

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2019

Public Authority: Ammanford Town Council

Address: clerk@ammanfordtowncouncil.co.uk

Decision (including any steps ordered)

1. The complainant requested copies of minutes of meetings for various periods of time. Ammanford Town Council ('the Council') provided some information but the complainant alleged that it had not provided all the information held relevant to the request. During the course of the Commissioner's investigation the Council disclosed additional information and stated that it did not hold minutes of some meetings. The Commissioner's decision is that, on the balance of probabilities the Council does not hold any additional information relevant to the requests that it has not already disclosed. However, in failing to disclose the information within the statutory timescale the Council breached section 10 of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. The complainant submitted six requests for information during the period 16 to 23 May 2018, as detailed below.
 - On 16 May 2018 he requested a copy of the minutes of Council meetings in November 2017;
 - On 17 May 2018 he requested a copy of the minutes of Council meetings in December 2017;
 - On 18 May 2018 he requested a copy of the minutes of Council meetings in January 2018;

- On 21 May 2018 he requested a copy of the minutes of Council meetings in February 2018;
 - On 22 May 2018 he requested a copy of the minutes of Council meetings in March 2018;
 - On 23 May 2018 he requested a copy of the minutes of Council meetings in April 2018.
3. On 18 June 2018 the Council responded to the request dated 16 May 2018 and provided copies of some minutes of meetings.
 4. The Council provided copies of other minutes of meetings on 20 February 2019, after the involvement of the Commissioner.

Scope of the case

5. The complainant contacted the Commissioner between 15 and 22 June 2018 to complain about the way his requests for information had been handled.
6. The Commissioner wrote to the Council on 11 July 2018 regarding the five requests which had not been responded to. The Commissioner reminded the Council of its obligations to issue a response which complies with the requirements of the FOIA within the required timescales. The Commissioner asked the Council to respond to the requests within ten working days.
7. Due to staffing changes at the Council, the Commissioner experienced difficulty making contact with the appropriate person at the Council. In light of this, the Commissioner wrote a further letter to the Council on 25 July 2018 and asked it conduct an internal review into its handling of the requests.
8. The complainant contacted the Commissioner again on 21 November 2018 to confirm that he had still not received a response to his requests. He asked the Commissioner to issue decision notices in relation to his complaints.
9. The Commissioner wrote to both parties on 28 November 2018 to confirm that the complaint had been accepted as eligible for formal consideration under the FOIA.
10. On 20 February 2019, the Council responded to all six requests and provided copies of the information held relevant to them.

11. On 28 February 2019 the Council wrote to the Commissioner regarding its handling of the requests. The Council confirmed that it had now disclosed copies of all minutes it held relevant to the requests and provided detailed representations to support its position that no further information was held.
12. In light of the above, the scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any additional information relevant to the requests, and to consider procedural matters associated with the Council's handling of the requests.

Reasons for decision

Section 1 – general right of access

13. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and she will consider any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
15. The Council confirmed that it undertook additional comprehensive searches following the involvement of the Commissioner of both its hard copy and electronic records. Thorough searches of all hard copy information held in the Council offices were searched, which identified some copies of minutes falling within the scope of the request.
16. The Council confirmed that it does not have a network of computers and only uses one lap top. During the Commissioner's investigation the Council retrieved a desktop computer from a previous clerk as well as information relating to Council business which was stored on a personal laptop used by a previous Clerk.

17. The Council advised that the documents held on the Clerk's laptop were structured in a way which made electronic searches challenging. As a result, every single document held on the laptop was accessed in order to determine whether it fell within the scope of the requests. Comprehensive searches were also carried out on documents held on the desktop computer and within the information retrieved from the personal laptop used by a previous Clerk. Again, these searches involved checking every single document to ascertain whether it was relevant to the requests.
18. The Council also conducted searches of its email inbox and consulted with all Council members who conducted searches of their own email inboxes to determine whether any relevant information was held. The Council also asked its members to check through any hard copy information in their possession. When checking emails the Council used the search terms "minutes" and "agenda".
19. As stated earlier in this notice, the Council disclosed copies of all minutes of meetings covering the periods quoted in the request that it was able to locate during the Commissioner's investigation. Following the disclosure made by the Council on 20 February 2019, the complainant indicated that the minutes for a number of meetings appeared to be missing. In its response to the Commissioner, the Council acknowledged that it was unable to locate minutes for a number of meetings listed below:

