

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2016

Public Authority: Trefeglwys Community Council

Address: c/o 1 Glandwr Terrace
Trefeglwys
Powys
SY17 5QF

Decision (including any steps ordered)

1. The complainant has requested various items of information from Trefeglwys Community Council, and in particular correspondence between the Council and One Voice Wales (OVW) in respect of her complaint against the Council. The Council initially refused the request by virtue of section 14(1) on the basis that it was vexatious. However, following the Commissioner's intervention, the Council provided further information and confirmed that it did not hold information in respect of other items of the request. The Commissioner's decision is that Trefeglwys Community Council has complied with its obligations under section 1(1) of the FOIA. However, the delay in providing some of the information to the complainant represents a breach of section 10 of the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 27 August 2015, the complainant wrote to the Council and requested the following information:

"1. Copy of the last letter TCC sent to the Monitoring Officer (dated around June/July 2015.

2. Copy of the Monitoring Officer's response to that letter.

3. Copy of TCC's letter to OVW that enclosed my letter of the 25 May 2015.

4. *Copy of OVW response to the above.*
 5. *Copy of the alleged complaint about the reimbursement of the Council's fine.*
 6. *Copy of HMRC's fine files against the Council.*
 7. *Copy of the External Auditor's comments for 2013/14"*
3. The Council responded on 1 September 2015. It stated that it has responded to most of the complainant's FOIA requests and that it considered it was going over old ground. It informed the complainant that it had adopted its Habitual or Vexatious Complainant's Policy.
 4. The complainant expressed dissatisfaction with this response on 14 October 2015 to which the Council sent a response on 26 November 2015. However, the Commissioner notes that this response was more in relation to the on-going disagreement between the two parties, than a response to her FOIA request.
 5. Following intervention from the Commissioner in which the Council was asked to issue an internal review to the complainant, the Council sent an amended response to the complainant on 22 December 2015, providing her with some information falling within the scope of her request. It also informed the complainant that as a small Community Council it did not have an internal review process, as it believed this applied to larger Councils. It further informed the complainant, that if she remained dissatisfied she should complain directly to the Commissioner.

Scope of the case

6. The complainant contacted the Commissioner on 5 January 2016 to complain about the way her request for information had been handled. She provided considerable background to her request, and whilst she acknowledged that she had now received some documents which the Council had previously informed her it could not locate, she was not satisfied that she had received all the relevant documents falling within the scope of her request.
7. During the course of the Commissioner's investigation, the Council provided further correspondence to the complainant, to the point that the only remaining element under dispute is item 4 of the request. On that aspect, the complainant considers that the Council must hold a letter from OVW in respect of item 4 of her request.

8. The Commissioner also notes that the complainant was a former Clerk to the Council and that both parties are currently in dispute over certain issues, with the FOIA requests forming part of the complainant's attempts to defend her position. The Commissioner would however point out, that involvement in the dispute is beyond her remit.
9. The focus of the Commissioner's investigation is therefore to determine whether the Council has complied with its obligations under section 1(1) of the FOIA in respect of item 4 of the request, and to look at the Council's procedural handling of the request.

Reasons for decision

Section 1 – General right of access to information held

10. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
11. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
12. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
13. In this particular case, the Council has stated that it does not hold a letter in respect of item 4 of the complainant's request, which asked for:
"Copy of OVW response to the above."
14. This was in respect of a copy of OVW response to item 3 which requested:
"Copy of TCC's letter to OVW that enclosed my letter of 25 May 2015."

15. The Commissioner asked the Council to provide details and evidence of the search undertaken which led it to conclude that it does not hold the requested information.
16. The Council informed the Commissioner that it can find no evidence that a letter accompanied the response of OVW letter from the Chief Executive to the complainant dated 17 August 2015. The Council has confirmed that it received a copy of this letter via email on 17 August 2015, which it forwarded to all Councillors on 28 August 2015, stating:
Please find attached for your information a copy of a letter being sent out to [name of complainant] tonight."
17. The Council has also confirmed that there was no other attachment or earlier correspondence from OVW regarding this matter, and has provided a copy of the email of 17 August 2015 from OVW.
18. In terms of its search, the Council confirmed that it looked for correspondence in its files and through its emails, and could find no further correspondence relevant to the request.
19. The complainant does not accept that this was the only correspondence regarding item 4 of her request. She has stated that having been a Clerk to the Council for over 7 years, that One Voice Wales would have responded much earlier than the seven week period from 2 July 2015 (when the Council wrote to OVW), and its email of 17 August.
20. Having considered the arguments put forward by the complainant, and the explanation and evidence provided by the Council, the Commissioner can find no evidence to support the complainant's assertions that OVW must have provided an earlier response and considers that the explanation provided the Council is reasonable.
21. The Commissioner has therefore concluded that the email from OVW dated 17 August 2015 is the only correspondence the Council holds relevant to the request, and consequently, is satisfied that the Council has complied with its obligations under section 1(1) of the FOIA in respect of item 4 the complainant's request.

Section 10(1) – time for compliance with request

22. Section 10 of the FOIA states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
23. The Commissioner notes that the complainant submitted her request for information on 27 August 2015 and did not receive any of the relevant

information until 22 December 2015. The Council clearly therefore breached section 10(1) of the FOIA in its handling of this request for information.

Other matters

Internal review

24. The Commissioner acknowledges that it is not a formal requirement for a public authority to conduct an internal review under the FOIA. However, the Section 45 Code of Practice recommends that public authorities do undertake an internal review and that it should be done promptly. The Commissioner has also produced guidance in relation to this matter which recommends that it takes no longer than 20 working days in most cases, and in exceptional circumstances, no longer than 40 working days.
25. The Commissioner notes that the complainant expressed dissatisfaction with the Council's response on 14 October 2015. However, neither of the Council's letters of 26 November 2015 or 22 December 2015 could be classed an internal review, with the latter informing the complainant that as a small community council, it did not have an internal review process as it believed it applied solely to larger Councils.
26. Whilst the Commissioner acknowledges that an internal review process is not a formal requirement under the FOIA, she would recommend that all public authorities, regardless of size, have such a process. She would also point out that such a process has its advantages for the public authority as it is considered to be its second opportunity to consider the request and to satisfy itself that its original response was compliant with the FOIA. Additionally, as an internal review is a formal requirement under the Environmental Information Regulations 2004 ('the EIR'), it makes sense for a public authority to ensure that a clear review process is established for both environmental and non-environmental information.

The Council's understanding of vexatious requests

27. The Commissioner notes that the Council's original response to the complainant of 1 September stated that it had:

"..adopted its Habitual and Vexatious Complainant's Policy."

28. This appears to be something totally different to the provision for vexatious requests under section 14(1) of the FOIA. Under section 14(1), it is the request, not the requester that is considered vexatious.

However, the policy referred to above appears to be viewing the complainant/requestor as vexatious.

29. Having explained this to the Council during the course of her investigation, the Commissioner is satisfied that the Council now understands this important difference.

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