

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2020

Public Authority: Ammanford Town Council
Address: Town Hall
Iscennen Road
Ammanford
Dyfed
SA18 3BE

Decision (including any steps ordered)

1. The complainant has requested information about a CCTV system. Ammanford Town Council ("the Council") provided some information and stated that it did not hold some of the requested information.
2. The Commissioner's decision is that the Council failed to comply with its duties under section 1(1) of the FOIA within 20 working days and therefore breached section 10 of the FOIA.
3. The Commissioner does not require any further steps

Request and response

4. On 11 March 2019, the complainant contacted the Council via the whatdotheyknow.com website and, referring to a CCTV system overlooking a children's play area, requested information in the following terms:

"Please could you confirm the full cost of the system, who specified the system and who installed it? Please identify if costs include or exclude VAT.

"Please can you explain where the images are viewable from? Is there live/active monitoring and who has access to the recordings?"

"Does the system have a service contract? How much does this cost? Please provide the Service Agreement.

"I understand the camera system was connected wirelessly to a control centre and was installed over winter. What verification steps have been performed to ensure the system operates correctly within a range of environmental conditions? How frequently has this been tested/validated (ie when there are leaves on the trees, does the system work? - as this tends to coincide with when children play on the Splashpads...)?"

5. The Council issued its first response on 17 May 2019. It provided some information and stated that it had been "unable to locate the paperwork" in relation to the remaining information.
6. The complainant sought an internal review on 28 August 2019. He argued that some of the information he had been provided with was incorrect and that the Council should hold further information.
7. The Council issued its final response on 28 April 2020. It provided some additional information and stated that it did not hold some of the requested information.

Timeline of investigation

8. The complainant first contacted the Commissioner on 12 April 2019 to complain about the way his request for information had been handled. At that point, the Council had yet to respond to the request and the Commissioner's intervention was necessary to produce a response.
9. Once the Council responded, it is evident that the Council and the complainant had at least one verbal conversation about the CCTV system. The Council appeared to believe that the conversation had resolved matters, but the complainant evidently did not, as he asked the Commissioner to investigate further. She initially declined to take up the complaint as the complainant had yet to seek an internal review, however, on 8 October 2019, as the Council had still not completed an internal review, she exercised her discretion and took on the complaint for investigation.
10. The Commissioner's initial investigation letter asked the Council a series of questions designed to elicit an explanation of the searches it had carried out to establish that it held no further relevant information. The Council did not respond to this letter and the Commissioner was forced to chase the Council for a response.

11. The Council eventually responded in a telephone call on 28 November 2019. The then-clerk stated that she had “had a chat” with the complainant and (apparently, despite the Commissioner’s letter) thought the issue resolved. At this point the Council appeared to indicate that, having reconsidered the matter, it now considered that the request was burdensome – although it did not make clear whether or not it knew that it held any further information. The Council stated that it had “always” been relying on section 12 (despite never having referred to the exemption in any of its written correspondence) and had informed the complainant of this verbally.
12. The Commissioner noted that, if the Council wished to rely on either section 12 or section 14 of the FOIA, it would need to issue a fresh refusal notice stating the same. At this point, the then-clerk noted that she would shortly be leaving her post but would aim to resolve the matter before leaving.
13. Given the delays that had already occurred and the lack of clarity over the Council’s position, when the Council failed to issue a fresh refusal notice or justify its position, the Commissioner decided to serve an information notice on the Council on 16 December 2019.
14. The Council failed to respond to the information notice by the deadline and, despite the Commissioner’s chasing, refused to respond as it said that it was busy dealing with an investigation by the Public Service Ombudsman for Wales. When the Commissioner threatened to bring contempt proceedings against the Council, it finally admitted to the Commissioner that it did hold some further information.
15. Despite the Council’s further response, the Commissioner was still not satisfied that it had identified all the information it held and a further exchange of correspondence established that some additional information was held. The Council finally issued its internal review on 28 April 2020, in which it disclosed some additional information to the complainant and stated that it did not hold some of the requested information.

Scope of the case

16. The Commissioner notes that some of the financial information the Council says that it does not hold is information that the Council would ordinarily be expected to hold. However, she is aware that the Council

has previously been criticised for the integrity of its financial control.¹ The complainant was also concerned that information that the Council previously held had been removed illegally from the Council's possession.

17. Nevertheless, having considered the Council's responses, the Commissioner wrote to the complainant on 30 April 2020 to set out her view that the Council had now complied with its duty under section 1(1) of the FOIA. Whilst the Council perhaps *ought* to hold further information, it can only provide what it does, as a matter of fact, hold at the time of responding. If the Council believes that information has been removed inappropriately from its possession, it would need to address the matter itself.
18. The complainant was clearly concerned about the wisdom of Council's decision to install the CCTV system in the first place. He was also, understandably, concerned about the delays in getting the Council to revise its response. However, he appeared to stop short of arguing that the Council did hold further information.
19. The Commissioner has therefore only considered the Council's procedural handling of the request.

