

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 November 2020

**Public Authority:** Olney Town Council

**Address:** High Street  
Olney  
MK46 4EF

#### Decision (including any steps ordered)

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1. The complainant requested information about public toilets.
2. The Commissioner's decision is that, on the basis of the available evidence, Olney Town Council ("the Council") has failed to issue a response to the request, that complies with the FOIA, within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response, under the FOIA, to the request.
  - If and to the extent that, the Council requires further clarification to process the request, contact the complainant to explain what further clarification he must provide.
4. The Council 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 4 August 2020, the complainant wrote to the Council and requested information in the following terms:

*"Please supply information on the expenditure incurred on all the public toilets owned, run and maintained by Olney Town Council for the financial years 2019/2020 and 2020/2021 (up to 4 August 2020) covering the sites at:*

- 1) Market Place*
- 2) Recreation Ground*
- 3) Council offices (High Street)*

*"Please ensure that both capital and running cost expenditure is clearly itemised with both equipment and staff (including overtime) costs clearly shown.*

*"For the part financial year of 2020/2021 please confirm the period during the Covid19 pandemic when the toilets were locked and out of public use and indicate any government or Local Authority instruction or order to this effect. I would be grateful if you could state the period for which the disabled toilet in the Market Place was separately open both for existing disabled users and for market traders/street cleaning operatives.*

*"Please show any additional expenditure that relates to the preparation for the toilets being re-opened in July 2020.*

*"Please provide copies of all assessments for the part financial year 2020/2021 that relate to risk or safety of the conveniences including a copy of the risk assessment during Covid19 following permission given to traders to use the disabled toilet.*

*"Where any contracts have been agreed with temporary cleaning staff please show the total attendance/week (in hours and by site) and the hourly rate that has been contractually established. Separately please state in detail all financial quotes by private companies that have been reported by the Town Council via Phonebox and directly on social media for cleaning.*

*"Please also provide copies of any correspondence from Milton Keynes Council that may have been issued with regard to 'best practice' for the enhanced hygiene procedures during the current Covid19 pandemic. Similarly, please provide copies of any advice*

*or instruction by OTC's insurance company on what is required by them to comply or is recommended (state which) with respect to their T&Cs. You should state whether any dialogue or correspondence has taken place with alternative insurance companies to mitigate against excess premiums or onerous conditions that may not be required under law or represent best value for money for OTC."*

6. The Council appears to have acknowledged the request on 6 August 2020 but had failed to provide a substantive response by the date of this notice.

### **Scope of the case**

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7. The complainant first contacted the Commissioner on 25 August 2020 to complain about the failure, by the Council, to respond to the request – although at that time, the statutory time deadline for responding had yet to expire. The complainant contacted the Commissioner again on 22 September 2020 to note that the response was still outstanding.
8. In line with her usual practice, the Commissioner contacted the Council on 23 September 2020 to highlight the outstanding response. She requested that the Council respond to the request within 10 working days.
9. The Council responded to the Commissioner on the same day to clarify what steps it was required to take. It noted that it did not hold some of the requested information and some would be difficult to access. Finally, it stated that it believed parts of the request were unclear and it noted that the Mayor had written to the complainant to seek clarification but that none had been provided. The Commissioner asked the Council to provide a copy of the aforementioned correspondence.
10. The Council then provided a further response to the Commissioner on 30 September 2020. This took the form of an annotated version of the request, setting out some information, noting that some information was not held, querying the extent to which information needed to be provided and querying the information sought. This version was topped by some commentary from the Town Clerk estimating that responding to the request would take "at least 30 working hours." The correspondence was sent to the Commissioner, copied to the Mayor, but addressed "Dear Colleagues." It was unclear whether this correspondence or the annotated version had been sent to anyone else.

11. The Commissioner responded on 1 October 2020, noting that no response appeared to have been provided to the complainant and requesting that the Council provide one. She also drew the Council's attention to her published guidance on section 12, in the event that the Council wished to claim that the cost of complying with the request would exceed £450. This correspondence was neither acknowledged nor responded to.
12. The complainant contacted the Commissioner on 29 October 2020 to note that he had still not received a response to his request.
13. The Commissioner considers that she has set out clearly, to the Council, the steps it needed to take to ensure compliance with the FOIA. She also considers that she has given the Council ample opportunity to either take these steps, or to provide evidence that it had already done so.
14. The scope of this notice and the following analysis is to consider whether Council has complied with section 10 of the FOIA.

## Reasons for decision

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15. 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 that information communicated to him.*

16. Section 8(1) of the FOIA states:

*In this Act any reference to a "request for information" is a reference to such a request which –*

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

17. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

18. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
19. Section 1(3) of the FOIA allows a public authority to place a request on hold if it reasonably requires further clarification in order to process that request and has informed the requestor of the clarification it requires. The 20 working days then restarts from the moment clarification is provided.
20. The Council argued that it had asked the complainant for further clarification but, despite a specific request to do so by the Commissioner, failed to provide a copy of this correspondence.
21. The Commissioner is mindful of the pressures faced by public authorities due to the ongoing pandemic. She is also mindful that there will be occasions where a public authority considers that, despite the complaint, it has complied with the FOIA. However, when the Commissioner notifies a public authority that she has received a complaint that a valid request for information has been received but not responded to within the statutory timeframe, she considers that the burden of proof lies with the public authority in demonstrating that it has complied with the FOIA.
22. The Council's responses to the Commissioner indicated that it might have issued a FOIA-compliant response but it failed to back up its assertions with evidence – despite being asked to do so.
23. Therefore from the evidence presented to the Commissioner in this case, she does not consider that the Council provided a FOIA-compliant response to the request within 20 working days, the Council has thus breached section 10 of the FOIA.

## Right of appeal

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24. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**