

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 September 2022

Public Authority: Pencoed Town Council

Address: pencoedtownclerk@gmail.com

Decision (including any steps ordered)

1. The complainant requested information about an event which took place in July 2021. Pencoed Town Council (the Council) provided the information held but the complainant considered more was held. During the course of the Commissioner's investigation the Council located additional information which it disclosed to the complainant. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information falling within the scope of the request. However, in failing to comply fully with section 1 within the statutory timescale the Commissioner finds that the Council breached section 10 of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 7 September 2021, the complainant wrote to the Council and requested information in the following terms:

"Please can I request under the Freedom of information act the following information relating to an event held by the Town Council on 14th July 2021:

- Copies of all correspondence, meeting notes or other records relating to decisions being made around the organising of the event held at Salem Chapel on 14/07/21, particularly around planning for coronavirus mitigations or responses and compliance with the coronavirus regulations at the time of the event.

I am happy for this information to be provided electronically (as email attachments) to me.

Please let me know if you require any clarifications to this request to allow you to fill it, otherwise I look forward to receiving your response in the next 20 working days. Given the time of day I am sending this email, I am happy to commence the period the town council has to complete the request from tomorrow 08/09/21. This would make the deadline for completion of the request the 5th October 2021”.

3. On 8 September 2021 the complainant clarified that the event referred to in the request was a presentation for the Christmas light competition.
4. The Council responded on 9 September 2021 and provided the information held relevant to the request - a council summons, a risk assessment and advice from One Voice Wales.
5. On 9 September 2021 the complainant wrote back to the Council expressing concern that it had breached Covid rules and procedures in arranging the event in question, particularly as a photograph was taken of the presentation which showed no social distancing and no one was wearing masks. The complainant asked a number of questions around their belief that Covid rules had not been followed.
6. The Council responded on 9 September 2021 and stated that it considered it had complied with the request in full. The Council also suggested that if the complainant had any concerns regarding a breach of Covid rules they should refer the matter to the relevant regulatory authority.
7. On 9 September 2021 the complainant wrote back to the Council and stated that it had failed to provide all the information requested such as emails, letters and instant messages relating to the event on 14 July 2021.
8. The Council responded on 10 September 2021 and re-iterated its position that it had provided the information held relevant to the request. The Council also stated that had it “been made aware of the intent, tone or content of your request as portrayed in your email dated 9th September 2021, then I and the Council would have considered your request as being Vexatious under Section 14(1) of the Freedom of Information Act and refused”.

Scope of the case

9. The complainant contacted the Commissioner on 26 September 2021 to complain about the way their request for information had been handled. Specifically the complainant raised concerns that the Council had not disclosed all the information held relevant to the request or confirmed that it did not hold any further information. The complainant referred to the fact that the Council had stated in its final response that it would no longer correspond with them as it considered the request to be vexatious.
10. During the course of the Commissioner's investigation the Council confirmed that it was not relying on section 14 of the FOIA in relation to the request. In addition, during his investigation, the Council located additional information relevant to the request, which it disclosed to the complainant.
11. In light of the above, the scope of the Commissioner's investigation is to determine whether the Council holds any further recorded information which, to date, it has not disclosed.

Reasons for decision

Section 1 – general right of access

12. 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.
13. 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. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
14. The Council confirmed to the Commissioner that all Council information is held centrally in Council offices and on one main frame computer. No information is held locally on personal computers.
15. In terms of the searches undertaken to locate information relevant to the request, the Council advised the Commissioner that on receipt of the request searches were undertaken of the only computer in use at the

Council. These searches encompassed email accounts, archive files, one drive, cloud storage, Acronis and the Council's website. The Council also confirmed that no information relevant to the request had been deleted or destroyed.

16. As background information, the Council stated that it did not consider the presentation to be an event as such. The winners of the competition held in December 2020 were invited to attend Council offices prior to the Council meeting on 14 July 2021 to receive their awards. The Council advised that the Mayor and Town Clerk were involved in the arrangements for the presentation and the rest of the Council were advised of the presentation by way of the agenda which was sent out prior to the meeting.
17. The Council stated that the presentation took less than 10 minutes including a photograph that was taken at the presentation. The photograph was taken and published with the full consent of the recipients of the award. Recipients of the awards were invited by email to attend the presentation and a copy of these emails was disclosed during the Commissioner's investigation. In addition, the Council advised the Commissioner that a discussion regarding the wearing of masks took place at the presentation itself, in consultation with the recipients of the award, prior to the photograph being taken. No recorded information is held relating to mask wearing at the event
18. The Council meeting on 14 July 2021 took place in Salem Chapel as this venue allowed for social distancing during the meeting to be maintained. The Council confirmed that its Town Clerk is also Honorary Secretary for the Friends of Salem Charity who look after Salem Chapel. As such, the Clerk was responsible for carrying out a risk assessment for the use of the Chapel. A copy of this has been provided to the complainant and no further recorded information is held relating to arranging the meeting venue.

Conclusion

19. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
20. Based on the evidence available to him the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate all the information falling within the scope of the

request. The Commissioner also notes the Council's explanations about arrangements for the event in question.

21. Based on the searches undertaken and the other explanations provided 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.

Section 10 – time for compliance

22. 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."

23. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
24. In this case the request was submitted on 7 September 2021 and the Council provided some information on 9 September 2021. During the course of the Commissioner's investigation, on 11 August 2022, the Council located and disclosed additional information falling within the scope of the request. In failing to comply fully with section 1(1) within 20 working days of receipt of the request, the Commissioner finds that the Council breached section 10(1) of the FOIA.

Right of appeal

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. 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

Joanne Edwards
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