

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 February 2023

Public Authority: Borough Council of King's Lynn and West Norfolk

Address: King's Court
Chapel St
King's Lynn
PE30 1EX

Decision (including any steps ordered)

1. The complainant requested information relating to the planting of trees. The Borough Council of King's Lynn and West Norfolk (the "council") disclosed some information and withheld other information under section 12(1) (Cost of compliance exceeds appropriate limit) of the FOIA. The council subsequently dropped its reliance on section 12(1).
2. The Commissioner's decision is that the council has failed to disclose all the information requested within the statutory time limit and that it is in breach of section 10(1) and section 1(1) of the FOIA.
3. The Commissioner requires the council to disclose the requested information to the complainant.
4. The council 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

5. On 17 August 2022, the complainant made the following request for information to the Borough Council of King's Lynn and West Norfolk (the "council"):

"(in relation to trees planted at LynnSport and site visits)

1) Could you please let me know the date that you visited the site?

2) Is the text provided in the meeting minutes your report in full, if not could you please provide me with your report in full, including any on-site notes?

3) Could I also please have a copy of any emails you have sent or received on the topic of the trees planted at LynnSport this year?"
6. The council's initial position was that the cost of compliance with part 3 of the request would exceed the appropriate limit set out in section 12(1) of the FOIA. The council subsequently dropped its reliance on section 12(1) at the internal review but provided no further grounds for refusing to comply with the request.

Reasons for decision

Section 1 – duty to provide information held

7. Under section 1(1) of the FOIA, public authorities must confirm or deny whether requested information is held and, where it is, disclose it to a requester.
8. Section 10(1) requires authorities to comply with section 1(1) within 20 working days.
9. In this case the complainant submitted their request on 17 August 2022. On 10 October 2022 the council confirmed that it was applying section 12(1) to refuse to provide the information cited in part 3 of the request.
10. On 17 November 2022 the council issued an internal review response which confirmed that, in relation to part 3 of the request, section 12(1) was no longer applicable. The internal review suggested that further representations might be made in this regard but it seems that this did not happen.
11. At the time of the internal review, therefore, the council's position was that the requested information was held and that there were no grounds for not disclosing the information to the complainant.

12. In light of the above the Commissioner has concluded that the council has failed to comply with its duty under section 1(1) and that it breached section 10(1). In order to remedy this the council should now disclose the requested information to the complainant.

Other matters

13. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

Internal review

14. In relation to internal reviews, paragraph 5.11 of the code of practice issued under section 45 of the FOIA (the "code") states:

"If the outcome of an internal review is a decision that information previously withheld should now be disclosed, the information should normally be provided at the same time as the applicant is informed of the outcome of the review. If this is not possible, the applicant should be informed how soon the information will be provided.¹"

15. The council's internal review in this case is confusing and appears to suggest that it is being carried out by a third party with no power to act on its conclusions. Whilst the internal review identifies a misapplication of section 12 it provides no remedy or timeframe for this to be addressed. In light of this the Commissioner considers that the council's internal review does not conform to the recommendations of the code.

Engagement with Commissioner's investigation

16. In investigating complaints the Commissioner is reliant on public authorities providing prompt and accurate responses to his enquiries. In this case he has experienced some difficulty in obtaining assistance from the council. In light of this, he has concerns that the council does not understand its responsibilities under the FOIA and/or that it is unwilling to or unable to carry out its duties in this regard.
17. The Commissioner will monitor the council's future compliance and practice via complaints received and if he finds no evidence of improvement he will consider taking further action.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

18. 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

19. 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.
20. 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

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