

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2017

Public Authority: South Tyneside Council
Address: Town Hall and Civic Offices
Westoe Road
South Shields
Tyne and Wear
NE33 2RL

Decision (including any steps ordered)

1. The complainant has requested the minutes of meetings to discuss proposed changes at a local community centre. The Commissioner's decision is that, on the balance of probabilities, South Tyneside Council (the Council) does not hold the information requested.
2. The Commissioner notes, however, that the Council's response was outside of the statutory timeframe and it has, therefore, breached section 10(1) of the FOIA. The Commissioner does not require the Council to take any remedial steps.

Request and response

3. On 7 April 2016, the complainant wrote to the Council and requested information in the following terms:

"all relevant minutes concerning the reconstruction of services at (Jarrow Community Centre) or foreseeable closer [sic] of said centre."

4. The complainant contacted the Commissioner on 5 May 2016 to complain that he had not received a response to his request. Following the Commissioner's intervention the Council responded to the complainant on 11 May 2016.

5. The Council refused to provide the requested information, citing section 22 'Information intended for future publication' as its basis for doing so.
6. The complainant requested an internal review by letter on 12 May 2016. He contacted the Commissioner on 14 June 2016 since he had not received a response. The Commissioner contacted the Council, who advised that it had not in fact received the request for internal review. The Commissioner provided the Council with a copy of the complainant's request for the internal review on 14 June 2016.
7. The Council provided the outcome of its internal review on 16 August 2016. It revised its position and stated that section 22 had been applied in error. The Council explained that the only document it held relating to potential changes at Jarrow Community Centre was the council's "*Medium Term Financial Plan (2016-2021)*". It provided a link to this document.

Scope of the case

8. Following the outcome of the internal review, the complainant confirmed by telephone on 18 August 2016 that he wished to complain about the way his request for information had been handled.
9. During the course of the investigation, the Council confirmed to the Commissioner that it did not actually hold the information requested and the "*Medium Term Financial Plan (2016-21)*" had been provided to the complainant in order to assist him.
10. The complainant explained to the Commissioner that he considered the requested information was held by the Council as it had a legal obligation to minute all meetings held under the Local Government (Access to Information) Act 1985. The Commissioner explained to the complainant that she does not regulate this legislation and therefore cannot comment on the obligations it places on the Council. The complainant accepted and understood this and explained he wished to proceed with the investigation on the basis that he believed the information must be held by the Council.
11. The Commissioner, therefore, considers the scope of the case to be whether, on the balance of probabilities, the Council holds the information requested.

Reasons for decision

12. Section 1(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 there is some dispute between the amount of information disclosed by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities.

14. The Commissioner is also mindful that the FOIA only applies to recorded information held by a public authority at the time a request is made. The FOIA itself does not require a public authority to create, or to hold, any information. If a public authority does not hold recorded information that is relevant to the request, it cannot be required to create such information.

15. The Council advised the Commissioner that the community centre had been discussed on a number of occasions in relation to preparing draft plans for the future. Therefore the Council approached officers in service areas involved in looking after Community Associations and related budgets, plans and savings. These officers, based on their service area knowledge, confirmed that no minutes or notes were taken of any of the discussions involving the community centre. This was because the Council did not consider any of these discussions to constitute formal meetings that would require minutes to be taken.

16. The Council confirmed that meetings held within the relevant service area are generally not minuted. Minutes would only be taken for meetings between different departments or regarding large-scale projects.

17. The Council explained that these discussions involving the community centre contributed to the development of the Medium Term Financial Plan which was then considered by Cabinet and the Borough Council which made the formal decision to adopt it. The Council set out that this is the normal decision making process for a local authority operating a Leader and Cabinet model of governance.

18. The Council confirmed to the Commissioner that there is no business or statutory requirement on the Council to retain notes of discussions. It further explained that only formal meetings of Councillor bodies, such as Borough Council, Committees and Cabinet have a requirement for minute taking. It also explained that the formal minutes taken are not verbatim records of discussions during the meeting and that the legal requirement is for the decision, and the reasons for it, to be recorded. It set out that the formal minutes would only state whether a proposal or document was approved and why.
19. The Commissioner accepts the Council's explanation that it does not routinely record internal discussions, although she is also of the view that all public authorities should ensure that the records they keep adequately document the decision making process. Authorities should be able to explain and demonstrate how they make decisions that affect the public. The complainant in this case was of the view that the Council ought to have documented any discussions regarding the community centre. As set out above the Commissioner recognises that the FOIA does not require authorities to record information.
20. However the Commissioner also considers that applicants cannot be expected to have detailed knowledge of a public authority's record keeping activities. This is especially relevant where an applicant considers that information ought to be held, but where the public authority says that it is not. Therefore, the public authority should provide adequate advice and assistance to help an applicant make a request for recorded information that is held by the authority. This may include explaining the types of information that are held, and why particular information is not held. The Commissioner asked the Council to explain how it was satisfied that the advice and assistance provided to the complainant was reasonable and adequate in the circumstances of the request.
21. The Council acknowledged that it should have provided the complainant with an explanation of when formal minutes are taken in accordance with legislative requirements. It could also have clarified that minutes are not necessarily taken of internal discussions, or non-decision making meetings. The Council accepted that it should have signposted the complainant to the Council's website where the official minutes of formal decision making council meetings are published.
22. The Council set out that it had provided the complainant with a link to the Council's Medium Term Financial Plan which referenced a plan to develop the centre into a Community Hub and that the Council has also advised the complainant that there would be a community

consultation period in respect of the proposals regarding the community centre. The Commissioner understands how the complainant may have interpreted this as an indication that some recorded information relating to this plan would be held by the Council. However the Council explained that the "*Medium Term Financial Plan (2016-21)*" is a five year forecast formed from verbal discussions which are not minuted.

23. The Council also explained that the "*Medium Term Financial Plan (2016-21)*" was approved at Full Council on 25 February 2016 and the minutes of the meeting can be found online¹.
24. The Council further explained that, at the time of the request, plans were at the proposal stage and due to go to consultation before being finalised.
25. The Council explained that the arrangements for this consultation were publicised to the centre and the local community and the complainant would have had the opportunity to put his views forward in this manner.
26. The Commissioner understands the complainant's concerns regarding this case and finds it unusual that a council would not take minutes or notes of meetings, decision-taking or otherwise, which led to the creation of a proposal document such as the Medium Term Financial Plan.
27. However, the Commissioner acknowledges the Council's maintained position that it does not in fact hold this information. Therefore, on the basis of the Council's submission and explanations, the Commissioner concludes that, on the balance of probabilities, the Council does not hold any recorded information falling within the scope of the request that has not been provided to the complainant. The Medium Term Financial Plan itself does not fall within the description specified in the complainant's request, but according to the Council it is the only recorded information held that references the Council's position on the community centre. Therefore the

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<https://portal.southtyneside.info/councillorsandcommittees/committeemeeting.aspx?committeeid=888&meetingid=3415&periodid=28>

Commissioner agrees that the Council was correct to provide this information to the complainant by way of advice and assistance.

Time for compliance

28. Section 1(1) of the FOIA states that:

1(1) Any person making a request 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.*

29. Section 10(1) of the FOIA states that 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.

30. In this case the Council failed to issue its response within the statutory timeframe, therefore the Commissioner finds that the Council breached section 10 of the FOIA.

Right of appeal

31. 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

32. 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.
33. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF