

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 July 2011

Public Authority: West Rainton and Leamside Parish Council
Address: 7 Grassdale
Durham
DH1 2AF

Summary

The complainant requested information about correspondence and communications sent by the public authority to specified parties, and associated matters. The public authority responded but did not disclose the requested information. The Commissioner finds that the public authority does not hold the requested information but, by its failure to confirm or deny that the information was held, it has breached section 1(1)(a) of the Freedom of Information Act. The Commissioner does not require any steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 16 August 2010 the complainant hand-delivered a letter, dated 14 August 2010, to West Rainton and Leamside Parish Council (the council), making the following requests:

"I am writing as I want the following information:

[1] *At the May 2010 Parish Council meeting in relation to 2008-09 Audit it was stated a committee reviewed the 2008-09 Auditors Report dated 31st March 2009 and produced a report (recommendations to full council). This committee consisted of: [3 named individuals]. I want to know how this committee complied*

with the LGA'72¹ and Standing Orders in relation to a quorum, and I want to see copies of public notices, minutes, report for this meeting. [...]

[2] *As you are aware I have seen Parish Correspondence to BDO Stoy Hayward dated 18th October 2009 which categorically states that a non-existent committee took all decisions in relation to a Village Fayre, and went on to actually name the members of this non-existent committee as: [3 named individuals]. I want to know the names of all members that approved this false instrument used to mislead the authority's external auditors.*

[3] *Record of Telephone Conversation between [named individual at] ICO and [named councillor] 12th March 2009 13.15hrs obtained under the DPA quote "[named councillor] said that a number of Council's committee had resigned, or were considering this action, because of [the complainant]". I want the names of all members that have resigned from the Parish Council and the membership of all standing committees.*

[4] *Parish Council Correspondence to [Information Commissioner's Office (ICO) staff member] Case Reference RCCO216470/RFAO156990 dated 9th December 2008 obtained under the DPA quote "When Dr. Blackman-Woods² couldn't be more helpful he began hounding her surgeries and then he made complaints about her to the Parliamentary Commissioner for Standards". I want to know whether this false instrument was approved by the council, if so I want the names of all members that attended the meeting of the parish council and approved these lies." [Sic]*

Note that the numbering of the four elements of the request has been added by the Commissioner, for convenience.

3. The council replied on 3 September 2010. It responded to the complainant's requests in the following terms:

[1] No committee was established to deal with the auditors report, it was a working party, consisting of three [named] councillors, which looked at the auditors report and reported back to council. The working party was not formally constituted as a committee, and did not make any decisions, so no minutes were produced.

¹ This is a reference to the Local Government Act 1972. See also footnote 3.

² Dr Blackman-Woods is the local Member of Parliament.

[2] Whether this was a 'false instrument' was disputed by the council. It explained that the organisation of the village fayre was open to all councillors to participate in, and it was usually done by an informal group of councillors who had taken it upon themselves to undertake various organisational tasks between them, with the whole council receiving regular updates on progress.

[3] A statement from the council chairman (the named councillor referred to in part [3]) was provided, which explained that the complainant's actions had led him to believe that there was a danger that several councillors were considering resigning from the council but that none had, in the event, done so.

[4] The complainant was invited to contact the member of parliament herself, for confirmation of the accuracy of any statements attributed to her.

4. The complainant replied on 10 September. He disputed the council's response on grounds which are summarised below:

[1] The council's minutes record what is now explained to be a working party as a 'committee'. The council's minutes are a legal record and they state that it was a 'committee'. As such, it must therefore comply with the provisions of the Local Government Act 1972 (LGA72)³. A working party has no legal standing under the terms of the LGA72 and Audit Commission Act 1998. His request is therefore for copies of the notices and agendas for its meetings, and minutes of those meetings, which must have been issued for compliance with LGA72.

[2] Reference was made to documents which, the complainant argues, indicate to the council's auditors that the village fayre was run by a committee and this is not correct. As explained, no formal committee was established and, as it was not a committee, the auditors were misled. His request seeks to establish on whose authority this misleading statement was made to the council's auditors.

[3] The complainant states that the council's response is not worth commenting on.

