

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2012

Public Authority: Border Group Parish Council
Address: 8 Red House
Bedstone
Bucknell
Shropshire
SY7 0BE

Decision (including any steps ordered)

1. The complainant has requested a copy of Border Group Parish Council's ('the council') publication scheme and the date it was adopted. Despite the intervention of the Commissioner, the council has not provided an adequate response to the request in accordance with the Freedom of Information Act. The Commissioner therefore reminds the council of its obligations under the Freedom of Information Act and requires that it either respond to the request in accordance with the legislation or issue a valid refusal notice under section 17(1).
2. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. On 1 April 2011, the complainant wrote to the council and requested information in the following terms:

"I had a few things I wanted to check in regard to BGPC. The first that would be most useful is the Freedom of Information Publication Scheme and the date it was adopted by BGPC – in line with section 20 of the Freedom of Information Act 2000.

I would like it quite urgently so please email it to me, if possible. Let me know if that is a problem.”

4. The council responded on 3 April 2011 stating that signing the publication scheme was a mandatory requirement and was done in 2001/2002 but the actual date would be contained in minutes which could be retrieved when the parish clerk had recovered from an infection.
5. The complainant replied on the same day stating that the year of adoption was sufficient and reiterated that he would still like to have a copy of the actual scheme.
6. On 15 April 2011, the complainant sent an email chasing the council's response.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner considers whether the council have responded to the request in accordance with the FOIA.

Reasons for decision

9. 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.”
10. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days.
11. On 22 June 2011, the Commissioner requested that the council issue a response to the complainant within 10 working days. He explained that the council should state whether or not the information is held in recorded form and if it is held, the council should either provide the information or issue a refusal notice in accordance with the

requirements of section 17 of the FOIA. The Commissioner also provided links to publically available guidance on refusing a request.

12. The council telephoned the Commissioner on 4 July 2011 to state that it hoped to retrieve the information by the end of the week.
13. This was followed by a letter on to the Commissioner on 10 July 2011 as follows:

“...I can confirm that in February 2005 the Clark drew the Council’s attention to the Implementation of the Full Act in January 2005 and issued copies of a brief outline of its main provisions. With apologies but as yet I can find no confirmation of formal ‘adoption’ by the BGPC. This is a small rural Parish and until the recent elections has had no reason to respond to any FIOA [sic] requests. If required this of course can be rectified. I am in consultation with my HALC Branch in replying to this requirement.”
14. On 20 March 2012 the complainant wrote to the council again to request a response to his request for a copy of the publication scheme. He reminded the council of the statutory obligation to have a publication scheme.
15. The complainant wrote to the Commissioner on 22 April 2012 to inform him that on 2 April 2012 and 6 April 2012 the council stated that the issue of the publication scheme would be included in the council’s next agenda. He pointed out that his original request was made over a year ago and that he had not yet received the requested information.
16. On 30 April 2012 the Commissioner wrote to the council again requesting that it issue an appropriate response within 10 working days. He clarified that the response to be issued to the complainant should not need to be approved as an agenda item at the next council meeting. He once again provided links to publically available guidance on refusing a request and also provided a link to a video available on the ICO website to assist the council.
17. The council replied on the same day stating that an up to date model template for a publication scheme was put on the agenda for 17 April 2012 and that copies were distributed to all council members and a master copy would be completed for approval at the next meeting on 15 May 2012. It also stated that it will eventually appear on the web and in minutes and a copy would be provided to [name redacted].
18. On 17 May 2012 the complainant once again notified the Commissioner that the council had failed to respond to the request.

19. The Commissioner contacted the council again on 24 May 2012 and informed it that the complaint has been deemed eligible for formal consideration under section 50 of the FOIA.
20. On 25 May 2012 the council replied stating that it had prepared a new draft 'Document of Information' which it had issued to all council members who would bring amendments to the next meeting for final approval.
21. It appears to the Commissioner that the council may not have held the requested information at the time of the request but may have subsequently held it in draft form. However, the council have never explicitly stated whether or not it holds the requested information either to the complainant or the Commissioner. Therefore, it is clear to the Commissioner that, in this case, the council has failed to adequately respond to the request in accordance with the legislation.

Other matters

22. Under separate cover the Commissioner has written to the council to remind it of the statutory obligation to have a publication scheme and to seek confirmation that it has one in place.

Right of appeal

23. 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

24. 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.
25. 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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