

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 01 October 2012

Public Authority: Havant Borough Council
Address: Civic Offices
Civic Centre Road
Havant
Hampshire
PO9 2AX

Decision (including any steps ordered)

1. The complainant requested a copy of the council's up to date charges for supplying environmental information. The council initially responded and referred to an investigation that was being conducted by the Commissioner regarding an earlier request. At the internal review stage, the council provided a link to a copy of its up to date charges book on its website. It referred to the exemption under section 21 of the Freedom of Information Act 2000 ("the FOIA"), the exemption concerning information that is reasonably accessible by other means.
2. The Commissioner's decision is that the council breached section 10(1) of the FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 21 April 2011, the complainant requested information from the council in the following terms:

"I Request a copy of Havant Borough Councils charges for supplying environmental information.

Please find attached my clearly identified request.

The copy of the charges must be accurate up to date and easily

understood by me.

It must contain the photocopy charges, any costs that are levied for searching for the information any post and packing charges any covering letter charges.

It must contain circumstances in which the charges may be waived.

If any parts I request are missing or not supplied I request a valid refusal notice citing the exception you are relying upon.

I am requesting just that document no other irrelevant information mixed up with it.

It must not be vague, misleading or ambiguous.

The copy must be a paper copy with no disclaimers attached".

5. The council responded on 27 April 2011 and referred to an investigation being conducted by the Commissioner at the time. It said that correspondence relating to that issue should be addressed to the Commissioner. For clarity, the Commissioner's case reference for that investigation is FS50356035 and a formal decision notice under section 50 of the FOIA was issued on 27 June 2011. An appeal to the First-Tier Tribunal (Information Rights) was subsequently considered under case reference EA/2011/0155 on 11 January 2012.
6. The council completed an internal review on 29 March 2012. It said that it considered that the complainant already had the information. It also provided a link to its website showing the up to date charges book. It said that it wished to rely on the exemption under section 21, the exemption relating to information that is reasonably accessible by other means.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He is dissatisfied because he considers that the council's response to the request was not in accordance with its obligations under section 1(1)(a), 1(1)(b) and 10(1) of the FOIA.
8. He also said that he considered that a separate breach of section 16 of the FOIA should be recorded and he complained that he did not consider that the council's charging policy complies with regulation 8(2)(b) and (3) of the EIR.
9. For clarity, the Commissioner has not considered the concerns expressed relating to regulation 8 of the EIR because that issue has no bearing on the handling of this particular request.

Reasons for decision

10. There is no on-going dispute over access to the information in question. As the late internal review in this case affirms, the requested information was by then in the possession of the complainant. The process allows a public authority to amend or correct any position that they may take initially through the internal review. As this clarified that the information requested was in fact in the possession of the requestor the Commissioner does not find a breach of section 1.
11. The Commissioner was not persuaded that there was a case for finding a separate breach of section 16 of the FOIA in this case. The Commissioner accepts that this request was a separate request for the charges in place at the time of the request, rather than the previous version of the charges (which was the subject of the First-Tier Tribunal (Information Rights) appeal). However, the council did provide an electronic link to the charges in place and, whilst late, did accord with the provisions of the Act.

Right of appeal

12. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

13. 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.
14. 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

Andrew White
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