

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2015

Public Authority: Llansannan Community Council

Address: Groesffordd Henllan

Conwy

LL16 5DA

Decision (including any steps ordered)

1. The complainant has requested various items of information in respect of public money spent by Llansannan Community Council since August 2008 in relation to the leased Post Office in Llansannan. The Commissioner's decision is that Llansannan Community Council has provided all information it holds falling within the scope of the complainant's request and has therefore complied with its obligations under section 1 of the FOIA. However, in failing to provide the information within the required timescales, the Council breached section 10 of the FOIA. The Commissioner does not require the Council to take any steps.

Request and response

2. On 16 March 2015, the complainant wrote to the Council and requested 11 items of information in respect of public monies spent by the Council since August 2008, a period over which it has continuously leased Llansannan Post office. As the Commissioner's decision notice is focused solely on items 4 and 7 of the request, these have been reproduced below. However, the remaining 9 items have been quoted in a separate annex to this notice:

Item 4

"How much money has been paid to [named individuals A and B] in the form of additional 'Insurance Rent'? This to cover the period from the original signing of the 2008 lease, I would like you tell me how much for

each of the accounting years 2008/2009, 2009/2010, 2010/2011, 2011/2012, 2012/2013, 2013/2014, 2014/2015.

Item 7

"Full and complete details of all monthly payments which been received from [named individual C] Flint Post Master for the sub-lease of this community office since August 2008 to present."

3. The Council responded on 11 April 2015. It stated that:

"I have not been able to gain any more information on this matter, but have noticed that from previous files and queries regarding this request to my predecessor Mr Dewi Jones you have been already been informed that no information is held on this matter."

4. On 18 June 2015, following the Commissioner's intervention, the Council provided the complainant with its second response to his request which is technically therefore its internal review. The Council provided information in respect of all 11 items of the complainant's request.

Scope of the case

5. The complainant contacted the Commissioner on 15 April 2015 to complain about the way his request for information had been handled. He provided some background information regarding alleged events concerning himself and officers of the Council. He also stated that he had been attempting to obtain information related to the subsidised Post Office in various ways before he submitted his FOI request.

6. Having received the Council's internal review of 18 June 2015, the Commissioner asked the complainant to confirm whether he was now satisfied with the response. The complainant confirmed that he was not satisfied with the Council's response in respect of items 4 and 7 of his request.

7. The scope of the Commissioner's investigation is limited to a consideration of the Council's procedural handling of the request, and in particular whether it complied with section 1(1) and section 10 of the FOIA. An investigation of events before the complainant's FOIA request is beyond the remit of the Commissioner's powers, as are the alleged actions of certain members of the Council referred to in the complaint to the Commissioner. Similarly, the focus of the Commissioner's investigation is with this particular request, and not any previous requests the complainant may have submitted to the Council.

Reasons for decision

Section 1 – General right of access to information held

8. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
9. In his consideration of whether a public authority has complied with its obligations under section 1(1) of the FOIA, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold relevant information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
10. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
11. In this particular case, the complainant is not satisfied that the Council has complied with its obligations under section 1(1) of the FOIA in respect of items 4 and 7 of his request.

Item 4

12. The Council's response to item 4 of the complainant's request, stated that the only monies paid to named individuals A and B have been the monthly rent of £151.66, confirmed the first payment was made in February 2009, and has continued monthly at this rate to the present.
13. The complainant informed the Commissioner that he believes that the above response is incorrect as his understanding is that the Council is liable to pay 'insurance rent'. He provided the Commissioner with a copy of the original proposal dated 17 October 2008, which specifically states that the Council was liable for insurance rent. He also provided a copy of the original lease which specifically states that the tenant is liable to pay insurance rent within 14 days of being notified of the amount of it.
14. The Commissioner therefore queried this with the Council which confirmed no additional payment was made for the years specified in the request. It further explained that although the lease does indeed state that insurance rent is to be paid by the tenant, named individual A never

claimed any additional insurance rent from the Council and no payments have been made. It added that there is no recording in any of the minutes for those years of invoices received from [named individual A] or additional payments made. The Council further added that its financial records and annual returns do not show any additional payments.

