

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 June 2020

Public Authority: Lydd Town Council
Address: Guild Hall
13 High Street
Lydd
TN29 9AF

Decision (including any steps ordered)

1. The complainant has requested information regarding council committees and decision making.
2. The Commissioner's decision is that, on the balance of probabilities, Lydd Town Council is not withholding any information in scope of the request. The Commissioner however finds that it breached section 10 in the time taken to provide a final response to the requests.
3. The Commissioner does not require any steps.

Request and response

4. On 31 July 2019, the complainant wrote to Lydd Town Council ('the council') and requested information in the following terms [numbering added by ICO]:

*"[1] Please **provide written confirmation** of the Mayor Making Ceremony held on the 20th May, 2019, to demonstrate the above legal procedure NALC Legal Topic Note 5 ("Parish & Community Council meetings") **Item 56**, was fully utilised when LTC councillors voted unanimously to hold council bi-monthly meetings.*

Please note: Your official minutes of this meeting have been read but fails to record how this outcome was achieved."

5. The complainant made a further request on 7 August 2019 in the following terms [numbering added by ICO]:

"This Freedom of Information request to Lydd Town Council (LTC) is regarding the council's recent decision to remove Council Committees from its annual meeting agenda, as shown on your 2019-2020 LTC Meeting Plan.

Lydd Town Council has elected to remove Amenities, Staffing (Personnel) and Crime Committee, without installing an alternative function...

This decision was carried out in Private Sessions in conclusion to the LTC meeting of 1st July, 2019...

*This amounts to **6 councillors** actually voting through this resolution when all criteria have been considered, by any calculation; the outcome could be construed as unsound under an external assessment.*

*[2] Please **provide written confirmation** of how, when for reasons stated above, this resolution was passed and acted upon.*

*[3] Please **make available evidence** to show how this decision is justified, for clarity; what is the benefits for Lydd Town Council and, more importantly, the Lydd Community."*

6. The council responded on 19 August 2019. It provided information the following answers to the questions raised:

"1. The Council has discretion whether or not to make arrangements for the discharge of its business through delegation arrangements and this

may or may not involve the appointment of committees: ss 101, 102 of the Local Government Act 1972. In reaching a decision to appoint committees and what committees or prescribe other forms of delegation the council will want to consider what is best calculated effectively, economically and lawfully to discharge its business.

2. Voting by the council (or in its committees) is by simple majority of those present and voting. There are no qualifications for a particular councillor's voting or participation. The only exception one encounters is on some district councils where a requirement is found in standing orders for members of the planning committee to be trained but there is no general requirement that councillors must be trained as such. However, it is good practice if new councillors receive induction and training and the Town Mayor and Town Clerk both support this practice."

7. On 16 September 2019 the complaint requested an internal review of the council's response.
8. On the 19 September 2019 the complainant raised a further request in the following terms [numbering added by ICO]:

"Our Freedom of Information request to Lydd Town Council is regarding the council's decision to not function with a Crime Committee.

Lydd Town Council (LTC) will be aware that Lydd Resident Group (LRG) has been campaigning for a formal Crime Committee for 18 months.

Our request for information is:

*[4] A copy of the minutes of the meeting whereby the councillors voted to **not accept** a Crime Committee.*

*[5] How Lydd Town Council is meeting its legal obligation within **NALC LTN 13** and **Section 17 of the Crime & Disorder Act 1998** and thus ensuring the safety and welfare of Lydd town residents."*

9. The council provided an internal review response on 7 October 2019 in which it revised its position and provided a refusal notice. The notice applied to all the requests detailed above. It stated that it was refusing the requests on the basis of the exemption at FOIA section 14, it stated:

"1. The requests are vexatious.

2. The request repeats a previous request from the same person."

10. On 20 April 2020, during the course of the Commissioner's investigation, the council changed its position to be that it had provided all the information held within the scope of the requests. The council stated

"We would advise that the Minutes of the Meetings of the Council are the sole source of public record and that after a further review no further information was identified."

