

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2017

Public Authority: Mid Suffolk District Council
Address: Council Offices
High Street
Needham Market
Ipswich
IP6 8DL

Decision (including any steps ordered)

1. The complainant requested a specific set of minutes as well as information relating to monitoring and deputy monitoring officers from Mid Suffolk District Council. During the course of the Commissioner's investigation, the council provided the complainant with information within the scope of the requests.
2. The Commissioner's decision is that the council has complied with section 1 with regard to the requests MF660(i) and MF661(f) in now providing the information that is held, but in providing it outside the required 20 working days, the council has breached section 10. The Commissioner has also found the council has failed to comply with section 16(1) of the FOIA in failing to clarify with the requester the specific information sought at MF661(g).
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the complainant after having clarified with him the exact nature of his request MF661(g).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 September 2015 the complainant made the following requests for information (using the council's reference numbers for clarity):

MF660

"Whilst writing as a foi requests I seek

- (i) minutes of msdc council meeting held on 25sep14 as confirmed as a correct record + evidenced as signed as such by councillor Roy Barker at the 17dec14 meeting*
- (ii) notes/observations made by the clerks/members or officers in respect of item 11 The Openness of Local Government Bodies Regulations [sic] 2014 from the msdc council meeting held on 25sep14*
- (iii) voice recording of the msdc council meeting held on 25sep14"*

MF661

"for the period from 26mar14 to present date

- (a) notifications/communications or such similar to all members under point 11 of p3-36 of the msdc constitution*
- (b) details of changes/amendments or alterations of any type to the msdc constitution to include but not limited to those made under made under p2-25 and/or p3-36 to include the dates of approval by council*
- (c) physical amendment to copy of constitution maintained by the monitoring officer*
- (d) physical amendment to council website + copy of constitution held for public inspection at reception. To include the original or previous wording + the replacement wording and to include the report reference + meeting date for the proposal by the monitoring officer – for the avoidance of doubt i am not requesting the underlying reports merely the reference + date*
- (e) to include notes/observations/attendance notes/file notes or similar documenting any classification of any changes/amendments or alterations as being of a minor nature*
- (f) as a further separate + distinct request – minutes of the msdc council meeting approving the appointment of Lindsay Barker to the statutory post of monitoring officer as a replacement to Esther Thornton*

- (g) *as a further separate + distinct request – the identity + qualifications of the msdc+babbergh deputy monitoring officers as at 17aug15”*
6. The council responded on 19 November 2015 with different responses to each part of the requests:
- (i) It provided information
 - (ii) It directed the complainant to the council’s website
 - (iii) It stated the information was not held
 - (a) – (e) It stated that the council considered these requests to be vexatious.
 - (f) It directed the complainant to the council’s website
 - (g) It stated that this information had already been provided.
7. On 22 February 2016, the complainant complained to the council in relation to MF660 that the response was late and that the wrong set of minutes had been provided to him. In respect of MF661 he complained that the council had not complied with section 21 in just stating that the information in (f) was on the website. He also complained that the requests were not vexatious and seemed to be querying the deputy monitoring officer response (g).
8. Following what appears to be a chaser letter from the complainant on 22 April 2016, the council responded advising him that it was not clear what he was requiring from an internal review and asking him to refer to reference numbers.

Scope of the case

9. The complainant contacted the Commissioner on 18 May 2016 to complain about the way this request for information had been handled. The Commissioner notes that the council has not conducted a formal internal review in respect of the requests, but as it is not a legal requirement under the FOIA for a public authority to do so, and in the interests of expediency, with the agreement of the council, the Commissioner undertook the case without a formal internal review.
10. The complainant stated that he was particularly concerned that incorrect minutes have been provided in respect of MF660(i). He has also complained that he has been directed generally to the website, but has not been provided with a specific link relating to MF661(f). In addition he disputes that he has

been provided with information about the identities of the deputy monitoring officers as requested at MF661(g).