13/11/17	Full Council
11/12/17	Full Council
4/1/18	Planning & Environment Sub Committee Meeting
4/1/18	Events Sub Committee Meeting
4/1/18	Asset Transfer Sub Committee Meeting
8/1/18	Finance Sub Committee Meeting
20. In relation to the meetings above, the Council identified agendas for some of the meetings, but it was unable to locate any minutes of the meetings in question. The Council acknowledged that minutes of meetings such as those listed above are required to be held and made available, if they were ever in existence. The Council was unable to provide a definitive reason for the absence of these minutes, for example whether the minutes were destroyed. Part of the reason for this is due to change in staffing at the Council. However, given that no member has a record of the minutes and in light of the comprehensive searches conducted, the Council considers it likely that either the meetings did not go ahead or minutes were never actually created for the meetings. For example, the minutes of the full Council meeting on 20 February 2018 suggest that the four sub-committee meetings in January 2018 referred to in paragraph 19 above were adjourned until

February 2018. Minutes of the four sub-committee meetings that took place in February 2018 were disclosed by the Council.

21. Following the disclosure on 20 February 2019, the complainant also raised two queries concerning 'blank' pages contained within some of the bundles of information which the Council had provided. He asked whether the pages were 'intentionally blank' or whether there was any additional information which should have been disclosed. The Council confirmed to the Commissioner that the information had been disclosed in the exact manner in which it had been located through the searches undertaken. As the minutes in question were written by a member of staff who no longer worked at the Council, it was unable to provide any further definitive reasons or explanations as to why the pages were 'blank'.
22. The Council confirmed to the Commissioner that, as a result of this complaint, it would be conducting a full review of its handling of records of this type and will be implementing an appropriate records management policy going forward. The Council also apologised for the delay in its handling of this matter, both in providing the information requested to the complainant and for the delay in responding to the Commissioner's enquires regarding this complaint.
23. The Commissioner accepts that it is reasonable to expect that the Council would hold a record of the minutes of all formal meetings that took place during the periods covered by the requests. The Commissioner understands that the Council is required to produce and maintain records of such meetings. In addition, the Commissioner notes that minutes of meetings are listed as an example of information which she considers that community councils should proactively publish under Class 3 of her Model Publication Scheme.
24. Whilst the Commissioner accepts that the Council *should* hold minutes of all meetings which took place during the periods covered by the requests, in cases like this she is limited to assessing whether, on the balance of probabilities a public authority has identified all the information held information relevant to a request. The Commissioner has not seen any evidence of any inadequate searches or grounds for believing there is any motive to withhold information relevant to the request. Based on the searches undertaken and the other explanations provided the Commissioner is satisfied that on the balance of probabilities, the Council does not hold any further recorded information relating to the requests, other than that which it has disclosed.

Section 10 – time for compliance

25. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
26. In this case the six requests which are the subject of this notice were submitted between 16 and 23 May 2018. The Council provided some information relevant to the requests on 18 June 2018 and disclosed the additional information held relevant to the requests on 20 February 2019. As the Council failed to comply with section 1(1)(b) within the required timescale it breached section 10(1) of the FOIA in relation to each request.

Other matters

27. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

Records Management

28. The Commissioner would like to draw the Council's attention to the code of practice issued under section 46 of the FOIA (the "section 46 code") which provides guidance to all relevant authorities as to the practice which it would, in the opinion of the Lord Chancellor, be desirable for them to follow in connection with the keeping, management and destruction of their records
29. The code is not directly legally binding but failure to follow it is likely to lead to breaches of the FOIA. As a public authority for the purposes of both the EIR and the FOIA the Council should have regard for the recommendations of the code.
30. The section 46 code recommends that authorities should define how long they need to keep particular records, should dispose of them when they are no longer needed and should be able to explain why records are no longer held. Information designated to be kept as records should be stored in such a way that it can be easily and quickly retrieved for business purposes or to respond to a request.

31. Whilst the Commissioner is satisfied that sufficient searches have now been completed, it is clear that significant time and resources could have been saved if all of the information that was eventually uncovered had been done so at the outset. She expects that the Council's future practice in this regard will conform to the recommendations of the section 46 code.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Joanne Edwards
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