Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2015

Public Authority: Caerphilly County Borough Council
Address: Penallta House
Tredomen Park
Ystrad Mynach
Hengoed
CF82 7PG

Decision (including any steps ordered)

1. The complainant requested copies of correspondence and minutes of meetings between Islwyn Indoor Bowls Club and Caerphilly County Borough Council ('the Council'). The Council initially stated that it did not hold the information requested. During the course of the Commissioner's investigation, the Council made a number of disclosures of information, subject to some personal data being withheld under section 40(2). The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information other than that which it has disclosed (subject to some information within the documents being withheld under section 40(2)). However, the Council breached section 10 of the FOIA in failing to provide the information within the statutory time for compliance. The Commissioner does not require any steps to be taken.

Request and response

2. On 14 November 2013 the complainant wrote to the Council and requested information in the following terms:

"Please provide copies of all correspondence and the minutes of all meetings between officers and elected members of Caerphilly Council and the Islwyn Indoor Bowls Club for the last two financial years and for this financial year to date".

3. The Council responded on 16 December 2013 and stated that the only communications between the Council and Islwyn Indoor Bowls Club ('IIBC') were verbal discussions and the Council did not hold a record of the conversations. The Council advised that IIBC would "retain the records of committee meetings that officers and members have attended".

4. On 18 December 2013 the complainant wrote to the Council and requested an internal review of its handling of the request. He pointed out that the original response did not address the part of his request for "correspondence and the minutes of all meetings between officers and elected members of Caerphilly Council and the Islwyn Indoor Bowls Club".

5. The Council acknowledged the internal review request on 18 December 2013 and sent several later communications apologising for the delay in conducting an internal review. On 17 April 2014 the Council confirmed that it had not provided the information requested and advised that the information, together with a response to the review was being processed. No further response to the request was provided by the Council.

Scope of the case

6. The complainant complained to the Commissioner on 26 June 2014 about the delay in the Council responding to his request for an internal review.

7. The Commissioner wrote to the Council on 27 June 2014 to remind it of its obligations under the FOIA. He asked the Council to provide the outcome of its review within 20 working days.

8. The complainant contacted the Commissioner again on 26 August 2014 to advise that he had still not received the outcome of the Council's internal review.

9. In view of the significant delays with the handling of this request, on 2 September 2014, the Commissioner exercised his discretion and accepted the complaint without an internal review having been carried out.

10. During the course of the Commissioner's investigation, the Council provided information relevant to the request. It made a number of disclosures, but each time the complainant raised concerns that the Council had not identified all the information held relevant to the request. This prompted additional disclosures from the Council. The

Council redacted some personal data under section 40(2) from the information disclosed, however, the complainant did not raise any concerns about these redactions.

11. In light of the above, the scope of the Commissioner's investigation into this complaint is whether the Council complied with its procedural obligations under the FOIA in its handling of the request of 14 November 2013 and whether all of the information held, relevant to the request, has been located.

Reasons for decision

Section 1 –General right of access

12. Section 1 of the FOIA 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.

13. In cases where a dispute arises over the extent of the recorded information that is held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to ascertain information falling within the scope of the request and he will consider if the authority is able to explain why further information is not held. For clarity, the Commissioner is not expected to prove categorically whether additional information is held. He is only required to make a judgement on whether the information is held "on the balance of probabilities"[1].Therefore, the Commissioner will consider both:

    - the scope, quality, thoroughness and results of the searches and
    - other explanations offered as to why further information is not held.

14. As stated in the "Scope" section above, during the course of the Commissioner's investigation, the Council made a number of piecemeal disclosures of information falling within the scope of the request. The

[1] This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

Commissioner has commented on the piecemeal disclosure of information in this case in the "Other matters" section of this notice.

15. The Council confirmed that relevant service areas and officers who would likely hold relevant information were identified through discussions with the Council's Head of Legal Services who had previously dealt with issues and complaints from the requestor in relation to IIBC. Following these discussion, searches were undertaken of the information held within the following locations:

    ICT – Information Governance Unit, and Head of ICT
    Corporate Services – Internal Audit Services
    Community & Leisure Services - Head of Community and Leisure Services, Sport & Leisure Services
    Corporate – Head of Legal Services, Legal Services
    Members – Councillors involved with IIBC
    Performance and Property Services – Head of Service
    Corporate Property – Facilities, Energy Team, Estates
    Engineering – Highways Operations, Engineering Admin, Traffic Management
    Chief Executive's department

16. The Council advised that some information was held in hard copy format within specific files/folders and other information was held electronically either in email accounts/folders or on various databases. The search method and search terms used by the Council to identify relevant electronic information was dependant on the way information was held and the department concerned. For example, the search terms used for email records included "Islwyn Bowls", "Islwyn Indoor Bowls Club", "Islwyn Indoor Bowls" and relevant email address for IIBC. For information held within the Council's electronic filing system by its Corporate Property Estates department, the search term "%bowl%" was used.

