

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2022

Public Authority: Peterlee Town Council
Address: Shotton Hall
Peterlee
Co. Durham
SR8 2PH

Decision (including any steps ordered)

1. The complainant has requested various information from Peterlee Town Council ('the council'). The council provided some information, however the complainant remained unhappy that some minutes of meetings had not been disclosed or published on the council's website. During the course of the Commissioner's investigation the council located further information and disclosed this to the complainant. It confirmed that no other information falling within the scope of the request is held.
2. The Commissioner's decision is that on a balance of probabilities, the council does not hold any further information falling within the scope of the complainant's request for information. The Commissioner has, however, decided that the council did not comply with the requirements of section 10(1) of FOIA in that it did not provide the information within 20 working days.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 24 December 2020 the complainant wrote to the council and requested information in the following terms:
 - "1. Can you please let me know where the meeting minutes are published for the Pavilion Management Board meetings, the Information Centre Committee and Clerks Advisory Committee? And are three Committees still functioning?
 2. And where are the agendas and meeting minutes published for the 'Extraordinary' council meeting, which seem to be called for by councillors quite often?
 3. I see that you have posted a 'notice of conclusion of the audit' on your website, but I can't find the audit document itself. I thought you were obligated to publish the document and I feel its wrong to ask electors to pay £1 for a copy. Anyway, can you email me a pdf copy please?
 4. I understand that the Council may have been in breach of some Regulations at odd times this year. If so, has any action been taken to prevent recurrence?"
5. The council responded on 25 January 2021.
 1. It confirmed that none of the named Committees are still functioning, and directed the complainant to where minutes could be found for the Clerks Advisory Committee, Pavilion Management Board and Information Centre Committee.
 2. It clarified that extraordinary meeting minutes are published alongside other minutes on the council's website.
 3. It provided a copy of the Annual return form as requested.
 4. It asked the complainant to clarify which Regulations he was referring to.
6. On 1 February 2021 the complainant requested that the council carry out an internal review, and also clarified the Regulations he was referring to in part 4 of his request for information.

7. Following the internal review, the council wrote to the complainant on 5 February 2021. It provided further information and promised to provide more once the deputy clerk had had the opportunity to look into this further.
8. The complainant subsequently sent a further series of emails dated 8 February 2021, 14 May 2021 and 14 June 2021 to the council asking the council to consider various aspects of its response again.
9. The council then responded on 31 August 2021 providing further information.

Scope of the case

10. The complainant initially contacted the Commissioner on 29 June 2021 to complain about the way his request for information had been handled. His central concern at that point was that the council had failed to respond to the letters which he had sent between February and June 2021.
11. When the council provided its response on 31 August 2021, the complainant asked the Commissioner to consider whether the council holds any further information falling within the scope of his request. Specifically, he provided a list of meetings to the Commissioner and asked the Commissioner to investigate whether the council holds the relevant minutes for these as they had not been disclosed to him in response to his request.
12. During the Commissioner's investigation, the Commissioner provided the council with the list of minutes and said that the complainant considered that these should be held by it. The council carried out further searches and found further information. It uploaded the minutes to its website and provided the complainant with a link. It said that it was still in the process of digitising some of the minutes and uploading these to the council's website, however these were available to the complainant to inspect should he wish to do so up until that time. However, it also clarified to the complainant that not all of the minutes he had identified were held by it. It provided a copy of the list back to the complainant clarifying whether information was now on its website, in the process of being put onto its website and therefore only available by inspection at the moment, and also where minutes had not been located.
13. The following analysis therefore relates to whether any further minutes are held by the council, and whether the council met with the time requirements of section 10 of FOIA.

Reasons for decision

Section 1 – General right of access to information

14. 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.*

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

16. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

17. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

18. The complainant argued that the council should hold the minutes which he identified in the list which he provided to the Commissioner.

The council's position

19. The council has now made the further information which it has located available via inspection and a link to its website. However, it said that it does not hold all of the information which the complainant indicated it should hold.

20. The council responded to the Commissioner's questions regarding the searches which it had conducted to determine whether further information was available.

21. It clarified that it had conducted searches of its cloud site, which its Democratic Services team use for storing committee documents, and of the hard copy minute books in which all signed meeting minutes are archived.
22. It said that there are no other information sources that it would expect the requested information to be stored within.
23. It said that where it found that hard copy minutes had not been uploaded onto its website, it did so, and this was the information it had now provided a link to, to the complainant.
24. It said that as the requested information is formal minutes from previous council meetings, the committee/meeting names were therefore used as search terms where applicable.
25. It clarified that searches were carried out on shared and personal network spaces of officials involved in production of committee minutes. One official, who was responsible for minute taking during this time, also searched their work email account.
26. It said that many of the dates referred to (the range is 2011-2016) predate the council's current IT storage system, which was enabled in early 2016, and that many of the minutes only exist in hard copy. Searches of the hard copies of the minutes had been carried out and the relevant minutes uploaded.
27. It said that the hard copy signed versions of minutes that are bound into its committee books are the 'sovereign' version of minutes as required in law, and as such, once hard copy minutes had been approved and signed at committee, the electronic copies were sometimes deleted by the person who had typed them up into an electronic format.
28. It said that hard copies of minutes are retained as per its duties under schedule 12 of the Local Government Act 1972.

The Commissioner's conclusion

29. The Commissioner has considered the Council's position, in conjunction with the request.
30. The Commissioner recognises that the complainant was correct in his assertion that the council had not provided all of the information which it held at the time of the request.

31. The council has confirmed to the Commissioner that appropriate searches have now been carried out, and that these searches were in the areas where relevant information is likely to be held. As a result, it identified its earlier error, and was therefore able to provide further information to the complainant. It said that it holds no further information falling within the scope of the request.
32. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
33. On this basis the Commissioner has concluded that, on the balance of probabilities, no further information falling within the scope of the request is held.

Section 10(1)

34. Section 10(1) of FOIA provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”
35. The complainant made his request for information on 24 December 2020. The council disclosed the additional information which it had located on 26 May 2022.
36. This falls outside of the 20 working days required by section 10(1) and the Commissioner therefore finds that the council breached this section in its handling of this request.

Right of appeal

37. 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

38. 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.

39. 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

Ian Walley
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