15. The Commissioner has considered the explanation provided by the Council and considers that it is reasonable. He has therefore concluded that the Council has complied with its obligations under section 1 of the FOIA in respect of item 4 of the complainant's request.

Item 7

16. The complainant was also dissatisfied with the Council's response in respect of item 7 of his request. The response itself confirmed that the payments received from the Postmaster dating from August 2008 to the end of March 2015, amounted to £5070.00. It also confirmed that it was not aware of any money paid directly to [named individuals A and B].
17. The nature of the complainant's dissatisfaction stemmed from alleged discrepancies between the figure given by the Council and its annual accounts. He claimed that the Postmaster only paid this money directly to the Council after he (the complainant), had raised it as a matter of concern.
18. The Commissioner relayed these concerns to the Council, which apologised to both the complainant and the Commissioner for the incorrect figure in its original reply, and explained that the figure was calculated on the basis of August 2008 to March 2015. However, the Post Office outreach service at Llansannan did not commence until March 2009, and the Postmaster retired in December 2014. Payments since that date have been made from the new Postmaster.
19. The Council also confirmed that it received payments of £60 per month from March 2009 for 16 months and that the payments increased to £70 per month from June 2010, and have been received on a regular basis since. It attached the relevant payment sheets as confirmation. The Council also explained that to save on bank charges and time, payments have periodically been received in bulk, which it identified on the payment sheets provided to both the complainant and the Commissioner.
20. The Commissioner has considered the explanation, amended figures and evidence from the Council and has concluded that the Council has now provided all relevant information to the complainant and has therefore complied with its obligations under section 1(1) of the FOIA.

21. He does however note that the Council's failure to provide a full and detailed response to the complainant within the required timescales specified under the FOIA represents a breach of section 10. He expects the Council to fully comply with the procedural requirements of the FOIA in all future requests for information.

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

Annex

The complainant's full request minus items 4 and 7 which have been reproduced in full in the main body of this notice.

Request in respect of all public monies spent by Llansannan Community Council, since August 2008, as it has continuously leased Llansannan Community Post Office.

1. *A copy of the lease between the Community Council, and [named individuals A and B]...I wish to obtain a copy of the new lease or leases which have been negotiated and which have applied since January 2011, up to and including a copy of the 2014/2015 current lease.*
2. *A copy of the sub-lease agreement between [named individual C] – Fflint Post Master which allows delivery of the Post Office "Outreach Service".*

...I now wish to have a copy of the sub-lease which was actually applicable for each year since August 2008.

3. *A copy of the sub-lease agreement or agreements between Llansannan Community Council and the Charity Menter Bro Aled CYF. This is for the use of this Community Office as the registered address of this small village Charity.*
4. (See main body of this notice)
5. *Full and complete details of all expenses which have been paid in connection with the day to day running of the Llansannan Post Office by the Community Council. To include such things as Heating and Lighting Costs, Security Costs, Public Liability Insurance Costs etc. Please also include all costs which have been associated with the Post Offices CCTV Security System.*
6. *Full and complete details of any financial contributions which have been paid to the Community Council by [named individuals A & B] since the inception of the lease in August 2008. Up to and including today's date.*
7. (See main body of this notice)
8. *Full and complete details of all monthly payments which have been paid since August 2008 to present. To include details of any negotiated increased monthly rental payments.*

9. *Full and complete details of all payments which may have been made to [named individual D] who lives in the flat above the post office. To include details of any payments from [named individual D] in connection with the use of any shared facilities or insurance expenses.*
10. *Full and complete details of all payments from the Charity Menter Bro Aled CYF for the shared use of the Llansannan Post Office and its facilities.*
11. *Full and complete details of all or any grants of money which have been obtained from the "Glyn Owen" legacy account. To include details of for what purposes any such grants of money have been used."*