

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 September 2014

Public Authority: Teignmouth Town Council

Address: Bitton House
Bitton Park Road
Teignmouth
South Devon
TQ14 9DF

Decision (including any steps ordered)

1. The complainant has requested information from Teignmouth Town Council ("the council") about current leases that the council has in place with third parties for a building that it is the freeholder of. The council confirmed that no relevant information was held.
2. The Commissioner's decision is that the council does not hold information that falls within the scope of the request. However, the council provided its response outside of 20 working days, and therefore breached the requirement of section 10(1) of the Freedom of Information Act ("the FOIA").
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 24 December 2013, the complainant wrote to the council and requested the following:

"For all of the current leases in Bitton House, Bitton Park Road, Teignmouth, TQ14 9DF, can you please supply me with the office space each lease relates to and its location in Bitton House, the length of each lease, the length of time each lease has to run, the annual rate of

each lease, the conditions of each lease and who it has been leased to."

5. The council responded on 3 February 2014 and refused the request citing regulation 12(4)(d) of the Environmental Information Regulations ("the EIR").
6. The council subsequently maintained this position in an internal review on 4 February 2014.

Scope of the case

7. The complainant contacted the Commissioner on 17 February 2014 to contest the council's response.
8. Having reviewed the nature of the requested information, the Commissioner identified that the information is not environmental in nature, and that the terms of the EIR do not apply. Following advice from the Commissioner, the council subsequently issued a response under the terms of the FOIA on 23 May 2014, in which it advised that it did not hold the requested information.
9. The Commissioner considers that the scope of this case is the determination of whether the council is likely, on the balance of probabilities, to hold the requested information.

Reasons for decision

Section 1(1) – Duty to make information available on request

10. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.

The Commissioner's investigation

11. On 10 June 2014 the Commissioner wrote to the council to request supporting evidence for its response to the complainant. The Commissioner also invited any supporting comment from the complainant on her assertion that information was likely to be held at the time of her request.

The complainant's position

12. The complainant has advised the Commissioner that she has recently identified that three businesses are listed as present at Bitton House on an online directory, and further contests that on the date of her request (24 December 2013), she believes that an advertising business held a lease for part of Bitton House.
13. The complainant further contests that the council, in its correspondence to her, has referred to the subject of leases still being at a negotiation stage, and that the council must therefore hold recorded information that falls within the scope of her request.

The council's position

14. The council, in its submission to the Commissioner, has detailed the recent history of Bitton House and the basis of the council's current responsibility for it.
15. The freehold of Bitton House was transferred to the council in 1989, and formerly belonged to Teignbridge District Council. On its transferral, a substantial part of Bitton house still remained under lease to Devon County Council, who consequently became tenants of the council. This situation continued until 2010, when Devon County Council surrendered its lease. Since 2010, the council has arranged for Bitton House to undergo refurbishment.
16. Following this refurbishment, an advertising company approached the council with the aim to lease part of the building. Due to difficulties in reaching an agreement on the specific terms of the lease, the council choose to allow the advertising company to use part of the building on a flexible basis whilst negotiating the lease and attempting to attract other tenants. However, the advertising company subsequently entered receivership during August 2013 while negotiation about the lease was ongoing.
17. The council has confirmed that since this time, it has entered discussions with other two other businesses with the aim of agreeing leases, of which one is currently at the stage of being drafted by the council's solicitors. The council has further clarified that its aim is to allow each of these businesses to further sublet space to another party.
18. The council has therefore explained to the Commissioner that no lease had therefore been agreed at the time of the complainant's request, and at the time of its submission no leases are yet place, principally due to negotiations about the payment of utilities and service charges, and the final apportionment of space. The council has suggested that it hopes for leases with the two parties to be concluded prior to August of this year.

Conclusion

19. In the circumstances of this complaint the Commissioner must decide, on the balance of probabilities, whether the requested information was likely to be held by the council at the time of the complainant's request.
20. Having considered the submissions of both parties, the Commissioner has identified that whilst businesses may have been established, or otherwise listed as present at Bitton House, leases between the businesses and the council had not yet been agreed at the time of the complainant's request, which specifically requests current leases. Consequently the Commissioner must conclude on the balance of probabilities, that no such leases were likely to be held by the council at the time of the request, and that the council's response fulfilled its duty under section 1(1).

Section 10(1) – Time for compliance

21. Section 10(1) requires that a public authority must provide its response within the time for compliance, which is 20 working days following the date of receipt.
22. In this case the Commissioner has identified that the council issued its refusal notice outside 20 working days, and therefore breached the requirement of section 10(1).

Right of appeal

23. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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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