

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 25 February 2008

Public Authority: Bletchingley Parish Council
Address: 20 Lambery Cottages
Rabies Heath Road
Bletchingley
Surrey
RH1 4PN

Summary

The complainant asked for copies of the annual reports and accounts of Bletchingley Parish Council ("the Council") from 2004-2007, a letter from the Council's indemnity insurer authorising it "sole executive powers" and a copy of the original proposal form and terms and conditions of the Council's original insurance policy. The Council advised the complainant that the annual accounts were already in the public domain and therefore exempt under the Freedom of Information Act 2000 ("the Act"). It applied the exemption under section 42 (Legal Professional Privilege) to the original insurance documents requested because of ongoing litigation involving the complainant. The Commissioner investigated and was satisfied that the annual accounts and reports are available on the website and are therefore exempt under section 21 of the Act. However, he found that the remainder of the information requested concerning the Council's insurer is not held by the Council. In addition, the Commissioner noted a number of procedural failings, in particular the Council breached section 1 and 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 Act. This Notice sets out his decision.

The Request

2. On 8 August 2007, the complainant wrote to the Council and requested information in the following terms:

“Please could you supply me with the following documents:-

The Annual Report & Accounts for 2004-2005

The Annual Report & Accounts for 2005-2006

The Annual Report & Accounts for 2006-2007 (draft form as advertised on the village notice board, but not available on 3 days to view despite a telephone call to the Clerk, will suffice)

The letter from the indemnity Insurer authorising you sole executive powers to deal with this matter

A copy of the original terms and conditions of the Indemnity Insurance Company's policy together with the original proposal form”

3. It has been assumed that by “this matter”, the complainant meant to refer to his ongoing litigation against the Council.

4. The Council responded to the request on 1 October 2007 and stated the following:

“Regarding your requests for accounts, we confirm our refusal to release the information that you require in accordance with the requirements of Section 17 of the Freedom of Information Act as this information is available in the Public Domain.

Regarding your request for information on our Insurers, we confirm that we refuse to supply this information in accordance with the requirements of Section 14 as this is a repeated vexatious request. We also refuse to supply the information, in accordance with the requirements of Regulation 14, as this information was provided in confidence.”

The Investigation

Validity of the complaint

5. During the initial stages of the complaint, the Commissioner contacted the Council on 21 August 2007 and enquired whether the Council had an internal review procedure. A response from the Parish Clerk confirmed that the Council did not operate an internal review procedure for information requests. In such circumstances, the Commissioner will consider a complaint without an internal review.

Scope of the case

6. On 4 September 2007, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically complained that he had neither received an acknowledgement of his request nor the information requested and that the deadline had elapsed.

7. The complainant also complained to the Commissioner about some separate requests for information about the identity of the Council's indemnity insurers. None of these requests are considered in this Notice because the outstanding information was supplied to the complainant during the Commissioner's investigation via the Council's solicitors on 16 October 2007 and the matter was therefore informally resolved.

Chronology

8. The Commissioner wrote to the Council on 30 October 2007 and asked the Council to clarify the details of its response. The Commissioner also expressed concerns about other correspondence on the file that suggested that the Council was not complying with some of the procedural requirements under the Act relating to the refusal of requests. He asked the Council for its comments on these failings and whether it would be taking any steps to address them in the future. The Commissioner also wrote to the complainant to confirm that he was reviewing the Council's response to his request.
9. The Chairman of the Council telephoned the Commissioner on 6 November 2007 to discuss the background to the request. He informed the Commissioner that the Council and the complainant are opposing parties in litigation and that he wished the Commissioner to take this into account when considering the complaint. The Chairman advised the Commissioner that it was his contention that the request was vexatious.
10. The Council responded formally to the Commissioner on 5 November 2007. It stated that it had responded to the request on 1 October 2007 and it supplied a copy of the letter. The Council also confirmed that its annual accounts were available on its website and provided documents confirming this. It did not address the general procedural failings noted by the Commissioner.
11. On 13 November 2007, the Commissioner wrote a further letter to the Council. The Commissioner pointed out that the Council had not addressed whether it actually held the information requested apart from the accounts and he asked the Council to clarify this.
12. The Council responded to the Commissioner on 26 November 2007 and stated that it believed that it had responded fully to the Commissioner's correspondence. It stated that it considered that the original insurance policy documents were exempt from general disclosure under section 42 of the Act (Legal Professional Privilege).
13. On 12 December 2007, the Commissioner wrote to the Council and asked it to provide the withheld information in order to allow the Commissioner to consider whether the exemption under section 42 had been correctly applied.
14. The Council responded on 18 December 2007. The Council stated that its Executive Officer had confirmed that no letter had ever existed from the Council's insurers authorising any member of the Council executive powers. The Council

stated that following checks for the original insurance documents requested it had now determined that it does not hold the information.

15. On 15 January 2007, the Commissioner wrote to the Council and asked some questions designed to ascertain whether the information was held as follows:
- Please could the Council provide details of the steps taken to ascertain whether the information is held? This includes details of officers consulted and searches that they, or other persons, conducted.
 - I understand that the Council's position is that a letter from the insurers authorising executive powers has never existed. Is the Council able to provide an explanation as to why it does not hold the information requested? For instance, has the Council been granted such powers by the insurer? Could such powers actually be authorised by the insurer?
 - Could the Council explain why it does not hold the other items of information, namely the insurer's policy and the original proposal? It seems reasonable for the claimant to expect that the Council would hold this documentation.
 - Please could the Council state whether it has ever held a copy of the insurer's policy and the proposal form? Were they deleted or destroyed and if so, does the Council hold any records on when this took place?
 - In the event that the policy and the form were deleted or destroyed, does the Council have a records management policy? If so, what does it state about records of this sort?
16. The Council responded to the Commissioner's questions on 21 January 2008. It confirmed that its insurance commenced with its existing insurer on 19 October 1992 and that the policy had been amended and renewed annually since then. It explained that because the original information dates back to 1992, the Council had not kept a copy of this documentation on file owing to its lack of administrative use. It stated that it does not have a records management policy so it was unable to account for what had happened to the original insurance documents. The Council reiterated that it had never held a letter authorising executive powers and that no such powers had ever been granted to the Council.
17. The Commissioner telephoned the Council on 4 February 2007 to clarify that annual reports were also available on the website as well as the accounts. The Council confirmed that both the annual reports and accounts were available on the website.

Analysis

Procedural matters

18. The complainant submitted his request for information on 8 August 2007 but the Council did not respond until 1 October 2007 when it refused the request. It is apparent that this was a very significant delay without explanation that was in breach of the statutory deadline to issue a refusal notice within 20 working days.

19. In response to the request and another request for information about the identity of the insurer (referred to in the scope of the case section of this Notice), the Council referred to section 14 and regulation 14 of the Act. It did not make it plain what information these exemptions referred to and regulation 14 is not an exemption under the Act. It appears that when the Council referred to information being “confidential”, it meant that it wished to apply the exemption under section 42 of the Act to copies of its original insurance documents. This being a qualified exemption, the Council also failed to consider the associated public interest test. It is the Commissioner’s view that the refusal notice suffered from a lack of clarity and this in turn affected the complainant’s understanding of the reasons behind the Council’s refusal.
20. In relation to the information that was available on the website, it is the Commissioner’s view that the Council failed to adequately state why the exemption under section 21 applied by referring to the fact that the information was in the public domain but not specifying how it could be accessed by, for example, including links to the relevant web pages.
21. The Council’s refusal notice was also deficient in that it did not advise the complainant that the Council does not operate an internal review procedure. In addition, the Council did not make any reference in the refusal to the complainant’s right of appeal to the Commissioner. It therefore failed to comply with its obligations under the Act.
22. At the end of the Commissioner’s investigation, the Council revealed that it did not hold the requested information relating to the insurers and it is therefore apparent to the Commissioner that no effective searches for the information had been carried out until that point. The Council therefore failed to comply with its obligation under the Act to state whether it holds requested information.

The Decision

23. The Commissioner’s decision is that the Council did not deal with the request for information in accordance with section 1(1)(a) of the Act because it did not inform the complainant in writing that it does not hold the information requested. The Commissioner is however satisfied that the information concerning the Council’s insurer is not held and that the remainder of the information is exempt under section 21 of the Act because it is reasonably available otherwise than under section 1.
24. The Commissioner also considers that the Council failed to comply with the Act in the following respects:
 - It failed to issue a refusal notice within 20 working days and therefore breached section 17(1) of the Act
 - It failed to correctly specify the exemption it wished to apply (section 42) in the refusal notice and therefore breached section 17(1)(b)

- It failed to state (when it was not otherwise apparent) why the exemptions under section 42 and section 21 of the Act applied and therefore breached section 17(1)(c)
- The Council also failed to state that it does not offer an internal review procedure for dealing with complaints about the handling of requests for information and therefore breached section 17(7)(a)
- The Council failed to give details of the right of appeal to the Commissioner conferred by section 50 and therefore breached section 17(7)(b) of the Act

Steps Required

25. The Commissioner requires no steps to be taken.

Other matters

26. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

The Council advised the Commissioner that it does not have a procedure in place to deal with complaints arising from the handling of information requests. Whilst a complaints procedure is not mandatory, the section 45 Code of Practice recommends that such a practice is adopted by public authorities, and the Commissioner therefore advises the Council to reconsider its approach in light of this.

Right of Appeal

27. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 25th day of February 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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 2(2) provides that -

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Section 14(1) provides that -

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Section 14(2) provides that -

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current 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 -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(7) provides that -

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

- (a) 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
- (b) contain particulars of the right conferred by section 50.”

Section 21(1) provides that -

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 42(1) provides that -

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”