

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 13th May 2005

Name of Public Authority: Shepway District Council

Address of Public Authority: Civic Centre
Castle Hill Avenue
Folkstone
Kent
CT20 2QY

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint alleging that on 12th January 2005 the following information was requested from Shepway District Council under the Freedom of Information Act 2000 (the "Act"):

Access to the minutes of the Strategic Management Board.

It is alleged that Shepway District Council refused to provide the information requested by the complainant. The reasons for this refusal were given in a letter to the complainant dated 25th January 2005, those reasons being that the information may contain exempt information and that it would be resource intensive to go through the minutes to establish what information may not be exempt.

The Commissioner's Decision

Under section 50(1) of the Freedom of Information Act 2000, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner's decision is as follows –

Section 1(1) of the Act states –

"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.”

Section 12(1) of the Act states that a public authority is not obliged to comply with a request for information -

“... if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Paragraph 4(3) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Fees Regulations”) states –

“... a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in:

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.”

By virtue of section 17 of the Act, where a public authority is to any extent relying on a claim that any of the exemptions in Part II apply to the request it must give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question,
- (c) states (if that would not otherwise be apparent) why the exemption applies.
- (d) contain particulars of any procedures provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (e) contains particulars of the right conferred by section 50 to apply to the Commissioner for a decision as to whether a request for information has been dealt with in accordance with the requirements of Part I of the Act.

The Commissioner’s decision in this case is that Shepway District Council has not dealt with the complainant’s request in accordance with the requirements of Part I of the Act in that it has failed to either comply with section 1(1) or section 17 within the time limit set out in section 10(1).

The cost of examining the information requested in order to establish whether or not an exemption may apply to it may not be taken into account in estimating the cost of complying with the request.

The letter dated 25th January 2005 from Shepway District Council in which the complainant's request for information was refused does not comply with the requirements of section 17.

Action Required

The Commissioner understands that the complainant has now been provided with the information he requested. In view of this, no further action is required to be taken by Shepway District Council in relation to the complainant's request.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 277
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the day of May 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF