

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2011

Public Authority: Morley Town Council
Address: Morley Town Hall
Queen Street
Morley
Leeds
LS27 9DY

Decision (including any steps)

1. The complainant requested an agenda item which was discussed at an Annual General Meeting (an "AGM"). This was refused at the time of request because it would be available in the future, to a limited audience, once it had been approved. The complainant was subsequently advised that he could not be provided with a copy as it was in 'draft' and not available to the public. Following its approval the complainant was later offered a copy of the document provided he paid for any disbursements. The complainant has advised that he wanted a copy of the draft document as it existed at the time of his request, not the item which was later offered.
2. The Information Commissioner's decision is that the public authority failed to issue an adequate refusal notice, that the item requested was not the item which would be made available in the future, and that being in 'draft' form does not necessarily make information exempt from disclosure under FOIA.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - It should either provide a copy of the draft document, as discussed at the AGM, or provide an adequate refusal notice explaining why the item is exempt from disclosure under FOIA.
4. 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 Information 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

5. On 25 May 2011, the complainant wrote to the public authority and requested information in the following terms:

"Please provide the supporting document for Agenda item 26 of the AGM held on Wednesday the 18th May 2011.

This was omitted from the documentation pack sent to Morley Library and I understand that copies were not available for meeting observers on the night".

6. Having previously acknowledged the request, the public authority responded on 16 June 2011. It stated:

"You have requested a copy of the supporting document for agenda item 26 of the Town Council's Annual Meeting held on 18th May 2011. This supporting document was the 2010/11 Annual Return which required the approval of Council before submitting this to the External Auditor.

A notice has recently been displayed on the Town Council notice board relating to the 'Notice of appointment date for the exercise of electors' rights'. During the stated period, i.e. commencing on 27th June 2011 and ending on 22nd July 2011 (20 working days), members of the public entitled and registered to vote in local council elections have the right to inspect the accounts, and request copies, if required. A charge will be made for photocopies.

Therefore, provided you are entitled, as above, you may inspect the accounts during the appointed period. A copy of the Annual Return itself will be displayed once the External Auditor's Certificate and Opinion has been signed and returned to the Town Council".

7. On the same date the complainant responded saying that he was unhappy with this response. He said that he was asking for: *"an attachment to an Agenda item that was not a confidential matter as it was discussed in public at full Council".* He was also unhappy that the information would not be made available within the statutory deadline.

8. On 19 July 2011 the public authority provided an internal review. It advised the complainant that:

"I can confirm that your request for a review was considered by the Town Council's Complaints Sub-Committee ...

It was resolved that the document to which you refer was in fact a 'draft' document for submission to the Town Council's External Auditors and referred to the Council meeting for consideration by members and therefore not for public circulation. Members of the Complaints Sub-Committee agreed that there was no 'missing document' and that correct procedures have been followed".

9. No exemptions were cited by the public authority.

Scope of the case

10. On 22 July 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He specifically referred to the availability of the information being at a date exceeding the statutory time limit and also the inconvenience in being required to travel to see the information.
11. On commencing his investigation the Information Commissioner was also advised by the complainant that it was the 'draft' annual return that he wanted access to – that is, as it existed at the time the request was made – rather than the approved version which was to be made available later.

Reasons for decision

12. Section 1(1) of FOIA requires a public authority in receipt of a request to confirm whether it holds the requested information and, if so, to disclose it to the applicant. Alternatively a public authority can issue a refusal notice compliant with section 17. This should cite the specific exemption that the public authority relies upon in refusing a request.
13. The public authority has not provided the information nor has it issued a valid refusal notice citing which exemption/s it is relying on. It has therefore breached both of these sections.
14. Although it did not cite section 22, the public authority advised in its initial refusal that it did not need to comply with the request because it intended to publish the requested information at a future date. During

the Information Commissioner's investigation it became apparent that it had intended to publish its Annual Return, as a copy was offered to the complainant. However, this is not the 'draft' version of the document which accompanied the AGM agenda and existed at the time of the request. Therefore, the Information Commissioner concludes that section 22 does not apply.

15. The public authority also referred to the document being in 'draft' form and therefore not being suitable for 'public circulation'. This is not a valid response under the FOIA.
16. The public authority should either provide the complainant with a copy of the requested information or issue a valid refusal notice stating why it is exempt from disclosure.

Right of appeal

17. 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: 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

18. 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.
19. 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

Jon Manners
Group Manager – Complaints Resolution

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