11. In June 2016, the complainant specified that he required the Commissioner to serve decision notices in relation to the council's FOI failings.
12. As directed by the complainant, the scope of the Commissioner's investigation therefore was to determine whether the council had complied with the FOIA in respect of MF660(i) and MF661(f) and (g).

Reasons for decision

Section 1 – information held

13. Section 1(1) of the FOIA states 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 it communicated to him.

14. The Commissioner wrote to the council on 14 September 2016 to highlight the complainant's concerns and to ask the council to now respond to him accordingly.
15. On 25 October 2016, the council therefore wrote to the complainant. In relation to the request MF660(i), it provided a copy of the requested minutes for the meeting of 25 September 2014. With regard to MF661(f), the council accepted that it had provided the complainant with an incorrect response. It explained that Lindsay Barker had been asked by the Chief Executive to undertake the post of Corporate Manager on an interim basis. This post carries with it the responsibility of Monitoring Officer. As such, the appointment of Lindsay Barker to Monitoring Officer did not go to committee for approval, and therefore there are no minutes held in respect of this. In respect of MF661(g) regarding the deputy monitoring officers, the council said that although an officer had recalled that this information had been provided to the complainant in the past, it could find no written record of this. Therefore the council provided the complainant with the names and job titles of the deputy monitoring officers as at 17 August 2015.
16. The complainant disputed that the minutes supplied in response to MF660(i) were as he had requested as he had specified the signed minutes. The Commissioner raised this with the council.

17. The complainant also disputed that the request MF661(g) had been fully complied with as he had asked for the qualifications of the monitoring officers. The Commissioner therefore contacted the council regarding these points.
18. The council then wrote to the complainant again on 30 November 2016. It provided the signed minutes as requested in MF660(i).
19. In respect of MF660(i) and MF661(f), the Commissioner finds that, regarding the information which has now been provided, the council has complied with section 1 of the FOIA.
20. With regard to MF661(g) the council provided some further information regarding the qualifications of the deputy monitoring officers on 30 November 2016. The council had previously stated that there was no specific qualification necessary in order to hold the post of deputy monitoring officer. It therefore confirmed that the relevant qualification for two of the individuals was "fully qualified solicitor" and for the third individual "Original and Higher National Certificates in Public Administration". The complainant again stated to the Commissioner that he did not consider this request to have been fulfilled. He stated that he had expected a greater level of detail as the request had simply asked for the qualifications held, and did not specify that he required confirmation that the individuals held the qualifications required for the post of Deputy Monitoring Officer.

Section 1(3)

21. Section 1(3) of the FOIA provides that where a public authority reasonably requires further information in order to identify and locate the requested information, and it requests this from the applicant, it need not comply with section 1 until further information is supplied. The Commissioner's approach is to expect the public authority to seek clarification of a request where its meaning is not clear or where its meaning is capable of more than one objective reading.
22. In this case the nature of the information provided to date in respect of MF661(g) suggests that the council has interpreted the request to mean the qualifications required for the post. It is clear that the complainant does not agree with this interpretation, but the Commissioner does not consider that there is a single objective reading of this request. For example, it could be interpreted as professional qualifications, academic qualifications, qualifications required for the post, or indeed each and every piece of qualification information the council holds about the individuals.

Section 16 – advice and assistance

23. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request.

24. The Commissioner has concluded that, on an objective reading, the request was open to more than one interpretation. In this case whilst it is clear that the council and the complainant have differing interpretations of the request, it still remains unclear what level of information is sought. The Commissioner considers that the council should have clarified this with the complainant before it responded to the request.
25. By failing to give appropriate advice and assistance to the complainant, the council has breached section 16(1) of the FOIA.

Section 10 – time for response

26. Section 10 requires that a public authority must comply with a request for information within 20 working days.
27. As the requested information, with the exception of that at MF661(g), was not provided until 25 October 2016 and 30 November 2016, over one year after the request was made, the Commissioner finds that the council has failed to comply with section 10 of the FOIA.

Right of Appeal

28. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

29. 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.

30. 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
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SK9 5AF