³ The Commissioner understands this to refer to the requirements in LGA72 for a committee to conform to various practices in relation to minimum size for a quorum, formal notices, agendas and minutes to its meetings. See <http://www.legislation.gov.uk/ukpga/1972/70/contents>

[4] As in item [2] above, the complainant argues that his request seeks to establish on what authority the statements referred to in the request, which were contained in a response to enquiries by the Information Commissioner's Office (the ICO), were authorised. The clerk is not authorised to respond on her own initiative, therefore the comments must have been authorised by the council. His request seeks to establish who authorised that response.

5. The Commissioner considers this to be an expression of dissatisfaction with the response, which should therefore be taken as a request for an internal review of the council's response. The complainant also wrote to the Commissioner about his request on 10 September 2010.
6. Further correspondence between the complainant and the council took place, but on 31 October 2010 the council indicated that it would be dealing with the ICO on the matter. The Commissioner is therefore satisfied that the complainant has exhausted the complaints processes provided by the council, and he has accepted this complaint in the absence of an internal review.

The Investigation

Scope of the case

7. On 10 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - the council's response ignores the matters in his letter delivered on 16 August; and
 - the minutes, which are the legal record of the council's proceedings, refer to a 'committee' not a 'working party' therefore a 'false instrument' has been created by the council.
8. The complainant subsequently clarified his view that various irregularities in the council's proceedings had taken place, involving the creation of what he termed as 'false instruments' and that these would have required authorisation by the council, which he had requested. Principally, he wanted to know who authorised the letter to the council's auditors which described the 'committee' established to organise the village fayre; and who had authorised the clerk's correspondence to the Information Commissioner's Office as the clerk has no authority to write on council matters without authorisation.

9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. A large part of his correspondence objects to the way the council conducts its business alleging, for example, failure to conform to the various Local Government Acts and other controlling legislation. These are not matters which the Commissioner has any powers to regulate, and are not investigated further. For example, where the complainant contends that certain matters should be contained within the council's minutes, the Commissioner's investigation is into whether the minutes do actually contain the requested information. He makes no findings as to whether the minutes are valid, or whether, by failing to record any information, any breaches of the LGA have occurred.
10. The Commissioner has therefore investigated to what extent the council holds information in its records which meets the description in the complainant's requests. Having discussed the scope of his investigation with the complainant, he has examined whether the council holds information in respect of the various elements of the request, with particular regard to whether it holds records of who authorised the various matters which the complainant refers to as 'false instruments' in the items numbered [2] and [4].

Chronology

11. The Commissioner contacted the complainant and the council on various occasions between 1 March 2011 and early July 2011 for his investigation. That correspondence will not be detailed here, but has been considered in the analysis section, below, as necessary.

Analysis

Substantive Procedural Matters

Section 1

Is the requested information held?

12. The requested information for each part of the request can be summarised as follows:
 - [1] any information on how a committee of three individuals constitutes a quorum, and any formal notices or other documents produced by that committee, as required under the LGA72;

- [2] the names of all council members who approved the letter sent to the council's auditors, dated 18 October 2009;
- [3] the names of all parish councillors who had resigned from the parish council and all standing committees for reasons described to him; and
- [4] the names of all parish councillors who attended the meeting and approved the correspondence sent to the Commissioner on 9 December 2008.

Item [1]

13. The council's response to the Commissioner's enquiries for item [1] explains that the group of three individuals (councillors) who undertook the task of reviewing the auditors' report described in part [1] of the request was not a formal committee, but might more correctly be referred to as a 'working group'. As such, it is not required to observe the requirements of a committee as set out in LGA72. Specifically, a formal committee or sub-committee is required to serve notice of its meetings and publish its agendas and minutes of its meetings and, under LGA72, would require a membership of at least four councillors to form a quorum.
14. The Commissioner is therefore satisfied that no information is held by the council in respect of item [1] in the request, because a working-group has no requirements for a quorum, nor is it obliged to notify meetings, or publish agendas and minutes. As a grouping of fewer councillors than would be required to form a quorum, the working group cannot, by definition, have been a committee or sub-committee. While he acknowledges the complainant's argument that referring to this working group as a 'committee' in its minutes might be misleading or inappropriate in a formal record of the council's business, that is not a matter for the Commissioner to pursue.

