

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2015

Public Authority: Keighley Town Council
Address: Keighley Civic Centre
North Street
Keighley
West Yorkshire
BD21 3RZ

Decision (including any steps ordered)

1. The complainant has requested information regarding a specific payment. Keighley Town Council initially provided some information and, during the Commissioner's investigation, conducted further searches and provided additional information within the scope of the request. The Commissioner's decision is that that, on the balance of probabilities, Keighley Town Council does not hold any further information. He has also decided that Keighley Town Council has breached section 10(1) of the FOIA by failing to disclose all of the requested information within the statutory time limit of 20 working days. He does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 4 June 2014, the complainant wrote to Keighley Town Council ('the council') and requested information in the following terms:

"Details of the payment/cheque 4971, including

A copy of the invoice

Payee

Signatories to the cheque

Authorization details to pay the invoice

Any correspondence regarding the invoice

I would prefer the information in electronic format as an email attachment. Alternatively it can be posted to the below address.”

3. The council responded on 4 July 2014 and provided a copy of the Finance and Audit Committee meeting minutes of 11 June 2014. It said that it could not provide details of signatories 'due to breach of personal data'.

4. The complainant requested an internal review on 5 July 2014. He pointed out that the response did not provide:

- A copy of the invoice
- Details of the payee of the invoice
- Authorization details to pay the invoice
- Any correspondence regarding the invoice

He also provided his opinion that revealing the names of the officials who signed a cheque does not reveal any personal information.

5. The Commissioner requested that the council conduct an internal review on 29 July 2014 and 30 September 2014. The complainant informed the Commissioner on 1 November 2014 that he has still not received an internal review response.

Scope of the case

6. The complainant contacted the Commissioner on 3 July 2014 to complain that his request for information had not been acted upon. Following the council's response of 4 July, the complainant contacted the Commissioner on 25 July 2014 to point out that the council were late in providing a response and failed to provide all of the requested information. He provided the Commissioner with evidence of his internal review request on 22 September 2014.

7. Following the Commissioner's letter of enquiry to the council, on 17 December 2014 it provided the complainant with documents that it said related to his request regarding payment/cheque 4971. On the same day, the complainant contacted both the council and the Commissioner to point out that the invoice provided related to payment 4970, not 4971, and that he had still not received the following:

- A copy of the invoice
- Payee
- Signatories to the cheque
- Authorization details to pay the invoice
- Any correspondence regarding the invoice

He pointed out to the Commissioner that the payee can be inferred from the cheque stub provided for payment/cheque 4971 and said that as this is a council matter, authorization for payment of the invoice must be within the procedures laid out by the council to authorize payment of the invoice and that "Any correspondence" is a broad term, to include – letters to Turner and Wall Solicitors to authorize the work done, minutes authorizing the work, correspondence between Turner and Wall and the council regarding the work done.

8. The Commissioner telephoned the council on 17 December regarding the incorrect information that had been sent. The council said it would provide the correct information as soon as possible. The Commissioner also informed the council that he would need responses to the questions in his letter of enquiry dated 21 November 2014 if 'Authorisation details' and 'Any correspondence regarding the invoice' cannot be provided.
9. On 15 January 2015, the complainant contacted the Commissioner as he had still not received an adequate response. The Commissioner wrote to the council on 16 January 2015 asking it to provide the requested information as a matter of urgency.
10. The council provided the complainant with further information on 19 January 2015. The complainant replied to the council on the same day as follows:

"Missing from this FOI request is the instruction from Keighley Town Council to Turner and Wall to undertake the work, the Council minutes that approve the work to be done and the minutes from the HR Committee as per the Finance minutes – all this would be covered in "any correspondence".

Also, there is no authorization to pay the invoice. The minutes attached are after the fact and, as such, not authorization "to pay".

I also note the Town Clerk's name, [name redacted], has been removed with no exemption for the removal being claimed."

