

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 June 2018

Public Authority: Desborough Town Council
Address: High Street
Desborough
Northamptonshire
NN14 2QS

Decision (including any steps ordered)

1. The complainant requested information relating to Desborough Town Council's (the Council's) office opening times.
2. The Commissioner's decision is that the Council correctly applied section 1 of the FOIA, but breached section 10 of the FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 25 September 2017, the complainant wrote to the Council and requested information in the following terms:

"Having written TWICE in the past ten days to all the Councillors in my ward (St Giles) and the Chairman, I have not received a single response or acknowledgment to a very simple question. What are the opening hours of the Town Council offices which are covered via 40 hours of administration every week? It is clear that Council themselves do not appear to know.

If (as I suspect) I will receive a response that the Council or Clerk are available by appointment, I want this FOIA request to include information on how many appointments per month, in the past twelve months there have been please."

5. The Council responded on 23 October 2017. It originally stated that the information is already in the public domain via their website under 'About the Council', sub section 'The Council', and therefore applied section 21 of the FOIA.
6. To the complainant's second part of his request, the Council stated that the information is not held.
7. Following an internal review the Council wrote to the complainant on 20 November 2017. It stated that *"no appointment diaries or listings are kept and, as result of the current demands on the Clerk's time together with the need for complete flexibility in working hours, no specific opening hours for the Town Council Office are listed"*.

Scope of the case

8. The complainant contacted the Commissioner on 23 November 2017 to complain about the way his request for information had been handled.
9. When contacting the Commissioner, the complainant did not raise any issues relating to the second part of his information request, for the number of appointments in the preceding 12 months. Therefore, that part of the request is not covered in this notice and the following analysis concerns only the first part of the request, for the Council opening hours.
10. The scope of the case has been to consider whether the Council dealt with this request correctly in accordance with sections 1 and 10 of the FOIA.

Reasons for decision

Section 1- General right of access to information held by public authorities

11. Section 1(1) of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner follows the lead of a number of First-Tier tribunal decisions in applying the civil

standard of the balance of probabilities. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds information which falls within the scope of the request.

13. On 18 May 2018, the Council informed the Commissioner that due to the nature of the work carried out by Council officials, the exact opening times of the office cannot be given.
14. The Council confirmed that in order to aid members of the public wishing to meet with the council they operate on an appointment only system.
15. The Commissioner is aware of no evidence to dispute this explanation and so is satisfied, on the balance of probabilities, that no relevant recorded information is held by the Council within the scope of the request.

Section 10- time for compliance

16. Section 10(1) of the FOIA says that a public authority must comply with a request as soon as possible and within 20 working days following the date of receipt of the request.
17. In this case, the complainant submitted his request on 25 September 2017 and the Council did not respond correctly until 18 May 2018. Therefore, the Council breached section 10(1) on this occasion.

Other matters

18. The Commissioner asked the Council to inform the complainant that it did not hold the requested information about its office opening times.
19. A week later, the Commissioner requested once more that the Council inform the complainant they did not hold the requested information. The Council did not respond to this request.
20. The Commissioner believes requests are easier when all parties are co-operative. Therefore, the Commissioner would like to reiterate to the Council the importance of responding to all parties promptly in order to prevent any further delays happening in future cases.

Right of appeal

21. 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

22. 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.
23. 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

Ben Tomes
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