Item [3]

15. In respect of item [3] in the request, the council has confirmed that no councillors resigned because of the complainant. The Commissioner accepts the council's explanation that no information is held for this element of the request.

Items [2] and [4]

16. With regard to items [2] and [4], the complainant has provided the Commissioner with copies of the council's minutes in which it is explained that the parish clerk may not enter into correspondence on

her own initiative, but requires the approval or knowledge of the council before doing so. For example:

- minutes of the parish council meeting of 20 November 2008: *“Chairman [...] stated that the Clerk cannot enter into any correspondence on her own volition and must have the approval of council.”*; and
 - a letter sent from the council to the complainant on 17 March 2006, which states: *“Four members are to be in attendance to for a quarum and all correspondence considered at the monthly meeting.”* [sic]
17. The complainant has referred the Commissioner to the provisions of the LGA72, and the council’s own Standing Orders, in support of his contention that the clerk may not act without the permission of the council. While the Commissioner recognises the thrust of the complainant’s argument, that important correspondence such as a letter to the council’s auditors, or to the Information Commissioner, is likely to have been sanctioned by the council, he has discussed this with the complainant, who accepts that compliance (or otherwise) with the provisions of LGA72, or similar governing legislation, is not within the Commissioner’s remit. Whether any breaches of LGA72 have, or have not, occurred is not a matter which the Commissioner has any authority to determine.
18. He also notes that the business of the council is recorded in its minutes. Therefore, he concludes (and the council confirms) that any information which is held about items [2] and [4] will be held in the council’s minutes. The Commissioner discussed this with a representative of the complainant who is also a parish councillor, who also agreed with the Commissioner that the minutes of the council meetings are where this information would be recorded, and there is no other location where the names of council members who had approved correspondence would be recorded.
19. The Commissioner has viewed copies of the council minutes preceding the specified items of correspondence, as this is the location where all parties are agreed that the requested information, if it is held, should be found. He has not found any entry which clearly records a specific authorisation to the clerk to send the specified letters referred to in items [2] and [4] of the request. While the minutes do record the councillors present at each meeting, without a record of whether the correspondence was approved at the meeting it is not possible to conclude that the council holds information on who authorised the letters described in these parts of the request.

20. The complainant's representative, who has copies of all the council's minutes spanning several years, has also examined the minutes at the Commissioner's request, and concurs with the Commissioner's observation that the minutes do not record any specific authorisations for either the letter of 18 October 2009 to the council's auditors, or the letter of 9 December 2008 to the ICO.
21. It is therefore not disputed by the complainant's representative that the minutes do not hold the requested information. Neither is it disputed that the minutes are the only place where the requested information would be found. The Information Tribunal has confirmed, on several occasions, that the normal standard of proof to be used is the civil standard of 'the balance of probabilities'. For example, the Information Tribunal in the case *Linda Bromley v IC and Environment Agency* (EA/2006/0072)⁴ stated:
- "There can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records. [...] the test to be applied was not certainty but the balance of probabilities. This is the normal standard of proof and clearly applies to Appeals before this Tribunal in which the Information Commissioner's findings of fact are reviewed."* (paragraph 13)
22. Consequently, having examined the location where all parties are agreed the information should be found, if held, the Commissioner finds that, on the balance of probabilities, the council does not hold information on the names of all members who approved the letter to the Information Commissioner's Office dated 9 December 2008, or the letter to BDO Stoy Hayward dated 18 October 2009.

Summary

23. The Commissioner finds that no information is held by the council which meets the description in the complainant's request. But he also finds that the council's response to the complainant did not make this sufficiently clear. The Commissioner accepts that the council's responses to the request do engage meaningfully with the complainant and do, at least to some extent, attempt to address the complainant's concerns apparent in the request, nevertheless this is a failure to deny that information is held, in breach of section 1(1)(a) of the Act.

⁴ See <http://www.informationtribunal.gov.uk/DBFiles/Decision/i64/Bromley.pdf>

The Decision

24. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

- The council failed to deny that information was held meeting the description in the request. This is a breach of section 1(1)(a) of the Act.

Steps Required

25. The Commissioner requires no steps to be taken.

Right of Appeal

26. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 28th day of July 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides 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."