

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 November 2017

**Public Authority:** Morecambe Town Council  
**Address:** Town Hall  
Marine Road East  
Morecambe  
Lancashire  
LA4 5AF

#### Decision (including any steps ordered)

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1. The complainant has requested information in relation to officers of the public authority. Morecambe Town Council responded to the request.
2. The Commissioner's decision is that Morecambe Town Council breached section 10(1) and section 17(1) of the FOIA but did not breach section 16(1).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a new response to the request and, where information is being withheld under provisions of Part II of the FOIA, issue a refusal notice in compliance with section 17(1).
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

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5. On 11 January 2017, the complainant wrote to Morecambe Town Council (the "council") and requested information in the following terms:

"Under the FOI Act I am requesting that for each of the following financial years – 2011/12, 2012/13, 2013/14, 2014/15, 2015/16, 2016/17 you supply hourly totals for the following funded by salary payments: -

- Officer training
- Officer Portas Town team administration
- Absence
- Total Officers hours

6. The council responded on 19 January 2017. It stated:

*"As set out in the Council's letter to you dated 3<sup>rd</sup> June 2014 the Council's position remains as:*

*'This information is not in the public domain and the Council has no obligation to release this information and does not intend to disclose it other than to the proper Statutory Authorities. The Council has a clear process in place for dealing with any issues which with regard to Staff Sickness if required.'*

## Scope of the case

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7. On 16 February 2017 the complainant contacted the Commissioner to complaint about the way their request was handled by the council.
8. On 31 October 2017 the complainant set out a number of factors which they considered the Commissioner should address in a decision notice.

## Reasons for decision

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### Section 10(1) – time for compliance

9. Under section 1(1) of the FOIA, public authorities have a duty to confirm or deny whether information specified in a request is held and, where it is, provide to a requester.
10. Section 10(1) requires public authorities to comply with section 1(1) within 20 working days.
11. In this case, the council's response of 19 January 2017 failed to confirm or deny whether the following elements of the request were held:  
  
“(Under the FOI Act I am requesting that for each of the following financial years – 2011/12, 2012/13, 2013/14, 2014/15, 2015/16, 2016/17 you supply hourly totals for the following funded by salary payments)
  - Officer training
  - Officer Portas Town team administration
  - Total Officers hours”
12. In failing to confirm or deny whether the information was held and failing to provide the information, the Commissioner finds that the council breached section 10(1) of the FOIA.

### Section 16 – advice and assistance

13. Section 16 of the FOIA states:

*“(1)It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*

*(2)Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”*

14. The complainant has argued that, in its handling of their request, the council failed to provide advice and assistance in accordance with section 16(1).
15. In the Commissioner's view, as set out in numerous decision notices, there are 3 specific situations which trigger a statutory duty to provide advice and assistance. These triggers are informed by the code of practice issued under section 45 of the FOIA<sup>1</sup>.
16. The 3 scenarios where the duty to provide to advice and assistance are as follows:
  - Where a person needs help to submit their request in writing,
  - Where, under section 1(3) of the FOIA, an authority reasonably requires further information in order to identify and locate information requested and,
  - Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold). In such cases the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.
17. In the case of the request which is the subject of this decision notice, the Commissioner finds that none of the above triggers are in place. She has, therefore, concluded that the council did not breach section 16(1) in its handling of the request.

### **Section 17 – refusal notice**

18. Where a public authority is relying on a provision of Part II of the FOIA to refuse to provide any of the information specific in a request, section 17(1) requires it to issue a notice which-
  - (a) States that fact.
  - (b) Specifies the exemption in question, and

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<sup>1</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235286/0033.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf)

- (c) States (if that would not otherwise be apparent) why the exemption applies.
19. In this case the council's response of 19 January 2017 stated that it did not intend disclosing information relating to staff absence. The Commissioner understands that this relates to the element of the request that sought the following information:
- "Under the FOI Act I am requesting that for each of the following financial years – 2011/12, 2012/13, 2013/14, 2014/15, 2015/16, 2016/17 you supply hourly totals for the following funded by salary payments: -*
- Absence"*
20. In light of the above, the Commissioner has concluded that, in relation to this specific element of the request, the council failed to issue a valid refusal notice and breached section 17(1).

## Right of appeal

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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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**