

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 October 2013

Public Authority: Mid Devon District Council

Address: Phoenix House
Phoenix Lane
Tiverton
EX16 6PP

Decision (including any steps ordered)

1. The complainant has requested information relating to the development of a site. Mid Devon District Council refused the request, citing the exemption for commercial interests (section 43(2) of the FOIA). During the course of the Commissioner's investigation the council disclosed the information to the complainant.
2. The Commissioner's decision is that, in failing to provide the requested information within 20 working days, Mid Devon District Council breached section 10(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 3 October 2012, the complainant wrote to Mid Devon District Council (the "council") and requested information in the following terms:

"(in relation to the Town Hall / tennis court / St Andrew street site)

1/ How much has the developer McCarthy & Stone paid for the site?

2/ How much will they contribute to either on or off-site affordable housing or community facilities and what will these contributions consist of?

3/ How much will the council contribute to the developer's costs such as initial site work/investigations or planning costs?

4/ Who will pay for demolition of 1&2 St Andrew Street and the creation of a vehicular access road?

5/ Has the final contract been signed as has been reported in the local press?"

5. The council responded on 4 February 2013. It stated that it was refusing the request, citing the exemption for prejudice to commercial interests (section 43(2) of the FOIA).
6. Following an internal review the council wrote to the complainant on 26 April 2013. It stated that it was maintaining its original position.

Scope of the case

7. On 26 April 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly withheld the requested information.
9. This Decision Notice does not include any analysis of whether or not the requested information was correctly withheld using the exemption under section 43(2) of the FOIA because it has now been disclosed.
10. Accordingly, this Decision Notice deals with the procedural aspects of the complaint only.

Reasons for decision

Section 10 – time for compliance

11. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
12. In this case the council disclosed the information in question to the complainant outside of the statutory time limit for compliance with requests. The Commissioner has therefore found that the council breached the requirements of section 10(1) of FOIA.

Right of appeal

13. 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

14. 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.
15. 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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