

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 October 2011

Public Authority: Stamford Town Council
Address: Town Hall
St. Marys Hill
Stamford
PE9 2DR

Decision

1. The complainant requested information from Stamford Town Council ('the council') about its actions towards and views about an organisation represented by the complainant.
2. The Commissioner's decision is that the council was not entitled to refuse to provide the requested information under section 42(1) of the Act. He consequently requires the council to comply with section 1(1) of the Act by confirming whether the requested information is held, and if so disclosing it to the complainant.
3. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply 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.

Request and response

4. On 2 December 2010 the complainant wrote to the council. Included within this letter were several questions highlighted in a different colour font. These are listed at Annex A.
5. The council wrote to the complainant on 7 April 2011 and stated that the costs of compliance with her aggregated requests might exceed the fees limit. Following the intervention of the Commissioner, the council issued a refusal notice on 3 May 2011 withholding the requested information under section 42 of the Act.

6. The complainant requested an internal review on 27 April 2011 and the council responded on 27 July 2011. This however appeared to be a review of the council's actions in relation to the issues raised in the request, rather than a review of the response to the request itself.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way her request for information had been handled. The Commissioner considers that requests 2, 5, 6 and 7 are not valid requests for information under the Act. This is because they are not requests for recorded information but ask the council to commit to future actions or to provide opinions.
8. The Commissioner has investigated whether the council was entitled to withhold the information under the exemption at section 42.

Reasons for decision

Section 42

9. The council withheld the requested information under section 42 of the Act. The exemption at section 42(1) applies where information is subject to legal professional privilege. Legal professional privilege protects the confidentiality of communications between a lawyer and client.
10. The council has applied this exemption on the basis that it is planning to institute legal proceedings against the organisation represented by the complainant. However, the Commissioner notes that the withheld information does not appear to constitute communications from a lawyer. The Commissioner therefore does not accept that the exemption at section 42 is engaged.
11. The Commissioner therefore requires the council to comply with section 1(1) by confirming whether the requested information is held, and if so, disclosing it to the complainant. The Commissioner would emphasise that the Act does not require a public authority to create information in response to a request. However, if information within the scope of a request is not held then a public authority must state that this is the case.

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

Annex A

The complainant's request of 2 December 2010:

- 1) "...under which specific power or duty the Town Council feel they have a right to scrutinise our independent charity's contractual relationship with the police and the basis for their request for a copy of the police report on the event?
- 2) Can you please provide us with suitable dates / times for this meeting to take place without further delay?
- 3) ...why it was felt the discussion of the whole of this report [the Riverside review report] would involve exempt information and what factors were considered when making the proposal that the public interest test favoured exclusion?
- 4) ...why it was felt that the discussion of this issue ["the charging system for our festival"] at the Amenities Meeting would involve exempt information and what factors were considered when making the proposal that the public interest test favoured exclusion?
- 5) We also look forward to receiving details of dates / times when we can meet to discuss this matter without further delay
- 6) We therefore trust that a decision on our request to use the Meadows will be forthcoming without further delay and that we will receive a speedy confirmation of our request to use the site for this community even for 2011
- 7) ...are the Town Council suggesting that they have a greater role in scrutinising how public money is spent than any of these larger authorities?
- 8) ...explain how the Town Council's decision to require Riverside to provide a full audit...complies with these Compact principles?
- 9) ...provide us with information about why the Town Council thinks that the outcome of the situation with De Montfort Hall in Leicester is in any way relevant to Riverside?
- 10) ...let us know what specific concerns the council / councillors have about our finances?
- 11) ...let me know of the current available dates between May and October 2011 for the Meadows, Recreation Ground and Town Hall"