

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 July 2018

Public Authority: Bridgend County Borough Council

Address: foi@bridgend.gov.uk

Decision (including any steps ordered)

1. The complainant requested information about Council Tax liability Orders. Bridgend County Borough Council ('the Council') provided some information and stated other information was not held. The Commissioner's decision is that, on the balance of probabilities the Council does not hold any additional information relevant to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 27 January 2018 the complainant wrote to the Council and requested information in the following terms:

"1. You provide us with the name of the Head of Legal Services Department who is responsible for making the application for Summons and Warrant of Committal to Prison for non-payment of the Council tax Liability Orders. His or Her Solicitors or Barristers Practising Certificate Number.

The Names of the Magistrates or Justice of Peace who had sentenced to Prison with regards to the Council Tax Liability Order.

What is the Capital Amount allowed for a Person before He/She can be given the Council Tax Reduction".

3. The Council responded on 26 February 2018 and stated it did not hold information relevant to parts 1 and 2 of the request and provided the information relevant to part 3 of the request.
4. On 16 February 2018 the Council requested an internal review of the Council's handling of the request.
5. The Council provided the outcome of its internal review on 27 February 2018 and confirmed that it had provided all the recorded information held in respect of the request.

Scope of the case

6. The complainant contacted the Commissioner on 27 February 2018 to complain about the way his request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any additional recorded information relevant to parts 1 and 2 of the request of 27 January 2018.

Reasons for decision

Section 1 – general right of access

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
9. 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 arguments. She will also consider the actions taken by the authority to check that the information is not held and she will consider any other reasons offered by the public authority to explain why the information is not held. She 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; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
10. In its initial response to the complainant the Council confirmed that its Head of Legal Service Department was not responsible for applying to

the Court of Liability Orders. The Council also explained the process by which summons or liability orders were produced and issued and confirmed that it is the Magistrates Court itself who summons the parties to Court to answer the complaint. The Council also confirmed that it did not hold details of the names of Magistrates and Justice of the Peace who had committed any person(s) to prison and it would be the Courts themselves who would hold such information.

11. To support its position that it does not hold any additional information relevant to parts 1 and 2 of the request the Council provided the Commissioner with background information about the processes and procedures relating to non-payment of council tax and Council Tax Liability Orders.
12. The Council confirmed that regulation 34 of the Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613) sets out the provisions for a billing authority to apply to a magistrate's court for a liability order for non-payment of Council Tax. This regulation provides that once certain criteria is met, a billing authority can apply to a magistrate's court for a liability order against a person who is liable for the Council Tax. The regulation requires such applications to be instituted by making a complaint to a Justice of the Peace and requesting the issue of a summons directed to the liable person to appear before Court to show why he/she has not paid any outstanding sum. The summons must be authorised by a Justice of the Peace or by the Clerk to the Justices and can be signed by either person using a facsimile signature.
13. Therefore the process in the Council is that as the billing authority, it makes a complaint to the Clerk to the Justices/Justice of the Peace by sending via email to the court, a list of all persons against whom it is seeking to apply for a liability order. If the Clerk to the Justices or the Justice of the Peace agrees the complaint is valid they provide an email to confirm that they authorise the issuing of the summonses in respect of all persons on the list. The billing authority then produces and serves the court summonses on behalf of the court.
14. The Senior Recovery Officers within the Council are responsible for sending the complaint list for approval, and once approved they arrange for the summonses to be issued. The actual process of running the complaint list and the summonses is automated via the Council's provider - Northgate computer system - and the summonses are actually issued by the Council's corporate mailing system through UK Mail.

15. When the Council attends Court to obtain Council Tax Liability Orders the Magistrates have a copy of the Court list which shows details of the individual cases where summons have been issued to council tax payers who have not paid the required amount before the hearing date. If the Magistrates agree to grant the liability orders then two copies of the Court List are signed and dated by the Head Magistrate, one is retained by the Court and the other is returned to the Council.
16. During a committal Hearing, a copy of the summons to be issued to the liable parties is sent to the Court for their authorisation and is retained by them. If the individual does not attend the hearing a warrant of arrest is applied for at the hearing. When granted, the Magistrates sign the warrant and it is passed to the Council. A letter is then sent to the individual advising them of the warrant and requesting they contact the Council to arrange payment in order that the warrant is not forwarded to the Enforcement Agent (EA) for enforcement. If the warrant is paid in full it is returned to the Court, alternatively if it is passed to an EA to execute it is returned to the Court by the EA when the individual is delivered there and held in custody. The commitment warrant which is signed at a committal hearing is not passed to the Council. Therefore no record is held by the Council of the name(s) of the Magistrates who pass the sentence.
17. In weighing up the balance of probabilities in this case, 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 addition information relevant to the request. The Commissioner has not seen any evidence to suggest there is a motive to withhold information relevant to the request
18. Based on the representations provided by the Council and explanations provided in relation to the procedure for non-payment of council tax, the Commissioner is satisfied that on the balance of probabilities, the Council does not hold any further recorded information relating to the request, other than that which it has disclosed.

Right of appeal

19. 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

20. 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.
21. 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
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