

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2015

Public Authority: Treviglas Community College

Address: Bradley Road
Newquay
Cornwall
TR7 3JA

Decision (including any steps ordered)

1. The complainant has requested from Treviglas Community College (the "College") a detailed description of the costs of the proposed 3G football pitch at the College.
2. The College explained that it does not hold the requested information.
3. The Commissioner's decision is that the College does not hold the requested information for the purpose of the FOIA. Therefore the Commissioner does not require any steps to be taken.

Request and response

4. On 21 July 2014 the complainant wrote to the College and requested information in the following terms:

"I am writing with regards to the 3G football pitch which you are intending to build. From my research I have discovered that similar football pitches are capable of being built for around £500,000 whereas this pitch is expected to cost in the region of £800,000. This additional cost concerns me and under the Freedom of Information Act I request that you send me a detailed description of the costs."

5. The College responded on 29 July 2014 and stated that it was unable to confirm the costs of the project until planning permission had been granted.

6. On 1 August 2014 the complainant wrote to Cornwall Council expressing his dissatisfaction with the response from the College and he asked Cornwall Council for help with this matter.
7. On 12 August 2014 Cornwall Council directed the complainant back to the College with his request and informed him that Schools/Colleges deal with their own FOI requests and any complaint in relation to these.
8. The complainant initially contacted the Commissioner on 31 August 2014 to complain about the way his request for information had been handled.
9. During the investigation the College stated to the complainant on 11 September 2014 that it does not hold the requested information "*at this time.*" It explained that it was waiting for a decision from Cornwall Council's planning department regarding the planning application for the development and that the College expected this in "*approximately 6 weeks' time.*"
10. The College further explained that if planning permission is granted, then it needed to confirm funders for the project and once confirmed it will assign its contractors to complete the project. The College assured the complainant that once it knows the cost for the project then it would disclose this information to him.
11. On 19 September 2014 the complainant was advised by the ICO to request an internal review by the College.
12. On 26 September 2014 the College responded to the complainant and reiterated that it does not hold the requested information for the same reasons explained in its correspondence of 11 September 2014.
13. The College informed the complainant that it will refer the matter to Cornwall Council Legal Services. For ease of reference, Cornwall Council will be referred to in this Decision notice as the "College".
14. Following an internal review, on 3 October 2014 the College wrote to the complainant and maintained its position that it does not hold the requested information. It added that the College is not seeking to apply any exemption, or to withhold any information.

Scope of the case

15. As noted above, during the investigation of this case the College informed the complainant that the requested information is not held. The complainant has disputed this.
16. Therefore the Commissioner will consider whether the College is correct to state that it does not hold the information requested.

Reasons for decision

Section 1 – information not held

17. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
18. The Commissioner acknowledges that the College informed the complainant that it does not hold the requested information for the purposes of the FOIA. However, where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Information Commissioner's Office (the "ICO"), following the lead of a number of Information Tribunal decisions applies the civil standard of the balance of probabilities.
19. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request). Without evidence to suggest that the College holds further information, this argument cannot carry weight.
20. The Commissioner's position on the interpretation of "held" for the purposes of the FOIA is that when information is solely held by a public authority on behalf of another person, it is not held by the public authority for the purposes of the FOIA. However, the information will be held by that public authority for the purposes of the FOIA if it is holding the information for someone else, and also holding it to any extent for its own purpose.

21. On 16 October 2014 following further investigations, the College informed the ICO that the figure quoted by the complainant in his FOI request was a sum that was provided by the Football Association (the "FA") and not the College.
22. The College explained that the quoted information is publically available and that the complainant may have inadvertently misrepresented that the figure quoted was provided by the College.
23. The College further explained to the ICO that planning permission is sought first before the overall cost is confirmed and that the figure was estimated by the FA.
24. The ICO informed the College to notify the complainant of its recent finding to his information request. On 20 October 2014 the College wrote to the complainant and confirmed that it does not hold his requested information because this figure was not estimated by the College but was provided by the FA.
25. The Commissioner notes that the College's response to the complainant was inadequate as it did not fully explain its reason why the College does not hold the information requested.
26. The complainant contacted the ICO on 4 November 2014 to express his dissatisfaction with this response from the College.
27. The complainant argued why he was not informed earlier that the sum was provided by the FA and not by the College. He also questioned why this finding has recently emerged.
28. The complainant made it clear that he is unhappy with the responses from the College concerning his information request. Therefore, he has asked the ICO to progress his case to a decision notice.
29. On 2 December 2014 the College explained to the complainant the reason why the information was not relayed to him earlier. It said that it had looked for 'recorded' information where the estimated costs of funding had occurred. Therefore, the College argued that it was unable to comply with the request "*as no such document existed, as the statement had originated from the FA*". However, the College did acknowledge that an earlier explanation on how the figure occurred could have been provided to the complainant and it apologised for this.

30. Following further investigations from the Commissioner, the College stated that the expected cost of £800,000 is a "*ball park figure*" and that it was obtained from the FA and then provided verbally to the College. It explained that a breakdown of the estimated cost was not given to the College, although the figure was the cost for another 3G football pitch which had been built in the region.
31. The College maintains that the information requested by the complainant is not held by the College.

Conclusion

32. In view of the above, the Commissioner is satisfied that the College does not hold the information requested for the purposes of the FOIA.

Other matters

33. The Commissioner considers that the College should have clearly explained in its initial response to the complainant that it does not hold the information requested. He also considers that the College should have informed the complainant at the internal review stage, that the figure quoted by the complainant was estimated by the FA and not by the College.
34. The Commissioner considers that it is good practice for public authorities to include a clear explanation of why the information requested is not held and to provide this at the internal review.
35. In future the Commissioner expects the College to provide satisfactory responses to requesters. However, the Commissioner recognises that the College apologised to the complainant for its inadequate response and that the College has now clarified the matter to the complainant.

Right of appeal

36. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

37. 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.
38. 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

Rachael Cragg
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