

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2016

Public Authority: Castle Point Borough Council
Address: Kiln Road
Thundersley
Benfleet
Essex
SS7 1TF

Decision (including any steps ordered)

1. The complainant has requested information from Castle Point Borough Council ("the Council") about public access to a Council meeting. The Council responded that no recorded information was held, which the complainant subsequently contested.
2. The Commissioner's decision is that no recorded information is likely to be held. However in failing to provide a response within the time for compliance the Council breached section 10(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 15 December 2015 the complainant requested:

I would like any information that relates to the arrangements of entry/exclusion to the Full Council Meeting on Wednesday 9th December 2015.

I would also like details of any meetings to discuss these arrangements and a list of attendees of the meeting.

I would like a copy of the list of names that were on the clipboard of the council employee I first encountered. Evidence of this clipboard will be clearly seen on the CCTV footage I requested previously.

I would like copies of any emails on council or personal computers, electronic devices that relate to the entry of the meeting on the Wednesday 9th December.

I would also like to see the criteria that was used to select the various groups/community representatives/developers, how it was communicated to them and who was involved in the decision to select them?

5. On 22 February 2016 the Council responded and stated that no information was held.
6. On 22 February 2016 the complainant requested an internal review; however this was not actioned by the Council.

Scope of the case

7. The complainant initially contacted the Commissioner on 19 February 2016 to complain about having received no response from the Council. Following the Council's response on 22 February 2016, and after having received no internal review outcome from the Council, the complainant submitted a further complaint to the Commissioner.
8. The Commissioner considers the scope of this case to be the determination of whether the information sought by the request is held by the Council.

Reasons for decision

Section 1(1) – whether information is held

9. Section 1(1) states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.

Context of the request

10. The Commissioner understands that the request relates to a full Council meeting held on 9 December 2015. Although this meeting was open to the public, steps were taken by the Council to manage the amount of people in the public gallery of the main chamber, and an additional video link viewing area was created outside the main chamber.

The complainant's position

11. The complainant was denied access to the public gallery, and has requested information about how access was decided upon and

managed, including a list of names that a Council employee appears to have used in managing the public gallery.

The Council's position

12. The Council has informed the Commissioner that the arrangements for the meeting took place in the 48 hours prior to it; once it became known that a large number of residents may attend due to the meeting's subject matter. These arrangements took the form of unrecorded conversations between staff responsible for managing the meeting.
13. Attendees given access to the public gallery on the day of the meeting were recorded on a list held by the House Officer; however this list was compiled by the House Officer for the management of the meeting only and was destroyed following the meeting's conclusion. The Council has further clarified that no correspondence was previously exchanged with parties who came to be seated in the public gallery.
14. In response to the request, the Council asked committee services staff to provide any recorded information held in relation to the meeting. An additional search of electronic data was also undertaken using the search term 'local plan meeting arrangements'. The Council has clarified to the Commissioner that there is no business or statutory reason for why information should have been recorded, or the list created by the House Officer to be retained following the meeting's conclusion.

The Commissioner's conclusion

15. When the Commissioner receives a complaint that a public authority has not provided any or all of the requested information, it is seldom possible to prove with absolute certainty that there either isn't any information or anything further to add. The Commissioner will apply the normal civil standard of proof in determining the case, i.e. she will decide on the balance of probabilities whether the information is held.
16. Whilst the Commissioner has noted the context that the request has been made in, there is no evidence available to the Commissioner that suggests information is held, and reasonable steps appear to have been taken by the Council to search for any information held in recorded form. There are also no evident business reasons or statutory obligations for why the list created by the House Officer should have been retained following the conclusion of the meeting, and in the absence of any valid reasons to retain the information the Commissioner recognises that to do so would have breached the fifth principle of the Data Protection Act 1998.
17. For the above reasons, the Commissioner has concluded that no recorded information is likely to be held in relation to the request.

Section 10(1) – time for compliance

18. Section 10(1) requires that an information request should be responded to within twenty working days of receipt. In this case a valid response was not provided until after this timeframe. The Council therefore breached section 10(1).

Other matters

19. Under the FOIA, there is no obligation for a public authority to provide a complaints process. However, it is good practice (under the section 45 Code of Practice¹) to do so, and the Commissioner recommends that an internal review outcome be provided within twenty working days, or forty working days in exceptional circumstances. In circumstances where a public authority is found to consistently fail to follow good practice, the Commissioner may issue a practice recommendation.
20. In the circumstances of this case the Commissioner understands that the complainant wrote (by email) to the Council officer who provided the Council's response of 22 February 2016. This email clearly sought an internal review of the response. As explained in the Commissioner's guidance for public authorities², the internal review process should be "*triggered whenever a requester expresses dissatisfaction with the outcome*". The Commissioner therefore recommends that the Council consults this guidance in managing future information requests.

¹ <https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

Right of appeal

21. 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

22. 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.
23. 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
Wilmslow
Cheshire
SK9 5AF