

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2021

Public Authority: Ashford Parish Council
Address: APCclerk2@mail.com

Decision (including any steps ordered)

1. The complainant has requested correspondence relating to a contract entered into by the council with ORS, a company owned by one of the councillors. The council initially refused the request on the basis that the request was vexatious, however it subsequently disclosed the information to the complainant. The complainant accepted the majority of the information which was disclosed, however he argues that one bundle of information contained a computer virus and refused to accept this. The council therefore sought to provide the information in PDF format however in transferring the information into PDF it missed important information from the full correspondence.
2. The Commissioner's decision is that the council has provided all of the information to the complainant in compliance with the requirements of section 1(1) of the Act. She has decided however, that the council did not comply with the requirements of section 10(2) in that it did not provide the information to the complainant within 20 working days.
3. She does not require the council to take any steps.

Request and response

4. On 3 August 2020 the complainant wrote to the council and requested information in the following terms:

"Under the Freedom of Information Act, I request electronic copies within 20 working days of the following:

- 1. All correspondence (including emails) between yourself, the Clerk and Cllrs Hall, [names redacted] concerning the formation of the APCC and its actions to date and its meetings.*
 - 2. The full list of all the tendering companies (including ORS) that were approached by the APCC to compete for the services of providing the new dataset as well as all communication, including responses to the tender.*
 - 3. Full details of the tender documentation that those companies (including ORS) had to price against. e.g., scope of work, deliverables and timing including GDPR and insurances.*
 - 4. Full disclosure of the actual award of tender to ORS.*
 - 5. The contract between the council and ORS including their insurances and GDPR policies*
 - 6. Details of payments made to ORS by the APC.*
 - 7. All correspondence (including emails) between yourself, the Clerk and Cllrs [names of councillors redacted], the monitoring officer, DALC, and any other third parties concerning the issue of 'Conflicts of interest'."*
5. The council responded on 29 August 2020. It refused the request on the basis that it was vexatious and applied section 14(1).
6. Following an internal review, the council wrote to the complainant on 18 November 2020 in which it maintained its original position that the request was vexatious.
7. However, on 11 January 2021 it provided further information to the complainant. It did however explain that some of the information would no longer be held as it would have been held on personal devices which were no longer in use or had automatic deletion policies.
8. The council subsequently reviewed its position again and on 25 March 2021 disclosed the withheld information to the complainant in full.

9. The complainant wrote back to the council and raised an issue with one part of the disclosure. He argued that in relation to the councillor, who also owns the company concerned, the folder of information which had been provided contained a computer virus, and he was not therefore willing to open the file to access the information.
10. On 24 April 2021 the council provided the complainant with the withheld information again, in PDF format. This disclosure, however, was missing headers from emails stating when emails were sent and the parties involved, on a large number of the emails contained within the disclosure.

Scope of the case

11. The complainant contacted the Commissioner on 5 October 2020 to complain about the way his request for information had been handled. His central issue is that he has not received all of the information which he requested.
12. In a telephone call on 14 July 2021 the complainant confirmed that he is happy with the information which has been disclosed to him to date. However, he remains unhappy that he has not received the information from the councillor concerned.
13. The Commissioner considers therefore that the complaint is that the council has not disclosed all of the information to the complainant. Specifically, his view is that the information relating to one councillor has not been disclosed to him.
14. He has also complained at the time which the council has taken to disclose the information to him.

Reasons for decision

Section 1(1) - General Right of Access

15. Section 1(1) of FOIA 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."

16. The council disclosed the information it holds to the complainant on 25 March 2021. This included a copy of the correspondence and information and the information relating to the councillor in question.

17. The complainant confirmed that he had received the email, however he did not open this as his antivirus systems alerted him to a potential virus.

18. The council's response was also copied the ICO, and the email and attachments were not refused by the ICO's anti-virus systems. Given the potential risk to the ICO highlighted by the complainant, the Commissioner's IT department subsequently checked the email and attachments and confirmed that, insofar as they are able to identify, the information/email does not contain a computer virus.

The Commissioner analysis

19. The requirements of section 1 are effectively twofold - to confirm whether information is held, and if so, to communicate that information to the requestor if no applicable exemptions apply.

20. In this case it is clear that relevant information is held by the council and that this was confirmed to the complainant, and so the council has met its obligations in this respect.

21. Secondly, the council, having revoked its initial reliance upon section 14 of the Act, eventually disclosed copies of the information to the complainant on 25 March 2021 and this was confirmed as received by the complainant.

22. The issue for the complainant is that he was not willing to accept one part of that disclosure due to his company's antivirus software, and his IT department alerting him to the potential for a virus.
23. The council did seek to issue the information in another format, however in doing so, it lost sections of the information which the complainant considered important to the issues he wished greater transparency over. Crucially, however, those details were included in the council's initial disclosure to the complainant. The Commissioner can be certain of this as the email of 25 March 2021 disclosing the information was copied to the Commissioner and those details are present in the attachments she received.
24. The Commissioner concludes that, for the purposes of section 1(1)(b) of the Act, the requested information was communicated to the complainant on 25 March 2021.

Conclusion

25. The council has provided the information to the complainant and has evidenced to the Commissioner that it has done so.
26. Under the circumstance, the Commissioner has decided that the council has met its obligation under section 1 of the Act. It was obvious that information was held, meeting the requirements of section 1(1)(a), and that information was communicated to the complainant, meeting the requirements of section 1(1)(b).
27. The Commissioner's decision is therefore that the council has complied with the requirements of section 1 of the Act.

Section 10- time for compliance

28. Section 10(1) requires an authority to comply with the requirements of section 1 of the Act within 20 working days following the date of the receipt of the request.
29. The complainant made his request for information to the council on 3 August 2020.
30. The council disclosed all of the information to the complainant on 25 March 2021.
31. The Commissioner's decision is that the council did not comply with the requirements of section 10(1) of the FOIA.

Right of appeal

32. 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

33. 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.

34. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF