

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2016

Public Authority: Elmswell Parish Council
Address: Parish Clerk's office
Station Road
Elmswell
Bury St. Edmunds
Suffolk
IP30 9HR

Decision (including any steps ordered)

1. The complainant has requested information in relation to the Wesley Centre. Elmswell Parish Council (the council) provided the information it held. It provided some further information during the Commissioner's investigations and also applied section 21 of the FOIA to some further information – information accessible by other means. The complainant was not satisfied with the time it took the council to provide its full response, being charged for information he considered not relevant and the format some of the information was provided in.
2. The Commissioner's decision is that the council has breached section 10(1) of the FOIA in responding outside the required 20 working days. He also determined that the council has complied with regulation 11 of the FOIA – means for communication – and regulation 9 of the FOIA – Fees Notice.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 26 June 2015, the complainant made the following request for information from the council:

"Under the Freedom of Information Act 2000 I would like to request of Elmswell Parish Council copies of all information held, from 1 January 2013 to the present time, relating to the Wesley

Centre (variously referred to as the Wesley Halls, The Methodist Chrch, the Wesley Chapel, the Methodist Chapel, the Wesley halls and chapel site) in School Road, Elmswell.

You will understand that this necessarily encompasses all types of information (not least notes, minutes, drawings, reports and business plans); and all information in all formats (i.e. inclusive of emails).

I would like to receive the information by e-mail please (scanned documents etc.). Should the format of any information not be conducive to e-mail, then I would be happy to receive exceptional items by post..."

5. The council acknowledged receipt of the request on the 27 June 2015 and on the 23 July 2015 it advised that the cost for copying and posting the relevant documents to the complainant is £20.42, stating this to be a fees notice.
6. On 24 July 2015, the complainant responded advising that he had made the payment but stated that he was surprised that the council only managed to issue a fees notice on the nineteenth day following the request being made.
7. The complainant also raised that he had requested the information by email rather than post and wondered why the council was unable to scan the documents and email him the information. He also asked the council to provide a copy of the council's publication scheme as he could not find where charges for information are listed on the website and also asked for a copy of the council's policy on handling information requests which evidences that it will levy fees.
8. On 27 July 2015, the council acknowledged receipt of payment and provided the emails as requested. It also advised that it will now make arrangements for the photocopying of the hard copy documents and post them as agreed.
9. The complainant requested and internal review on the 17 August 2015 for the following reasons:
 - a) The council did not provide him with a response within the required 20 working days following receipt of the request.
 - b) He considered that the council incorrectly levied a charge of £20.42 and asked why it was left until the nineteenth day to issue a fees notice. Also, he had not yet received a copy of the council policy which states the fees it charges for or a copy of the publication scheme.

- c) He considered that the council had provided and charged for irrelevant papers.
 - d) He also considered that the council had not provided all the information relevant to his request, advising what he considered to be missing.
10. The council acknowledged receipt of the review request on the 21 August 2015 and advised that it will be put before councillors at their September meeting.
 11. On 27 August 2015, the complainant followed up on the internal review request stating that he would expect the response to come by the 15 September 2015 – that being 20 working days from the review request – as he noted the councillors September meeting is not scheduled until the 21 September 2015.
 12. The complainant complained to the Commissioner on the 20 September 2015 as no internal review response had been received from the council.
 13. The Commissioner wrote to the council on the 2 October 2015 advising that he would expect an internal review to be conducted within 20 working days, and at the latest, 40 working days.
 14. The council provided the complainant with its internal review on the 23 October 2015. It responded to each of the points raised by the complainant:
 - a) It accepted that it had responded outside the 20 working days
 - b) It advised that it charges 10 pence per side of A4 sheet copied and this was applied in this case. It also advised that its publication scheme is available within the agendas and minutes and can be found at the Elmswell Memorial Library, which is where it states the charges. It also advised that it holds no other policies relating to the FOIA.
 - c) The council stated that the papers it provided were from its file relating to the Wesley Centre, this being the only relevant file. It considered that it provided the information in accordance with the complainant's request for '*all information*' and it was not possible to know what information the complainant already held nor the complainant's view on the relevance of the papers held in the file.
 - d) With regards to any other information held, the council advised that some was available online or from the Elmswell

Memorial Library and online from Mid Suffolk District Council.
It confirmed that the other information is not held.

