

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2023

Public Authority: Workington Town Council
Address: The Town Hall, Oxford Street
Workington
CA14 2RS

Decision (including any steps ordered)

1. The complainant has requested information relating to advice the Council had received from the Cumbria Association of Local Councils (CALC).
2. The Commissioner's decision is that the public authority has not complied with its obligations under section 1(1) of FOIA. The Council also failed to respond within 20 working days and therefore breached section 10 of FOIA.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 20 November 2021, the complainant wrote to Workington Town Council and requested information in the following terms:

"I write to request a copy of any written request for advice (paper or electronic) or contemporaneous note of any oral request for advice from CALC by anyone acting in an official capacity for the Council (including but not limited to the Mayor, a Committee Chair, and the Clerk), and a copy of any written or email response or contemporaneous note of any oral response, from CALC, prior to 11th October 2021, in respect of

- a) any proper basis for exclusion of newly elected councillors from the meeting on 11th May 2021;
 - b) any proper reason why the provisions of s83(4) of Local Government Act 1972 should not apply in the case of those councillors not having made Declarations of Acceptance of Office before or at the 11th May Council meeting.
 - c) any other advice which the Council sought or received which could reasonably be seen as having a bearing on these issues, on the matter of the May by-elections, on the assumption of office by those elected councillors, and the position of those councillors subsequent to 11 May 2021.”
5. Workington Town Council responded on 1 February 2022, providing an email chain and a publication by the National Association of Local Councils (NALC).
 6. The complainant sought an internal review on 28 February 2022. They considered that parts a) and c) of their request had not been properly responded to. Despite the Commissioner’s intervention, the Council had failed to complete its internal review at the date of this notice.

Reasons for decision

7. When a public authority receives a request for information it has two obligations under section 1(1) of FOIA. Firstly it must explicitly confirm or deny whether it holds the information in question. Secondly, if it does hold that information, it must either provide a copy to the requester or issue a refusal notice. If it receives a request that contains multiple elements, its response must be clear about which information it holds and which it does not.
8. In its submissions to the ICO, the Council described the searches it had carried out for the requested information. The Commissioner is satisfied, on the balance of probabilities, that the Council does not hold any further information relevant to the request. However, the Council failed to state this to the requester.
9. Parts a), b), and c) of the request seek specific information. It is not sufficient for the public authority to simply state that it is complying with appropriate guidance to meet its FOIA obligations. It must state whether it holds each piece of information and then either provide that information or explain why it cannot. As the public authority has not done so, it has not complied with section 1(1) of FOIA.

10. Furthermore, the public authority did not respond to the request within twenty working days, and therefore breached section 10 of FOIA.

Other matters

11. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
12. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
13. In this instance, the public authority failed to respond to the original request within the legal timeframe and failed to respond to the request for internal review at all.
14. Section 17(1) of FOIA states that where a public authority intends to refuse a request for information on the grounds that it is subject to an exemption in Part II of FOIA, it must issue the requester with a refusal notice explaining the exemptions relied upon and why they apply (if not apparent), no later than 20 working days after the date on which the request was received.
15. In this case, the Council failed to issue the requester with a valid refusal notice with respect to part two of the request within 20 working days. The Commissioner therefore finds that the Council breached section 17 of FOIA with regards to part two of the request.

Right of appeal

16. 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

17. 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.
18. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF