [name redacted] claimed in writing was held shortly before his undated letter (received about 8th May) giving his staffing Panel's negative decision".
3. On 29 July 2013 the Council provided the minutes of the Staffing Panel Meetings for 18 April 2013, 24 June 2013 and 15 July 2013.
4. The complainant wrote to the Council again on 16 September 2013, referring to her letter of 8 July 2013 and re-iterated her request for a copy of "the Staffing Panel's minutes for May 2013".
5. On 6 April 2014, the Council responded to other matters the complainant had raised with them. In relation to her information request

it confirmed that it had provided "copies of the Staffing Panel minutes to you".

6. The complainant wrote a further letter to the Council on 30 May 2014 disputing its statement that it had provided copies of the information she had actually requested. She indicated that the Council had provided the minutes of some Staffing Panel meetings, but not the minutes she had actually requested.
7. On 11 June 2014 the complainant wrote to the Council asking it to conduct an internal review into its handling of the request.
8. The Council responded on 25 June 2014 and stated that "as has been stated previously, there was no Staffing Panel meeting during May 2013"
9. The complainant wrote back to the Council again on 8 July 2014 expressing dissatisfaction with its response of 25 June 2014.
10. Following a decision notice which the Commissioner issued on 18 November 2014¹, the Council wrote to the complainant on 15 December 2014 stating that it did not hold the information requested.

Scope of the case

11. Following receipt of the Council's response of 15 December 2014, the complainant contacted the Commissioner on 9 February 2015 to complain about the way her request for information had been handled.
12. The scope of the Commissioner's investigation into this complaint is to determine whether the Council holds the information requested, namely minutes of a staffing panel meeting in May 2013.

Reasons for decision

Sections 1 – general right of access

13. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority
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¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042675/fs_50533797.pdf

whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.

14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is 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 civil standard of the balance of probabilities.
15. The Council's position is that no staffing panel meeting took place in May 2013 and consequently it does not hold the information requested. The Council advised that the staffing panel only convenes as and when necessary and they are not required to meet on a monthly basis.
16. The Council confirmed that a comprehensive search was conducted of paper records within its offices and the information requested was not located. In addition electronic searches were conducted of all office computers using various search terms such as "minutes of staffing panel May 2013", "staffing panel May 2013", "staffing panel minutes" and no minutes of any staffing panel meeting in May 2013 were located. Apart from one, those councillors who were members of the staffing panel in May 2013 are no longer serving members of the Council. Contact was made with the former councillors concerned who confirmed they did not hold minutes of any staffing panel meeting in May 2013.
17. The Council provided the Commissioner with a copy of the full council minutes for its meeting on 28 May 2013. In line with normal practice, this meeting considered and agreed the minutes of other council meetings. This included a council meeting on 10 May 2013, a meeting of the general management committee on 13 May 2013 and a meeting of the finance and establishment committee on 20 May 2013. There is no reference within the full council minutes to a meeting of the staffing panel meeting in May 2013. The Council considers that this supports its position that no meeting of the staffing panel committee took place in May 2013. If such a meeting had taken place, the minutes would have been considered at the full council meeting on 28 May 2013.
18. The complainant referred to the letter which she received from the Council on or around 8 May 2013. This letter was sent in response to her email to the Council of 25 April 2013, and stated that "the staffing panel has attempted to gain advice on the matter, collected information from

various sources and has met to discuss your correspondence". The remaining part of the letter refers to advice and recommendations which the staffing panel would be providing to full council about an employment matter.

19. The Commissioner notes that the minutes of the previous staffing panel meeting on 18 April 2013 mentioned the employment issue referred to in the Council's letter to the complainant sent around 8 May 2013. The minutes contained an action for the panel to contact Carmarthenshire County Council for advice on the issue concerned. Given that the Council's letter suggests that a settled view had been reached on the issue, in the absence of any meeting having taken place between 18 April 2013 and 8 May 2013, the Commissioner asked the Council to explain the reference within the letter to a meeting having taken place.
20. The Council advised the Commissioner that the reference within its letter to the complainant around 8 May 2013 to a meeting having taken place could only refer to the meeting of the staffing panel on 18 April 2013, as no meeting took place in May 2013. The Council confirmed that advice was sought from Carmarthenshire County Council (in line with the minutes of the staffing panel meeting in April 2013). The advice was provided verbally during a telephone call. The Council advised that its recollection is that following this advice a telephone conversation took place with other members of the staffing panel, and the format of the recommendation to full council was discussed and agreed. This recommendation was relayed to the complainant in its letter of 8 May 2013.
21. Based on the representations provided by the Council the Commissioner is satisfied that it has carried out adequate searches of all places where relevant information would be held. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. The Commissioner has also considered the Council's representations in relation to the subject matter of the request, particularly in relation to its position that no meeting of the staffing panel took place in May 2013. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold the information requested.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

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