

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 June 2014

Public Authority: Rainworth Parish Council
Address: Village Hall
Kirklington Road
Rainworth
Mansfield
Nottinghamshire
NG21 0JZ

Decision (including any steps ordered)

1. The complainant has requested the council to disclose a copy of the tape recording that was made by the council of the parish council meeting that took place on 9 January 2014. The complainant specifically stated that he required the council to provide a copy of the tape in his original request.
2. The council responded. It confirmed that it was willing to disclose all the requested information and would make the tape recording available to the complainant for him to listen to and make notes. With regards to the complainant's preference for a copy of the actual tape, the council refused to provide this.
3. The Commissioner has considered this matter and the council's obligations under section 11(1) of the FOIA. It is the Commissioner's decision in this case that it would have been reasonably practical for the council to have complied with the complainant's preference of communication and should therefore have provided a copy of the tape in response to this request. As it failed to do so, the Commissioner considers the council breached section 11(1) of the FOIA in this case.
4. However, it is noted that the information requested has since been destroyed. The Commissioner cannot therefore order any steps compelling the council to comply with section 11(1) of the FOIA in this case. As a result he requires no further action to be taken in respect of this request.

Request and response

5. On 9 January 2014, the complainant wrote to the council and requested information in the following terms:

"I request a copy of the recording that was made at the Parish Council meeting of 9th January 2014."
6. The council responded on 15 January 2014. It stated that it was willing to allow the complainant to come to the council to listen to the tape recording that was made but it was unwilling to provide him with an actual tape copy. The council explained that it still required use of the tape but would contact him again when the tape was available for him to listen to.
7. On 16 January 2014 the complainant requested the council to carry out an internal review.
8. The council responded again on 22 January 2014. It confirmed that the tape recording was now free for him to listen to on council premises. It reiterated that the complainant was unable to take or have a copy but was free to make notes.

Scope of the case

9. The complainant contacted the Commissioner on 27 January 2014 to complain about the way his request for information had been handled by the council. Specifically, he requested the Commissioner to contact the council prior to the next council meeting and request that the tape recording is not deleted until his complaint has been considered, as it is the council's usual practice to delete a recording at the next meeting once the formal minutes of the previous meeting have been agreed.
10. The tape recording in question was deleted by the council in accordance with its standing orders' procedure prior to the Commissioner beginning his investigation. The complainant confirmed that he chose to reject the council's offer for him to visit the premises and listen to the recording prior to it being destroyed.
11. The Commissioner cannot order any steps to provide a copy of the tape if indeed this was to be his decision, as the information has now been destroyed. However, it can consider the council's handling of his request under the FOIA and whether the council adhered to the requirements of section 11 of the FOIA which addresses a public authority's obligations

where it receives a request for information in a particular format and this will be the focus of this notice.

Reasons for decision

12. Section 11(1) of the FOIA states that where, on making his information request, the applicant expresses a preference for communication by any one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.

13. Section 11(1) therefore allows an applicant to request a particular means by which the information is communicated to them. It does not state that the public authority must comply but it does state that a public authority must give due consideration to the applicant's preference for communication and should oblige when this is reasonably practical.

14. This section addresses the practicality of complying with an applicant's preference i.e. whether this is actually possible not whether the information itself should be disclosed. Obviously, there will be cases when it is not possible to comply because the information requested is not held in the format requested. However, it is apparent that this is not the case here.

15. It has already been established that the requested information was held at the time of the request in the format the complainant requested i.e. in a tape recording. The complainant specifically stated in his request that he required the contents of this tape communicated to him by way of a copy. There is no question here whether the information itself should be released under the FOIA or not, as the council offered the complainant the opportunity to listen to the entire contents and make notes. The relevant consideration here therefore is whether it would have been reasonably practical for the council to have supplied the

requested information by making a copy of the tape that existed and forwarding this to the complainant.

16. The council has explained to the Commissioner why it was unwilling to provide a tape copy of the parish council meeting. It stated that it is nothing to do with the contents of the information itself, as it was willing to give this information to the complainant. It is because the council's standing orders specifically state that the purpose of the tape recording is for the clerk to make minutes of the meeting after it has taken place and these orders state that this is the only purpose of the tape recording in question and should be deleted at the next meeting once the formal minutes have been agreed.

17. The Commissioner understands the relevant sections of the Council's Standing Orders to be as follows:

"10) A tape recording of the meeting will be taken by the Clerk as an aide to preparing the minutes only. The tape recording of each meeting will be erased after confirmation of the previous minutes.

(11) Photographing, recording, broadcasting or transmitting the proceedings of a meeting by any means is not permitted without the council's prior (written) consent."

18. The Commissioner does not consider this is a valid reason under section 11(1) of the FOIA to refuse to disclose the requested information in this case in the form the complainant requested. The council has not argued that it would not be reasonably practical to comply. Instead the council's only reason is that its standing orders specify a particular purpose for the tape recording in question. The relevant sections of its standing orders do not appear to imply that copies of the tape recording cannot be provided. Only that a tape recording will be taken by the clerk and no other forms of recording are permitted by any other person attending *unless* the council agrees.

19. As the requested information was held in a tape recording at the time of the request, the Commissioner considers it would have been reasonably practical for the council to have complied with the complainant's preference of communication. As stated previously, there is no question in this case as to whether the complainant could have the information or not. The council clearly responded that he could. And the Commissioner considers the council should have complied with his preference for communication in accordance with its obligations under section 11(1) of the FOIA, as it was clearly reasonable for it to do so considering the fact that the requested information was already held in the form the complainant required.

20. For the above reasons, the Commissioner has decided that the council breach section 11(1) of the FOIA in this case. However, the Commissioner does not require any further action to be taken in respect of this request, as the requested information has now been destroyed.

Other matters

21. Although the Commissioner cannot order any steps in respect of this request compelling the council to comply with the complainant's preference for communication, it is noted that the complainant may make similar requests for information to the council in the future. The council is reminded that unless it appeals this notice to the First-tier Tribunal it will be expected to comply with the complainant's preference for communication in accordance with section 11(1) of the FOIA *if* a preference of communication is specifically stated in the initial request made to it *and* it is reasonably practical for it to do so.
22. The Commissioner has produce guidance on the application of section 11(1) and this can be accessed via the following link:

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/means-of-communicating-information-foia-guidance.pdf

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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Rachael Cragg
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