

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 October 2022

Public Authority: Bodmin Town Council

Address: Shire Hall
Mount Folly
Bodmin
PL31 2DQ

Decision (including any steps ordered)

1. The complainant submitted two separate requests to Bodmin Town Council (the town council) for information held about its dispute with Bodmin Jail.
2. Whilst the town council provided the complainant with some information in response to both requests, it advised it was withholding part of the information relevant to the second request. The complainant has not contested the council's decision to withhold this information; however, they do not accept that the town council has provided all of the remaining information that is held that is relevant to the two requests.
3. It is the Commissioner's decision that, on the balance of probabilities, the town council has now correctly identified and provided the complainant with all the information that it holds that is relevant to those parts of the two requests that are in dispute.
4. The Commissioner does not require the town council to take any steps as a result of this decision notice.

Request and response

5. On 20 February 2021, the complainant wrote to the town council and requested information (Request 1) in the following terms:

Please say whether the council is in a dispute with Bodmin Jail.

Please identify the substance of the dispute.

How much has the council spent on legal fees and other costs?

Is the dispute resolved or ongoing?

6. The complainant was not satisfied with the information that was provided by the town council and on 7 October 2021, they submitted a new request (Request 2) as follows:

I am resubmitting this request. You provided me with a figure for the costs you have incurred in your dispute with Bodmin Jail. Please can you let me know whether the case is ongoing. I note the council meeting on 22 July 2021 considered Hillside Park, which may mean your dispute with the Bodmin Jail. Please tell me what you can about the update and further developments.

You quoted £34,000 for the cost of legal advice so far. A former councillor has posted that the cost was £51,000. Around 50% more than the figure you gave me. The higher figure, I am informed comes from an Estates meeting on 18 February (only just before I submitted my FOI). Figures for legal fees appear to have been available in a financial report discussed in the open part of the meeting. What were the figures given in February for the cost of litigation so far and the projected costs of pursuing the case? Had these costs been changed from a previous council meeting mentioned in the minute?

Please explain the reasons for any discrepancy?

Please update me on the latest incurred and projected costs for this.

Please give me the information that applies at the time you answer this.

7. As part of its response to Request 1, the town council had advised the complainant that the total legal costs to date had been calculated to be £34,745.98.

8. In response to Request 2, the town council confirmed that the total legal costs as of 13 October 2021, were £36,495.98. It went on to say that it was unable to provide any meaningful figure with regard to the projected costs of continued litigation.
9. The town council also confirmed in response to that part of Request 2 where the complainant had asked, "Please tell me what you can about the update and further developments", that the matter was 'ongoing'. It went on to say that it had applied section 43(2) - commercial interests, to some of the information discussed at council meetings, as it believed disclosure of such information could prejudice the 'process'.
10. In the complainant's internal review request, and subsequent correspondence, they continued to question the figure which had been given by the town council for the total legal costs, referring again to the figure of around £50,000 which they stated was in the public domain. They suggested that information to support this figure may be held in records other than the minutes of the Estate Committee meeting of 18 February 2021, such as the financial report which had been referred to at that meeting. The town council then provided a further response to the complainant, once again advising that it did not hold any information relating to the £50,000 figure quoted.

Scope of the case

11. The complainant has raised concerns with the Commissioner about the way in which the council has dealt with Request 1 and Request 2.
12. The town council has recently issued the Commissioner with a revised response to Request 2, which they confirmed was also to be sent to the complainant.
13. Within the revised response, the town council has said that it is now relying on section 42, rather than section 43, as its basis for withholding the information set out in paragraph 9 of this decision notice.
14. However, as far as the Commissioner can see, the complainant has not expressed any dissatisfaction with the town council's original decision to withhold this particular information. He therefore does not regard it to be necessary to consider further whether the council is entitled to rely on section 42 (or section 43) of the FOIA as its basis for refusing to provide certain information in response to Request 2.

15. Having considered the concerns that have been raised by the complainant, the Commissioner will make a decision on the following two points:
- Whether the town council has provided all the information that it holds in relation to the total costs for its legal advice relevant to Request 1 and Request 2.
 - Whether, on the balance of probabilities, the town council holds any information relating to the projected legal costs relevant to Request 2.

Reasons for decision

16. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by that public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
17. The town council has advised that it has checked all the information held that is relevant to the Estates Committee meeting of 18 February 2021, and has also completed a full search of its systems. It states that it has not located any additional information that is relevant to Request 1 or Request 2.
18. With regard to the total legal costs, the town council has said that officers dealing with the request have also consulted senior officers, and they have advised that they are not aware of the figure of £50,000 which the complainant claims to be in the public domain.
19. The council has also provided the Commissioner with a copy of the 'financial report' which the complainant had believed may include information to support the figure of £50,000 they state to be in the public domain.
20. The Commissioner has found no evidence of the legal costs described by the complainant within this report; it is also the Commissioner's view that none of the information contained therein falls within the scope of the complainant's requests.
21. However, the council has confirmed that it is now aware that the total figure for legal costs previously provided to the complainant was not correct. It has said that the original figure included costs that were not specific to the dispute; this error was subsequently identified by an officer who the council states is more familiar with the case.

22. The Commissioner notes that the revised total for legal costs now calculated by the council is only marginally different to the figure provided to the complainant in response to their requests; it therefore is still not close to the £50,000 figure specified by the complainant.
23. The Commissioner does not dispute the complainant's assertion that there is information on social media which claims the costs were around £50,000. However, he is not required to provide an explanation for this figure.
24. The Commissioner can only consider what information is, on the balance of probabilities, held in a recorded format by a public authority that is relevant to the request that has been made. In this instance, the Commissioner has found no evidence that the town council holds recorded information which would support any claim that has been made that the legal costs were around £50,000.
25. The Commissioner accepts that the council has now calculated the correct figures for the total costs, based on the information that it held at the time of the requests.
26. The Commissioner is satisfied that, on the balance of probabilities, there is no additional information held by the town council that is relevant to Request 1.
27. Furthermore, the Commissioner has found no evidence which would indicate that the town council holds information about projected legal costs (at the time that Request 2 was received); therefore, he also concludes that, on the balance of probabilities, the town council does not hold any additional information relevant to Request 2.

Additional matters

28. As part of its response to the Commissioner's investigation, the town council included a copy of a revised and final response to the requests. It confirmed that it was also to provide this to the complainant.
29. However, the complainant has advised that they have not received any recent communication from the town council. The Commissioner would therefore request that the town council takes adequate steps to ensure that its revised response is now received by the complainant, and that this information also includes the corrected figure for the costs relevant to the requests.

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF