

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2015

Public Authority: Bridgnorth Town Council
Address: College House
4 St Leonards Cl
Bridgnorth
Shropshire
WV16 4EJ

Decision (including any steps ordered)

1. The complainant has requested the audio recording of a council meeting. Bridgnorth Town Council disclosed some of the information but withheld other information under the exemption for personal data, section 40(2) of the FOIA.
2. The Commissioner's decision is that Bridgnorth Town Council has:
 - Failed to demonstrate that section 40(2) of the FOIA is engaged and,
 - failed to provide information in accordance with section 1(1) and section 10(1) of the FOIA.
3. The Commissioner requires the public authority to disclose the requested audio recording in its entirety.
4. The public authority 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 19 June 2015, the complainant wrote to Bridgnorth Town Council (the "council") and requested information in the following terms:

"I have requested a copy of the tape for the Town Council meeting of 16 June, and been advised that the Council are not allowing the Public to have these currently."

6. The council responded on 20 July 2015. It provided a recording of the requested meeting but redacted parts because they were "...contrary to standing order 1z(v). The council withheld other information under s40(2) of the FOIA.
7. Following an internal review the council wrote to the complainant on 11 August 2015. It stated that the redacted information would not be disclosed because it did not conform to 'standing orders' and did not form part of the official minutes of the meeting.

Scope of the case

8. On 14 August 2015 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner confirmed with the complainant that his investigation would consider whether the council had legitimately withheld some of the requested information.

Reasons for decision

10. Section 1(1) of the FOIA provides that anyone making a request for information to a public authority is entitled to be informed whether the information is held and, where it is, to have it communicated to them.
11. In this instance the council confirmed that it held a copy of the requested recording, however, prior to communicating the information it edited the recording to remove parts of the information. The council explained that the information was removed because "...certain questions which were asked should not be included in the minutes of the meeting as they were contrary to standing order 1z(v)".
12. The council has explained to the Commissioner that the information removed contain statements and questions which are not permitted by

the relevant standing orders and the information does not form part of the official record of the meeting.

13. The Commissioner notes that the request did not ask for the "official record" of the meeting in question but simply for the recording. That the recording contains information which does not form part of the official minutes of the meeting or falls outside the scope of any standing orders is not, in the Commissioner's view, a relevant consideration under the FOIA. He also considers that it is not for authorities to effectively "censor" held information to remove elements simply on the basis that it does not agree with it. Put simply, the requested information is held and it should be disclosed to the complainant in its entirety.
14. In failing to provide the information to the complainant within 20 working days the Commissioner finds that the council breached section 1(1) and section 10(1) of the FOIA.

Section 40(2) – personal data

15. Section 40(2) of the FOIA provides that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).
16. The council has stated that the information comprised in the recording was "...acquired and processed in accordance with the first data protection principle - data acquired fairly and lawfully". It has argued that a member of the public attempted to ask a question in a Town Council meeting which was outside the range of what they were permitted to do as a member of the public in a meeting "...in breach of Standing Order 1z; the information comprising what he said could thus be argued not to have been acquired fairly."
17. The Commissioner has had some difficulty understanding the council's position with regard to its application of section 40(2). Having viewed the information in written form he notes that it records questions and statements made by a named member of the public. Whilst an individual's name can be said to constitute their personal data under the terms of the DPA, he notes that the individual in question was speaking at a public meeting of the council. He also notes that the individual in question's name appears in the published minutes of the meeting.
18. Both the Town Clerk and the Mayor of the council are also identified in the information. The council has stated that it would be unfair to disclose this information because it contains statements relating to these individuals, the veracity of which the council disputes.

19. In order for section 40(2) to be engaged it is necessary to demonstrate that disclosure of personal data would result in a breach of one of the data protection principles. The council has suggested that disclosing the information would be unfair, suggesting that it might result in a breach of Principle 1 of the DPA.
20. The Commissioner considers that the council's attempt to transpose the argument for non-disclosure it presented under section 1 (see above) into the context of section 40(2) is misinformed: The fact that the data subject presented questions/statements which standing orders do not permit is irrelevant for the purposes of this exemption. This is simply an internal procedural matter for the council and has no bearing on its responsibilities under the FOIA.
21. In relation to the question of fairness, the Commissioner considers that anyone attending a public council meeting would have a reasonable expectation that what they said would be recorded and made public. He does not consider, therefore, that it would be unfair to the data subject who spoke at the meeting for the information to be disclosed.
22. In relation to comments which identify the Town Clerk and the Mayor the Commissioner considers that senior members of public authorities should expect to be subject to scrutiny and criticism (whether unwarranted or otherwise) in relation to the carrying out of their public roles. Where facts are disputed authorities are at liberty to make this known when making disclosures under the FOIA, however, disagreement with the facts reflected in recorded information is not in itself a ground for withholding information.
23. Having had regard for the withheld information and, in the absence of more coherent arguments from the council, the Commissioner has concluded that disclosure would not breach principle 1 of the DPA. The council has, therefore, failed to demonstrate that section 40(2) of the FOIA applies.

Other matters

24. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.
25. The Commissioner is mindful that this is the second recent occasion when he has had to direct the council to disclose information when it has

been wrongly withheld from a requester¹. In view of this and the reluctance of the council on this occasion to resolve matters on an informal basis the Commissioner has concerns that the council might not properly understand its obligations under the FOIA.

26. The short title of the FOIA clarifies that it is an "Act to make provision for the disclosure of information held by public authorities...." The Commissioner's guide to freedom of information clarifies that one of the fundamental principles of the FOIA is:

*"Disclosure of information should be the default – in other words, information should be kept private only when there is a good reason and it is permitted by the Act."*²

27. The Commissioner directs the council to his guidance and expects that in its future handling of requests it will ensure that requested information is provided unless there are valid and clearly defined reasons for it to be withheld.

¹ See: https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1431734/fs_50565917.pdf

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>

Right of appeal

28. 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@hmcts.gsi.gov.uk

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

29. 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.
30. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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