17. The Council confirmed that the departments and officers to whom the request was distributed were also asked to confirm whether they were aware of any additional service area/officers that might hold relevant information. All information identified through the searches conducted was returned to the Council's Information Governance Unit who checked emails/correspondence against the distribution list and sent out to additional service areas/officers, as appropriate.

18. Following disclosure of information in December 2014 the complainant raised a number of concerns that the information supplied was incomplete. These queries, and the Council's response are summarised below:

(i) The absence of minutes of the management committee meetings which are attended by officers and members of the Council

The Council confirmed that these documents are sent in hard copy only to relevant Councillors and officers by IIBC as there are compatibility issues between the word processing software used by the Council and IIBC. Councillors confirmed that they had not retained any hard copies but further checks of the relevant service area were undertaken by the Council and some minutes were identified and provided to the complainant.

(ii) Blank pages within the bundles of documents provided

The Council confirmed that the blank pages did not reflect information which had been withheld but was simply a result of the information having been batch scanned as double sided. As some documents consisted of an "odd" number of pages, when they were scanned, it would include a blank page.

(iii) Various emails referred to attachments which had not been provided

The Council advised that this was due to a system issue whereby the attachments had failed to print when the email was printed, and some attachments being 'archived' by its systems. The Council located the missing attachments and provided copies to the complainant.

(iv) There was no covering email/letter accompanying various copies of IIBC's constitution which the Council disclosed

The Council conducted additional searches and identified a covering email which was disclosed.

(v) Information within the leisure services bundle of information referred to meetings of officers and councillors but there were no agendas or minutes of such meetings

The Council advised that the meetings referred to less formal catch ups and as such agendas and minutes of the meetings were not produced. The only meetings where agendas and minutes were produced were executive committee meetings**,** copies of which had been provided**.**

(vi) The information provided included a copy of IIBC's new constitution but no information as to how the new constitution was agreed. As a new constitution can only be agreed at a general meeting, there should at the very least be an agenda and minutes of the general meeting

The Council confirmed that it did not hold an agenda or minutes of any meeting where IIBC had approved a new constitution. It explained that any alterations or amendments to the IIBC constitution only had to be approved by the Council if they related to fees, charges or terms of the Management Agreement.

(vii) Reference was made within the information disclosed about a decision about land adjoining IIBC but no decision had been provided.

The Council confirmed in February 2015 that no decision had yet been made about the land in question. A decision was expected in the near future.

19. The Council confirmed that, to the best of its knowledge, other than some hard copies of minutes of management committee meetings (as referred to in paragraph 18(i) above), no information relevant to the request had been destroyed or deleted. The Council does not have a record of the destruction of these documents but confirmed that the two members who attend the meetings advised that the minutes were destroyed after the meeting concluded, as they felt the information did not need to be retained. The Commissioner understands that IIBC retains copies of the information as they are IIBC meetings.

20. Based on the representations provided by the Council the Commissioner is now satisfied that it has carried out adequate searches of all locations where relevant information would be held. There is no evidence of any inadequate search or grounds for believing there is any motive to withhold information. Based on the searches undertaken and the other explanations provided by the Council, the Commissioner is satisfied that, on the balance of probabilities, the Council held no further recorded information relevant to the complainant's request other than that which has already been disclosed to him, or withheld under section 40(2).

Section 10(1) – time for compliance

21. 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.

22. The request in this case was made on 14 November 2013 and it was not until after the Commissioner commenced his investigation in November 2014 that the Council disclosed information relating to the request. In failing to provide the information within 20 working days of receipt the request, the Council clearly breached section 10(1) of the FOIA.

Other matters

23. Whilst there is no explicit timescale laid down by the FOIA for completion of internal reviews, the Commissioner considers that they should be completed as promptly as possible. The Commissioner believes that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

24. The Commissioner is concerned that in this case, at the time he accepted this complaint for consideration on 2 September 2014, the Council had still not provided the outcome of its internal review, which had been requested on 18 December 2013. The Commissioner notes that the Council has explained the delay was due to changes in senior officers which resulted in the review being overlooked. However, he does not believe that any exceptional circumstances existed to justify the significant delay, and he therefore wishes to register his view that the Council fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would take this opportunity to remind the Council of the expected standards in this regard and recommends that it aims to complete its reviews in future within the Commissioner's standard timescale of 20 working days.

25. The Commissioner considers that it is appropriate to comment on the piecemeal identification of information falling within the scope of the request by the Council and also its delays in providing responses to the Commissioner's requests for information.

26. During the course of his investigation of this complaint it was necessary for the Commissioner to query the extent of the searches conducted by the Council and raise other points about the scope of information held relevant to the request. Most, if not all of these queries resulted in the identification of further information falling within the scope of the request and as a consequence information was disclosed on a piecemeal basis. Whilst the Commissioner does not expect public authorities to conduct an extensive, unfocused search of all its records in every case, he does expect that a reasonable and proportionate search is conducted at the outset to prevent such piecemeal disclosure of information occurring.

Right of appeal

27. 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: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.

29. 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 .....

Anne Jones
Assistant Commissioner
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Wilmslow
Cheshire
SK9 5AF