

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 December 2010

Public Authority: Magherafelt District Council
Address: Council Offices
50 Ballyronan Road
Magherafelt
BT45 6EN

Summary

The complainant requested information in relation to all freedom of information requests and responses dealt with by Magherafelt District Council (the Council) during 2009. The Council confirmed it held the required information and issued the complainant with a fees notice under section 9 of the Act. During the course of the investigation the Council subsequently advised the Commissioner that it considered some of the information exempt under section 40(2).

The Commissioner's decision in this case is that the Council breached section 17(1) of the Act in that it failed to issue a refusal notice in relation to the information it considered exempt under section 40(2). The Commissioner finds that the fee charged under section 9(1) for communicating the information was reasonable, but the Council failed to offer appropriate advice and assistance to the complainant, breaching section 16 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 26 January 2010, the complainant made the following information request to Magherafelt District Council (the Council):

"Provide a copy of each freedom of information request received by the council during 2009. Also provide a copy of the council's response to each request."

3. On 3 February 2010, the Council responded to the complainant and confirmed that it held the requested information. The Council issued a fees notice under section 9 of the Act, advising that the cost of photocopying the requested information would be £340.
4. On 5 February 2010, the complainant requested the Council conduct an internal review of its decision to charge for the information requested.
5. The Council responded with the outcome of its internal review on 4 March 2010. The internal review upheld the Council's original decision to charge a fee for photocopying the information requested, but issued a revised fees notice of £200 rather than £340.

The Investigation

Scope of the case

6. On 13 April 2010, the complainant contacted the Commissioner complaining about the Council's decision not to supply the information requested.

Chronology

7. On 6 August 2010, the Commissioner wrote to the Council requesting a detailed breakdown of how it arrived at the figure of £200, as set out in the revised fees notice, to provide the information requested.
8. On considering the wording of the request it appeared likely to the Commissioner that the information to be disclosed would contain personal information such as the names and addresses of requesters. The Commissioner is mindful of his role as both FOI and data protection regulator, and for this reason asked the Council whether it had considered any personal data issues.

9. The Council responded by letter dated 2 September 2010. At this stage the Council clarified that it had considered the request to be "live" as the complainant had not specifically agreed to pay the sum required in the revised fees notice. However the Council went on to confirm that, if the complainant had agreed to pay the fee, the Council would then have sought to withhold the personal information under section 40(2) of the Act.

Analysis

Procedural Requirements

Section 9 – fee for complying with section 1(1)

10. Section 9(1) of the Act provides:

"A public authority to whom a request for information is made, may, within the period for complying with section 1(1) give the applicant a notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1)".

11. The revised fees notice issued by the Council states that a charge of £200 would be payable to provide the information requested. The Council advised the Commissioner the relevant information comprised 1,359 A4 pages. The Council's publication scheme states that a charge of 15 pence per sheet would be applied for photocopying if the number of pages exceeds 26, which equates to a rounded down photocopying charge of £200.
12. The £200 fee as charged by the Council relates solely to photocopying charges at 15 pence per page. The Commissioner has previously considered that 10 pence per page is a reasonable charge for photocopying costs, however 15 pence per page may still be reasonable with the proviso being that the charge does not exceed the actual cost of providing the information. The Commissioner sought further clarification from the Council on the actual photocopying costs incurred and was advised that following a recent review of its printing and photocopying costs, the actual cost incurred is 13.5 pence per page.
13. However, the Commissioner considers that a fees notice should be applied to the information the Council is prepared to release. Had the complainant paid the fee he would have expected to receive all the

information he had requested, as the Council had not advised him that any of the information may be exempt. Therefore the Commissioner finds that the Council did not apply section 9 properly in that it failed to advise the complainant that not all of the information would be provided even if he paid the fee.

Section 16 – advice and assistance

14. Section 16 of the Act deals with the duty to provide advice and assistance to applicants. Section 16(2) states that:

"Any public authority which in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case".