Scope of the case

15. The complainant contacted the Commissioner again, following the outcome of the internal review, as he was not satisfied with its outcome.
16. During the Commissioner's investigations, the council issued further responses to both the Commissioner and the complainant. It issued the complainant with a refusal for some of the requested information under section 21 of the FOIA and provided some further information that it had missed out from its initial response. It also refunded the complainant for the duplicated information it had charged him for.
17. Following these further responses the complainant advised the Commissioner that he accepts that no further information was held within the scope of his request, but he was still not satisfied with the time it took the council to respond to his request, including the time it took to issue the section 21 refusal and he is not happy with the council providing him with some of the information in hard copy, charging for photocopying/ postage and providing him with and charging him for information he considered to not be relevant to his request.
18. The Commissioner therefore considers that the scope of the case is to consider whether the council was correct to provide the information it did in hard copy as per section 11 of the FOIA, charge for photocopying/ postage of the information as well as charging him for information he considered to be irrelevant to his request as per section 9 of the FOIA.
19. Lastly the Commissioner will determine whether the council breached section 10(1) of the FOIA in not providing its full response within the required 20 working days following the receipt of the request.

Reasons for decision

Section 11 of the FOIA – means of communication

20. Section 11(1)(a) of the FOIA allows a requestor to ask for a copy of the information in the form that they prefer, e.g. hard copy, electronic,

audio tape or as in this case, by email as discussed in the Commissioner's guidance¹ at paragraph 15.

21. Section 11(3) of the FOIA states where the public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request; the authority shall notify the applicant of the reasons for this determination.
22. The Commissioner has noted the final part of the complainant's request where he states: *"I would like to receive the information by e-mail please (scanned documents etc.). Should the format of any information not be conducive to e-mail, then I would be happy to receive exceptional items by post..."*
23. The council has told the Commissioner that it provided the information it held in manual form by post rather than electronically as it did not own a scanner.
24. The complainant has stated that the council does have scanning facilities as per one of its recorded meetings that the council has placed on YouTube. The scanner was discussed from around 58 minutes into the meeting.
25. On reviewing this online meeting, the Commissioner notes this discussion but it appears that the Clerk has borrowed a scanner in the past, there was talk of either purchasing a scanner or paying for an engineer to come in and upgrade the photocopier functions so that scanning capabilities are enabled in the future.
26. So, the Commissioner is satisfied that the council does not own, or did not own, at the time of the request a scanner, albeit the clerk has borrowed one in the past. It would therefore have been at the council's discretion as to whether it looked to borrow the scanner for this particular request in order to provide the manually held information electronically. The Commissioner therefore finds the council has complied with section 11 of the FOIA in this case.

¹ <https://ico.org.uk/media/for-organisations/documents/1163/means-of-communicating-information-foia-guidance.pdf>

Section 9 of the FOIA – Fees notice

27. Section 9(1) of the FOIA allows a public authority to issue a fees notice and payment needs to be made before the information is supplied.
28. The main issue in this case is the complainant says he has received information not relevant to his request. The council on this has stated to the Commissioner that the complainants request asked for:

*“copies of **all information** held...”. And , “You will understand that this necessarily encompasses all types of information (not least notes, minutes, drawings, reports and business plans); and information in all formats (i.e. inclusive of emails).”*

29. The council has explained that the use of bold type prompted it to simply have the whole of the paper file copied over rather than risk a possibly lengthy discussion as to what might have been left out. It took the above comments as a firm and unequivocal demand for an all-encompassing response to provide all information held and determined that if they were relevant to the Council’s file, they were relevant information in the context of this firmly expressed request with its emphasis on, ‘*all information*’.
30. It appears in this case that the council has copied and sent the file it holds on this matter and in doing so has provided more information than that expected by the complainant.
31. The council, however, considers the information to be relevant because it was the information held in the Wesley file and just because there may not be an obvious link, to the complainant, as to why the information is in the file - this does not mean there was not a reason for it being placed in the file at the time. And a request for ‘all information held’ does create a wide scope for the information requested.
32. With that, the Commissioner, is satisfied that the council complied with section 9 of the FOIA.

Section 10(1) of the FOIA – Time for compliance

33. Section 10(1) requires a public authority to respond to a request, complying with section 1(1) of the FOIA within 20 working days following its receipt.
34. In this case, the request was made on the 26 June 2015. The council’s full response was not provided until it had provided its section 21 refusal notice on the 15 March 2016. This is clearly outside the required timeframe; therefore the Commissioner finds that the council has breached section 10(1) of the FOIA.

35. As the response has now been provided, the Commissioner does not require the council to take any steps.

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: 0870 739 5836

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

Andrew White
Group Manager
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