

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2011

Public Authority: West Berkshire Council
Address: Council Offices
Market Street
Newbury
Berkshire
RG14 5LD

Decision (including any steps ordered)

1. The complainant requested the agenda, minutes and documents/notes associated with a meeting between officers and councillors that took place on 17 November 2010 between 6.00 and 6.30pm prior to a planning committee meeting.
2. The Information Commissioner's (the Commissioner's) decision is that West Berkshire Council (the council) has correctly applied section 1 of the Freedom of Information Act (the Act), since it does not hold any further information that has not already been supplied to the complainant.
3. The Information Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 22 March 2011, the complainant wrote to the council and requested information in the following terms:

"I understand that there was a meeting between officers and councillors from around 6pm to 6:30pm on 17th November 2010 before the Western Area Planning Committee Meeting considering the planning application for Sovereign Housing's proposed redevelopment

of the Priory and Platt Court in Hungerford (application number 10/01928/FULEXT). The meeting was held in the council chambers and the press and public were excluded.

Please could you supply:

- (1) The agenda for this meeting*
- (2) The minutes of the meeting*
- (3) Any other associated notes/documents".*

5. The council responded on 22 March 2011. It stated that there was no briefing meeting or pre-meeting held on that date and time.
6. On 3 April 2011 the complainant asked for an internal review because she said that the council's account did not tally with her recollection or the recollection of other individuals.
7. Following an internal review, the council wrote to the complainant on 4 April 2011. It stated that there had been no meeting and therefore there were no notes to provide to the complainant.
8. However, on 5 April 2011, the council wrote to the complainant to advise that, although no pre-meeting had taken place, a training session for the western area planning committee had taken place at the date and time specified in her request. The council stated that the contents of the training were unrelated to the meeting that took place afterwards. It was confirmed that there was no agenda or minutes.
9. On 7 April 2011, the complainant responded by asking for the following information:
 - The agenda for this meeting.
 - The minutes of the meeting.
 - Any other associated notes/documents.

She also asked for clarification as to why the request was being refused. Finally, the complainant suggested that she would expect certain information to be provided such as:

- Training meeting invitations/notifications (specifying the date and purpose of the meeting/training).
- Acceptances or apologies.
- Notes specifying matters covered.
- A list of attendees.

10. On 10 May 2011, the council conducted another internal review, though the complainant stressed that she had not asked for this. The reviewer stated that the event was not a committee meeting and that the council has not produced or retained notes or other documentation relating to it. The reviewer also stressed that the council was not required to do so. The council provided certain enclosures which comprised of the audit trail for the training that was held. There was no record of acceptances or declines. The reviewer concluded that he had provided everything held by the council relating to the training session and that nothing further was held.
11. On 10 May 2011 the complainant wrote back to the council suggesting that she did not accept that there was nothing further held, such as briefing notes.

Scope of the case

12. The complainant contacted the Commissioner on 24 May 2011 to complain about the way her request for information had been handled. She made the following observations:
 - That she did not accept that the 'training' meeting that had taken place had no relation to the planning committee meeting immediately afterwards, or that no documentation existed.
 - That the matters covered in the meeting apparently related to a planning application which was the first application to be considered in the meeting that followed.
 - That a ward councillor had attended the meeting that the council had described as training.
 - That, as this training had been delivered on 3 separate occasions, no training/briefing notes had been produced to accompany it.
13. The Commissioner considers the scope of this case to focus on determining whether any information was held in relation to the request that has not been supplied to the complainant.

Reasons for decision

14. Section 1 of the Act states that any person making a request to a public authority must be informed in writing if that information is held and, if that is the case, to have that information disclosed to him.

15. On 30 June 2011, the Commissioner wrote to the council explaining that he had received a complaint about its handling of this request for information.
16. On 16 August 2011, the case officer called the council in response to its request and made a file note of the conversation:
 - The council maintained that it had explained to the complainant about the initial misunderstanding and the subsequent correction of the error.
 - The council further explained that no PowerPoint presentation had been used at the training session as it had broken down during an earlier training session and it was decided that the second session should be conducted without it.
 - Although notes were taken at the time, these were not retained and there was no recorded information held electronically at the time of the request.
17. Having considered the history of the complaint as set out in whatdotheyknow.com and in the chronology above, the Commissioner wrote to the complainant on 17 August 2011 setting out the reasons why he accepted the council's reasons for stating that there was no further information held in relation to the training/meeting that was the basis of the request for information.
18. On 23 August 2011, the complainant explained that she did not accept the Commissioner's view and that she had further evidence that she had not wished to include on whatdotheyknow.com and that she would supply that evidence in time.
19. On 12 September 2011, the complainant gave her reasons for not accepting the council's conclusions:
 - That the committee meeting that followed the training had a 'rehearsed' atmosphere.
 - That she felt that the council had tried to imply that her request was within a 'vexatious' context by including correspondence that was irrelevant to her complaint.
 - That she did not accept that the information was 'not held' as this was not credible in light of other information she had obtained and the initial denial the council had made.
 - That she believed that PowerPoint printouts would still be in existence or recoverable as a third training session was

scheduled for presentation after the training session in question. She also questioned the lack of an audit trail of any training having taken place.

20. The Commissioner wrote to the council on 22 September 2011 in an attempt to further determine what was held/not held by the council at the time of the request and how it had reached that determination.
21. On 6 October 2011, the council responded at length providing further chronology and context:
 - The initial misunderstanding occurred because the individuals who had been contacted had said that they recollected no meeting taking place between 6.00 and 6.30 pm. One of those emailed stated that it was not the practice of the committee to arrange pre committee meeting discussions about items on the agenda.
 - When a further request was received relating to a meeting having taken place before the main planning committee meeting further enquiries were made and it was established that training had taken place at that date and time.
 - One of the managers who had taken the training session confirmed that it had taken place and that it was not a pre-brief or briefing session relating to the main meeting afterwards.
22. The Commissioner asked for further confirmation on 13 October 2011 regarding the PowerPoint presentation that had been prepared but not shown during the training session.
23. On 17 October 2011, the council confirmed that it no longer held the PowerPoint presentation. In answer to the Commissioner's questions it explained that, as far as the recollection of the trainer went, the presentation had been overwritten in part or whole by the time of the request as another round of training was being prepared.
24. The Commissioner wrote to the council on 18 October to ask for further clarification concerning the PowerPoint presentation.
25. On 19 October 2011, the council explained that it could not be certain if the presentation had existed at the time of the request as there was no record of when it was destroyed. However, in line with the officer's normal working practice, the council decided that the information had not been held. The council stressed the ephemeral nature of the information and the fact that it was neither statutorily obliged to retain this information nor was it obliged to retain it by its own records management policy. The council categorically stated, after further

consultation, that the presentation had not been reused or recycled into another presentation.

26. The Commissioner is satisfied that everything the council holds within the scope of the request and the subsequently amended request has been given to the complainant.
27. The Commissioner accepts on the balance of probability that no further information is held by the council and that a reasonable effort has been made to determine this. Accordingly, the Commissioner is satisfied that the council has complied with its obligations under section 1(1)(a) and (b) of the Act.

Right of appeal

28. 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

29. 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.
30. 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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