Scope of the case

11. The complainant contacted the Commissioner initially on 8 November 2019 to dispute the section 14 exemption. During the investigation the council reviewed its position to state that no further information is held within the scope of any of the requests outlined in this decision notice.
12. Following the updated response of April 2020, the complainant provided reasons why the council should hold further information and asked the Commissioner to continue with the investigation. Furthermore, the complainant has expressed dissatisfaction with the way in which the council has dealt with the requests and the delays incurred.
13. The Commissioner considers the scope of the investigation is whether, on the balance of probabilities, the council holds any further information in scope of the information requests. She will also consider whether the council made any procedural breaches in dealing with the requests.

Reasons for decision

Section 1 general right of access

14. Section 1 of the FOIA states 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."

15. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a

judgement on whether the information is held on the civil standard of the balance of probabilities.

17. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the council and other information or explanation offered by the council which is relevant to her determination.

The complainants view

18. The council revised its internal review response, and as a result there is no longer a section 14 refusal to investigate. As such the Commissioner's investigation is concerned with the complainant's views as to why the council holds further information in scope of the requests.
19. The complainant referred the Commissioner to section 7 of the '*The Openness of Local Government Bodies*¹' legislation ('the Legislation'). It is their view that "*this legislation clearly states the framework and legal obligations for the recording of decisions.*" The Commissioner notes that section 7 of the Legislation requires that certain types of officer decisions are recorded and made available to the public.
20. The complainant states that it is of public interest to know how the decisions, which are the subject of the request, were arrived at. And whether "*the actions complained of arises out of a direction by the Mayor or the Town Clerk rather than a vote by Councillors as would be required.*"
21. Regarding request items [4] and [5] the complainant advises that Lydd residents were led to believe that there would be three Crime Committee Meetings per year, as recorded in the council's minutes. The minutes also state that the dates would be an agenda item at this next meeting. The complainant states "*Disappointingly, no more was said by the Town Clerk or Mayor, it wasn't on future agendas as promised, and hence our FOI was submitted.*"
22. The complainant states that there is significant public interest in furthering the debate of a Crime Committee, and in terms of the FOIA request, understanding whether the change in direction came directly from the Mayor or Town Clerk rather than a vote by councillors.

¹ <https://www.legislation.gov.uk/ukdsi/2014/9780111113554>

The Council's response

23. The council states that there is no data in relation to [1] because the council did not take the matter forward. The council states *"It was thus not formally refused, but equally it was not adopted. [The complainant] was present in the Public Gallery for this meeting and observed events, contributing with a question from the gallery, so he knows this to be the answer to his question."*
24. Regarding [2] and [3], the council advises that the only recorded information is minute number 137 within the Lydd Town Council Minutes dated 3rd June 2019², which records the question raised by the complainant and the Council's response.
25. Regarding [4] the council considers that this is a repeat question, following on from the previous requests. However, it also confirmed to the Commissioner that no such minutes exist.
26. Request [5] is a question, the council advised that it does not hold any recorded information that would answer this question.
27. The Commissioner asked what searches had been undertaken for information falling in scope of the requests. The council advised that the only data source for the council is the minutes of meetings. It confirmed that all agendas and minutes are available on the public website. It advised that no further search terms to locate electronic data had been used.
28. The Commissioner asked whether any other recorded information may have been held relevant to the scope of the request, but since been deleted or destroyed. The council advised that although council officers may take notes of meetings, or record meetings, these are shredded or deleted once the formal record is agreed. This is in line with the council's procedures, as outlined in its *"Impact Statement"*, and established working practice for records management.
29. The Commissioner asked whether there was a business or statutory requirement for holding the requested information. The council responded that in publishing the minutes, it meets the statutory requirement to record the business of the council.

