

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 11 July 2011

Public Authority: Lutton Parish Council
Address: 134 London Road
Long Sutton
Spalding
Lincs
PE12 9EE

Summary

The complainant requested copies of bank statements and cheques from the Council in relation to a particular charity. The Council has not provided a clear response to the request, despite the intervention of the Commissioner. The Commissioner therefore reminds the Council of its obligations under the Act and requires it to respond to the complainant confirming or denying whether information is held. If information is held the Council should either disclose the information to the complainant or issue a valid refusal notice under section 17 of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. Following previous similar requests made to Lutton Parish Council ('the Council') for information relating to the Blanks Charity, on 30 November 2010, the complainant submitted the following request to the Council:

"It has been since September that you said you had received the blanks charity statements which I had asked for.....Under the freedom of information act I will need copies of the statements as agreed, I will also require separately copies of cheques drawn on the charity during the period 2005 to May 2007"

3. Following the Commissioner's intervention, the Council finally responded to the request on 27 February 2011 stating that:

"The council regretfully advise that they have to decline the request at present because the information is relevant to a legal matter currently being investigated and if the information is released it may jeopardise these matters".

4. To date the complainant has not received a response in accordance with the provisions of the Act.

The Investigation

Scope of the case

5. On 16 February 2011 the complainant contacted the Commissioner to complain that he had not received a response to his request of 30 November 2010.
6. On 8 March 2011, the complainant contacted the Commissioner following receipt of the Council's response of 27 February 2011, to complain about the way his request for information had been handled. Specifically the complainant expressed dissatisfaction that the Council had not provided him with any valid reason for refusing his request for information. As far as the complainant was aware there was no legal investigation ongoing.

Chronology

7. On 25 January 2011, the Commissioner wrote to the Council reminding it of its obligations under the Act. The Commissioner advised the Council that it should respond to the request of 30 November 2010 stating whether or not the requested information was held, and either provide the information or issue a valid refusal notice in accordance with the requirements of section 17 of the Act. The Commissioner asked the Council to respond to the request within 10 working days.
8. The Council responded to the Commissioner on 27 January 2011 stating that it had previously advised the complainant that the information

requested could not be provided as it was subject to a possible fraud investigation.

9. On 9 February 2011, the Commissioner wrote a further letter to the Council to advise that, as the complainant had submitted a new request on 30 November 2010, it should handle this request in accordance with the Act. The Commissioner repeated that the Council should respond clearly stating whether the information requested was held and either provide it or issue a valid refusal notice.
10. The complainant contacted the Commissioner on 16 February 2011 to advise that he had still not received a response from the Council.
11. The Commissioner wrote to the Council on 18 February 2011 to confirm that the complaint had been deemed eligible for formal consideration under the Act.
12. On 8 March 2011 the Council provided the Commissioner with a copy of a response it had sent to the complainant dated 27 February 2011. The Council's response was not in accordance with the provisions of the Act. The Council simply stated it could not provide the information as it was subject to a "legal matter currently being investigated".

Analysis

13. The Commissioner has considered whether the Council has responded to the request of 30 November 2010 in line with the provisions of the Act. The full wording of the sections detailed in this Notice can be found in the Legal Annex.

Procedural Matters

Section 8 - Requests for information

14. Section 8(1) of the Act states that a request for information should be in writing, bear the name and address of the applicant and describe the information requested. The Commissioner considers that the request in this case can be defined as such and therefore constituted a valid request under the Act for recorded information.
15. The Commissioner holds the view that all communications made in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. Whilst the Commissioner notes that the Council has explained why it has refused to provide the requested information,

the response is not in accordance with the provisions of the Act. This is because the Council has not confirmed what provisions of the legislation (if any) it is relying on. In this case the Commissioner's view is that the Council was under an obligation to provide a freedom of information response to the request within the statutory timescale.

Section 10 – Time for response

16. Section 10(1) of the Act states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
17. From the information provided to the Commissioner on this case it is evident that the Council did not respond to the complainant under the Act within the statutory time frame, and therefore breached section 10(1).

The Decision

18. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that:
 - it breached section 10(1) of the Act by failing to provide a response to the request within the statutory timeframe of 20 working days and
 - it did not provide a clear response in order to permit the Commissioner to identify which provisions of the legislation (if any) it was relying on.

Steps Required

19. The Commissioner requires the Council to take the following steps to ensure compliance with the Act:
 - confirm or deny whether the requested information is held to comply with section 1(1)(a) of the Act;
 - if information is held, in accordance with its obligations under section 1(1)(b) either provide it, or withhold it by issuing a valid refusal notice under section 17(1) of the Act.

20. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

21. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

22. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 11th day of July 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides 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."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that –

"Where a public authority –

- (c) reasonably requires further information in order to identify and locate the information requested, and
- (d) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that –

"The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Time for Compliance

Section 10(1) 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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (c) prescribe different days in relation to different cases, and
- (d) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (e) the day on which the public authority receives the request for information, or
- (f) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (g) states that fact,
- (h) specifies the exemption in question, and
- (i) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (j) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

1. that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 2. that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (k) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (l) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (m) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that -

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (n) the public authority is relying on a claim that section 14 applies,
- (o) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (p) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (q) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (r) contain particulars of the right conferred by section 50.”