15. The Code of Practice issued under section 45 of the Act (the Code) provides guidance on good practice to public authorities in carrying out their duties in relation to the Act. The Code includes suggestions in relation to the nature of the advice and assistance that public authorities should provide in relation to section 16 of the Act. Paragraph 13 of the Code states that where the applicant indicates that he is not prepared to pay the fee notified in any fees notice, the authority should consider whether there is any information of interest to the applicant that is available free of charge.
16. The Council advised it had offered assistance to the complainant in its fees notice dated 2 February 2010, however the complainant chose not to avail himself of this. The Council also pointed out that the complainant is a journalist, and, as such, could be expected to be familiar with the provisions of the Act. The Council also advised the Commissioner that the complainant did not at any stage specifically indicate he was not prepared to pay the fee notified in the fees notice. The Council advised had he done so it would have considered whether there was any information of interest to the applicant that was free of charge.
17. The Commissioner reviewed the advice as offered by the Council which stated *"If you require any assistance please let me know"*. The Commissioner does not consider this sufficient to constitute the offering of advice and assistance as set out in section 16 of the Act. In particular the Commissioner considers that paragraph 13 of the Code suggests that authorities should proactively consider whether any information could be released if an applicant refuses to pay the fee.

18. The Commissioner also notes that, although the complainant did not explicitly refuse to pay the fee, he did request an internal review of the Council's decision to charge a fee. Paragraph 38 of the Code states that any written reply from the applicant expressing dissatisfaction with an authority's response to a request should be treated as a complaint. The Commissioner considers that the Council should have interpreted the request for an internal review as an indication the complainant was not prepared to pay the fee. The Council does appear to have used the internal review process as an opportunity to revisit the fees notice as it revised the fee to £200. However the Commissioner is of the view that at this stage the Council ought to have considered whether there was any information of interest to the applicant that was available free of charge. In failing to do so the Commissioner considers the Council failed to comply with section 16 of the Act.

Section 17(1) – refusal notice

19. Section 17(1) provides that, where a public authority refuses a request for information, it is required to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon. This notice should be provided to the applicant within twenty working days.
20. The Commissioner notes that in this case the Council did not advise the complainant that it would withhold information if the fee were paid. The Council only introduced the exemption at section 40(2) after the Commissioner raised the issue of personal data contained within the requested information. The Commissioner notes that the Council did not at any stage advise the complainant of its intention to rely on this exemption. Therefore the Commissioner finds that the Council failed to comply with the requirements of section 17(1) in failing to issue an adequate refusal notice in response to the request.
21. In not issuing a refusal notice, it follows that the Council failed to comply with section 17(7) of the Act in that it did not provide details of the Council's appeals procedure nor did it state that it did not have such a procedure. It also failed to advise of the complainant's right, under section 50 of the Act, to apply to the Commissioner for a decision as to whether his request for information had been dealt with in accordance with the Act.
22. Accordingly, the Commissioner finds that the Council breached all the requirements of section 17(1)(a), (b) and (c) and section 17(7) of the Act.

The Decision

23. The Commissioner's decision is that following elements of the request were not dealt with in accordance with the Act:
- Section 16 in that the Council failed to provide advice and assistance to the complainant.
 - Section 17(1)(a), (b) and (c) and section 17(7) in that the Council failed to provide an adequate refusal notice within the statutory time limit.

Steps Required

24. The Commissioner requires the Council to take the following steps to ensure compliance with the Act:
- Reconsider the complainant's request and issue an appropriate refusal notice in respect of any information considered exempt from disclosure.
 - Consider whether advice and assistance can be offered to the complainant in line with the Code, to comply with section 16 of the Act.
25. The Council must take the steps required within 35 calendar days of the date of this Notice.

Right of Appeal

26. 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: 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 sent.

Dated the 21st day of December 2010

Signed

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

Legal Annex

Freedom of Information Act 2000

Section 9 – Fees for complying with section 1(1)

(1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).

(2) Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.

Section 16 – Duty to provide advice and assistance

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

Section 17 – Refusal of request.

(1) 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.

(7) A notice under subsection (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.