² <https://www.lyddtc.kentparishes.gov.uk/wp-content/uploads/2019/12/Minutes-190603.pdf>

30. The Commissioner asked whether the council could provide any other explanation of why no further in-scope information is held. It stated that *"In the case of the crime committee, because the decision of the Council was not to have one."*

Conclusion

31. The Commissioner observes that a number of the request items are written in the form of questions. Whilst she appreciates that they are written in this way to elucidate as much information as possible, the FOIA does not require public authorities to answer generic questions or create new information as a result of a request. However, if the answers are held in recorded form then these should be provided.
32. The legal procedure in request [1], refers to a 'Legal Topic Note' ('LTC') published by the National Association of Local Councils ('NALC'). Item 56 in the LTC is about the process of decision making and resolutions by councillors. The complainants request is for written confirmation that the council adhered to the process in voting to hold council bi-monthly meetings. The complainant states in the request: *"Your official minutes of this meeting have been read but fails to record how this outcome was achieved."* As outlined in the previous paragraph, in terms of the FOIA, the question for the Commissioner is whether the council holds any recorded information on this point, it is not within her remit to appraise whether the council should hold the information or ask it to create a response to the question.
33. The Commissioner considers that request items [2] and [3] follow in a similar vein, requesting *'written confirmation'* of how the resolution was passed and *'evidence'* to justify the decision such as benefits to the local community. She must therefore determine, whether on the balance of probabilities, the council has released all recorded information, held at the time of the request, that would provide answers to these points.
34. The Commissioner notes that in the council's initial response to the complainant it gave an outline of how the council operates to discharge its business through committees and councillors' voting and participation.
35. The Commissioner notes that item [4] is requesting specific meeting minutes where a decision was made by councillors not to accept a Crime Committee. The council have responded to the Commissioner that there is no information in scope of the requests in the case of crime committee *"because the decision of the Council was not to have one."* The Commissioner considers that this response does not answer the question particularly well, which was for the minutes of the meeting where that decision was made.

36. Request item [5] is also written in the form of a question, aimed at elucidating how the council is operating to meet council obligations for the safety of local residents.
37. The Commissioner is sympathetic to the purpose of the complainant's requests, being for more explicit details of decision making by the council in regard to issues that may be of concern to the community. It is possible that there are gaps the documentation of decisions in this respect. However, it is not within the Commissioners remit to investigate whether, or how, decisions should have been documented, or if due process was followed in making them, but rather to uphold the right of access to information that is recorded.
38. In responding the Commissioner's questions, the council maintains that the only records held are the published minutes which are a statutory record of the council's business. It confirmed that searches did not identify any other information that addresses the scope of the requests. Furthermore, it advised that no information was deleted or destroyed other than the draft versions of notes and recordings made prior to the issue of published minutes.
39. The Commissioner understands an underlying purpose of the requests from the complainant's perspective is to ensure that issues are considered, subjected to proper debate, and that decisions are made appropriately in the council. However, the FOIA is limited to giving the public the right to access information that is held, rather than any determination of what information *should* be held.
40. The Commissioner has found no evidence that information exists that is being withheld.
41. Having considered the council's responses, and in the absence of any evidence to the contrary, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold any further information within the scope of the requests.
42. The Commissioner therefore considers that the council complied with its obligations under section 1(1) of the FOIA.

Procedural matters

Section 10(1)– Time for compliance with request

43. Section 10 (1) of the FOIA states that a public authority must respond to a request promptly and "*no later than the twentieth working day following receipt*".

44. The complainant made their requests for information on 31 July 2019, 7 August 2019 and 19 September 2019. The council's initial responses were within the statutory timescales.
45. However, in response to the internal review requests, the council changed its position to a refusal notice on the basis of section 14.
46. During the course of the investigation the council revised its review response to state that it held no further information in scope of the requests. This response was provided to the complainant on 20 April 2020.
47. The final response is greater than 8 months from the initial requests. The Commissioner therefore finds that the council has breached section 10(1) of the FOIA by failing to respond to the request within 20 working days. However, as the response was issued no steps are required.

Right of appeal

48. 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@justice.gov.uk

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

49. 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.
50. 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
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