11. The Commissioner wrote to the council on 21 January 2015 stating that it needed to provide justification for redacting the previous Town Clerk's name under section 40(2) and for not providing the information the complainant believes is missing as stated in his email of 19 January 2015 (see above paragraph). The council responded the same day simply stating that the Town Clerk's name has been removed under section 40 and that it has no other documentation relating to the request.

12. On 11 February 2015, the Commissioner contacted the council by telephone and email to repeat his request for justification for the redaction and for not providing the information the complainant believes is missing. The council responded on the same day providing further details.
13. The complainant contacted the Commissioner again on 11 February 2015 detailing what information he still believed to be missing.
14. Although the name of who the payment was made on behalf of was redacted from the disclosure of information made on 19 January 2015, specifically a copy of the cheque book stub and Schedule number 169 April 2014, it was provided as part of the disclosure made on 17 December 2015. Therefore the Commissioner considers that such information is already in the public domain and does not deem it necessary to consider the council's application of the exemption at section 40(2) to such information.
15. The Commissioner has considered whether further information is held within the scope of the request.

Reasons for decision

16. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
17. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
18. The council disclosed a copy of the invoice, the name of the payee, the names of the signatories to the cheque. It also disclosed Finance & Audit minutes dated 11 June 2014 as 'authorization details to pay the invoice' and Schedule number 169 April 2014 as 'any correspondence regarding the invoice'.

19. The complainant has said that he believes that the following information is missing:
 - 1) The instruction to Turner and Wall to undertake the work.
 - 2) The results of the work undertaken by Turner and Wall, which would have been sent to the Council.
 - 3) The instruction to include the item on the minutes.
 - 4) Discussion of the item by councillors to get the item on the minutes.
20. He has said that the minutes dated 11 June 2014 are 'after the fact and, as such, not authorisation "to pay"'. However, he has also said that he does not believe that the council hold 'authorisation details' as he alleges that the payment was unauthorised.
21. In addition, the complainant has said that the council and councillors use personal email addresses which will not have been checked.
22. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. The council said that searches have been carried out on computer records, files and cheque books and confirmed that this included personal computers used by officers of the council that are networked and emails. It said that information would be held both manually and electronically and that no information relevant to the request has been deleted or destroyed.
23. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council said that invoices and cheque books must be retained for accounting purposes but there are no statutory requirements to retain the requested information.
24. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. He understands that the complainant believes that there has been an unauthorised payment and has reported alleged fraud to the police. The Commissioner has not seen any evidence of wrongdoing surrounding its records management obligations and has not identified any reason or motive to conceal the requested information.
25. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any information relevant to this request. He appreciates the complainant's view that further information relating to

this request should be held but acknowledges that there is often a difference between what a complainant believes should be held with what is actually held. The Commissioner is therefore satisfied that on the balance of probabilities, further information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Section 10 – Time for compliance

26. 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, disclose it to the applicant. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request.
27. The request in this case was submitted on 4 June 2014. The council provided some information on 4 July 2014, 2 working days after the statutory time for compliance and did not provide the remainder of the information it held until 17 December 2014 and 19 January 2015, 6.5 and 7.5 months after the request. The Commissioner therefore finds that the council did not make information available within 20 working days and consequently finds a breach of section 10(1) of FOIA.

Other matters

28. The Commissioner found it necessary to seek clarification from the council several times during this investigation. He notes the inconsistent responses to this request and the delays in responding. The council should ensure in future that its first step upon receiving an information request is to identify all the relevant information it holds and provide it unless a relevant exemption applies. The council should also ensure that its responses to the Commissioner's enquiries are as thorough and timely as possible.

Internal Review

29. As he has made clear in 'The Guide to Freedom of Information'¹, the Commissioner considers that internal reviews should be completed as
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¹ https://ico.org.uk/media/for-organisations/documents/1642/guide_to_freedom_of_information.pdf

promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review, or 40 working days in exceptional cases. In this case the Commissioner notes that complainant first requested an internal review on 5 July 2014 but the council did not provide an internal review response. The council should ensure that internal reviews are carried out promptly in future.

Right of appeal

30. 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

31. 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.
32. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF