

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 08 October 2009

Public Authority: West Felton Parish Council
Address: Parish Office
Montford Bridge
Shrewsbury, Shropshire
SY4 1ER

Summary

The complainant submitted requests to West Felton Parish Council for copies of documents made within the Council. Responses to the requests were not provided. The Commissioner's decision is that the Council failed to comply with section 1(1)(a) and (b) of the Act and must now do so within 35 calendar days of the date of this notice. The Commissioner found that West Felton Parish Council breached section 10(1) 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. On 2 November 2008 the complainant requested the following information:
 - 1) There was a proposal for a tree-preservation order for an oak at our November 2007 meeting (item 7.5). Was this ever obtained?
 - 2) Cutting of verges next to the Church. You said you would get authorisation for this from Shropshire CC. Would you please let me have copies of any correspondence on this.

- 3) Tree Safety Inspection, Burial Ground. July minutes (6.5c) state that an inspection was to be carried out by a (*name redacted*). Could you let me have a copy of his report, please?
- 4) Parish Office Safety Check. Would you let me have a copy of this report, please.

On 27 November 2008 the complainant requested the following information:

- 1) Will you please let me have copies of all extant emails to do with West Felton Parish Council, either sent by you or received by you, for the period of 17th May 2007 and 27th November 2008, both dates inclusive.
- 2) Will you also, at December's meeting, please let me have copies of all emails sent or received by you for the period from 28th November 2008 to 18th December 2008.

On 22 March 2009 the complainant requested the following information:

- 1) Will you please let me have (a) a copy of the advice received from NALC concerning the former clerk's claim for compensation; and (b) a copy of the estimate for safety work on the trees at the Burial Ground.

On 16 April 2009 the complainant requested the following information:

- 1) Will you please let me have a copy of (*name redacted*)'s resignation letter or email?

The Investigation

Scope of the case

3. On 7 and 24 April 2009 the complainant contacted the Commissioner to complain about West Felton Parish Council's failure to respond to his requests.

Chronology

4. The Commissioner notes that West Felton Parish Council has not responded to the complainant's request since those dates, or indicated when it expects to respond either directly to the complainant or to the Commissioner.

Analysis

Procedural Requirements

Section 1

5. Section 1(1) of the Act states 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.”

6. The Commissioner considers that West Felton Parish Council has failed to comply with section 1(1)(a) and (b) of the Act to date, as it has not provided a response to the complainant.

Section 10

7. Section 10(1) of the Act states 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.”

8. The Commissioner considers that West Felton Parish Council has breached section 10(1) of the Act as it failed to respond to the request within twenty working days following the date of receipt.

The Decision

9. West Felton Parish Council has breached section 10(1) of the Act in failing to comply with section 1(1) within twenty working days following receipt of the request.

Steps Required

10. The Commissioner requires West Felton Parish Council to respond to the complainant's requests in accordance with section 1(1)(a) of the Act by informing the complainant whether it holds the information, or issuing a refusal notice explaining why it is excluded from the section

1(1)(a) duty to confirm or deny if information is held. If the exclusion from the duty to confirm or deny does not apply, and the information is held, then West Felton Parish Council should respond to the complainant's requests in accordance with section 1(1)(b) by either communicating the information to him or issuing a valid refusal notice. Any refusal notice issued should comply with the requirements of section 17.

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

Failure to comply

12. 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

13. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 8th day of October 2009

Signed

**Anne Jones
Assistant Commissioner**

**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.”

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(6) provides that –

“In this section –

“the date of receipt” means –

(a) the day on which the public authority receives the request for information, or

(b) 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 -

(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(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) 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
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) 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 -

- (a) 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
- (b) 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 –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) 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
- (c) 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 –

- (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.”