

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 February 2024

Public Authority: Berry Pomeroy Parish Council

Address: clerk@berrypomeroyparishcouncil.gov.uk

Decision (including any steps ordered)

1. The complainant has requested the legal fees for a specific case brought against Berry Pomeroy Parish Council (the council). The council stated that it did not hold the requested information.
2. The Commissioner's decision is that the requested information is not held by the council.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 18 September 2023 the complainant made the following information request to the council:
"...how much has been spent on legal fees defending the claim brought against BPCC by [name redacted]."
5. On 20 September 2023 the council responded that the information was not held. It advised the complainant that if he was dissatisfied with the response to contact the Commissioner to make a complaint. The complainant requested an internal review on the same day.

Scope of the case

6. The complainant contacted the Commissioner on 5 November 2023 to complain that the council had not provided the information requested or carried out an internal review.
7. The Commissioner chose to accept the case for investigation without first contacting the council to carry out an internal review.
8. The scope of the case is for the Commissioner to determine whether the council holds the requested information.

Reasons for decision

Section 1 of the FOIA – Information held / not held

9. 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 the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
10. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
11. At the request of the council a solicitor from DAC Beechcroft contacted the Commissioner about this case. The solicitor explained to the Commissioner that they were hired by Zurich Insurance to defend the council.
12. The solicitor advised the Commissioner that the litigation costs were paid directly by the council's insurers, Zurich Insurance, whom the Council hold a policy with.
13. The solicitor further explained that insurers will not ordinarily disclose expenditure details they incur to their policy holders and that in this case Zurich Insurance have not and will not disclose to the council the legal fees requested by the complainant.
14. The Commissioner accepts this explanation as to why the council does not hold the information requested by the complainant.

15. On this basis the Commissioner is satisfied that on the balance of probabilities the requested information is not held by the council and that it complied with section 1(1)(a) of FOIA when stating this to the complainant.

Other matters

16. In this case, the council did not offer an internal review and did not carry a review out after being requested to by the complainant.

17. The Commissioner accepted the case for investigation without an internal review in this case, however the Commissioner refers the council to the FOIA section 45 Code of Practice¹ which states:

"It is best practice for each public authority to have a procedure in place for dealing with disputes about its handling of requests for information. These disputes will usually be dealt with as a request for an 'internal review' of the original decision."

18. The council should have in place an internal review procedure and should advise information requesters of this when responding to requests. It should carry out internal reviews when requested to do so.

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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

19. 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

20. 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.
21. 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

Ben Tomes
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