Reasons for decision

20. Section 1(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.*

21. Section 10 of the FOIA states that a public authority must comply with its duty under section 1(1) "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

¹ <https://www.southwalesguardian.co.uk/news/17396840.auditors-looking-at-ammanford-town-council-books/>

22. The Commissioner considers that, whilst the request contained multiple parts, a similarly-sized public authority with an appropriate system of records management should have been able to collate the necessary information within a reasonable period.
23. The Commissioner finds it completely unacceptable that it took the Council more than a year to determine the amount of information it held about one of its biggest single items of expenditure. The Council did not provide any form of substantive response whatsoever until well after the 20 working day period for responding. The Commissioner therefore has no trouble in identifying a breach of section 10 of the FOIA.

Other matters

24. The Commissioner notes that just a few days prior to this particular request being made, she issued decision notice FS50711667 to the same Council.² In that decision notice, she felt compelled to make the following statements as part of the "Other Matters" section:

"Engagement with the Commissioner's investigation

27. *When dealing with complaints the Commissioner is reliant upon the cooperation of public authorities in her investigation. Where public authorities fail to provide timely, comprehensive responses to her enquiries, this can result in the Commissioner's investigation being unnecessarily prolonged. As an investigation can result in information previously withheld or not identified being disclosed to complainants, the Commissioner considers that such delays represent a failure by the authority in question to act within the spirit and the letter of the FOIA.*
28. *The Council's repeated failure to respond to the Commissioner's enquiries in this case resulted in her issuing an Information Notice to compel it to respond. The Commissioner is disappointed that, even after she had taken this step, the Council still failed to provide a response until being further prompted to do so.*

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614491/fs50711667.pdf>

Records Management

31. *The Commissioner would like to draw the Council's attention to the code of practice issued under section 46 of the FOIA (the "section 46 code") which provides guidance to all relevant authorities as to the practice which it would, in the opinion of the Lord Chancellor, be desirable for them to follow in connection with the keeping, management and destruction of their records*
 32. *The code is not directly legally binding but failure to follow it is likely to lead to breaches of the FOIA. As a public authority for the purposes of both the EIR and the FOIA the Council should have regard for the recommendations of the code.*
 33. *The section 46 code recommends that authorities should define how long they need to keep particular records, should dispose of them when they are no longer needed and should be able to explain why records are no longer held. Information designated to be kept as records should be stored in such a way that it can be easily and quickly retrieved for business purposes or to respond to a request.*
 34. *Whilst the Commissioner is satisfied that sufficient searches have now been completed, it is clear that significant time and resources could have been saved if all of the information that was eventually uncovered had been done so at the outset. She expects that the Council's future practice in this regard will conform to the recommendations of the section 46 code."*
25. The Commissioner is concerned to note that, although made over a year ago, those comments describe precisely the same situation as occurred with the present request and complaint.
26. The Commissioner is particularly disappointed that she has to repeat the exact same criticism because she also noted in that decision notice that:
- "29. *The Council confirmed to the Commissioner that as a result of this complaint it is taking steps to address a number of issues around its procedural handling of requests in the future. This includes reviewing its website, complaint procedures and formal records management policies, and providing additional training to staff and members to ensure they are fully aware of their responsibilities.*
 - "30. *The Commissioner is pleased to note that the Council is taking steps to address issues which have arisen as a result of this*

complaint and she expects that, in the future, it will provide timely and adequate responses to her correspondence.”

27. Whatever improvements the Council did put in place following the Commissioner's earlier decision notice have evidently been no more than temporary.
28. Furthermore, the Council's handling of this information request left much to be desired. Whilst the request appears to have formed part of broader concerns the complainant had about the Council's decision to invest in the CCTV system, the Council appeared to believe (apparently without justification) that, if it dealt with the underlying concerns, it need not deal with the information request. Because some of its attempts to deal with the request have been done verbally, it is difficult to establish exactly what happened.
29. The Commissioner recognises that an information request can form part of a broader concern that the requestor has about the public authority. In some circumstances it may be more efficient (and beneficial to the requestor) to deal with both matters simultaneously. However, where a public authority has received an information request, it should be wary of stepping outside the FOIA process – especially when the requestor has not explicitly agreed to such an approach.
30. Equally, whilst there is nothing to prevent a public authority from communicating verbally with a requestor in order to resolve an information request, it is advisable to make a record of any conversation – in the event that the content of the conversation is subsequently disputed.
31. The Commissioner notes that the Council is not a large public authority and has experienced a turnover of staff during the timespan of this request and complaint. However, the problems identified in the two complaints suggest broader structural issues with the way it manages its records and the way it handles and prioritises information requests. This is something that the Council needs to address at the earliest opportunity.

Right of appeal

32. 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

33. 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.
34. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF