

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 August 2024

Public Authority: Penkridge Parish Council
Address: Haling Dene Centre
Cannock Road
Penkridge
Stafford
ST19 5DT

Decision (including any steps ordered)

1. The complainant requested information held by Penkridge Parish Council (the parish council) about a tender exercise relating to a particular refurbishment.
2. The Commissioner's decision is that the parish council has breached section 16(1) (advice and assistance) of FOIA. This is because part of the request did not have a single objective reading, and the parish council failed to seek clarification of this part of the request from the complainant under section 1(3) of FOIA.
3. The Commissioner also considers that the parish council has breached section 1(1) (general right of access) of FOIA, as it misconstrued the remaining parts of the request and did not provide the information requested, or advise that it was not held.
4. The Commissioner requires the parish council to take the following steps to ensure compliance with the legislation.
 - The parish council should seek clarification of the information that the complainant requires in response to part 1 of the request, and then issue a fresh response that complies with FOIA.
 - With regard to part 2 of the request, the parish council should issue a fresh response, confirming to the complainant if it holds copies of

estimates it received from companies bidding for the refurbishment contract, and also whether it holds a tender specification document, or similar. The parish council should disclose the information that is held, or issue a refusal notice that complies with FOIA.

- With regard to part 3 of the request, the parish council should issue a fresh response, confirming if it holds copies of any information about the decision to award the contract to the successful bidder. The parish council should either disclose the information that is held, or issue a refusal notice that complies with FOIA.
5. The parish council must take these steps within 30 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

6. On 13 March 2024, the complainant wrote to the parish council and requested information about a tender exercise relating to refurbishment work that had been carried out. For ease of reference within this decision notice, the Commissioner has separated the complainant's request into 3 parts as follows.

"Please take this as submission of a freedom of information act request.

This is to do with the above works that have been carried out.

Part 1. The people of Penkridge want to know who it went out to and via what platform?

Part 2. Also the estimates from the tender submissions and the scope that they were priced against.

Part 3. How the decision was made to select the supplier following the parishes own policies with regard to value for money and selection of suppliers above a financial threshold."

7. On 19 March 2024, the parish council provided the following information in response to the complainant's request:

"The ladies and gents toilets on the Ground Floor of the Haling Dene Centre towards the Function Room and Bar were refurbished in January/February 2024.

The invitations to submit a quotation were sent out either by letter, email or on-line request form and where possible the Parish Council always try to use local companies.

The quotations were submitted against a table of works document.

The quotations received were considered at the 26 October 2023 Haling Dene Management committee meeting and a Contractor was appointed to undertake the refurbishment. The Council's Policies are always taken into account when considering any type of work for the Parish Council."

8. The complainant advised the parish council that it had not provided the information requested. Further correspondence was then exchanged between the two parties about the request.
9. On 19 April 2024, the parish council sent correspondence to the complainant which included the information provided in its original response to the request. The parish council also said that it considered that parts of the subsequent correspondence sent by the complainant had set out opinions and additional questions that did not form part of their original request.

Reasons for decision

Section 1 – general right of access **Section 16 – advice and assistance**

10. Section 1(1) of FOIA provides that any person making a request for information to a public authority 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.
11. Section 16(1) of FOIA provides that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

12. Section 16(2) provides that any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice¹ issued under section 45 of FOIA is to be taken to comply with the duty imposed by subsection (1) in relation to that case.
13. With regard to clarifying the request, the section 45 code of practice explains that there may be instances when a public authority needs to contact an applicant to seek clarification regarding the information they are seeking.
14. The Commissioner's published guidance on section 16² goes on to confirm that when a request, read objectively, is ambiguous and requires clarification as to the information sought, the public authority should contact the applicant for more details to help it identify and locate the information they want.
15. Whilst the parish council has provided what it appears to have considered to be an appropriate response to part 1 of the request, the complainant has said that it is not what they required.
16. Having considered part 1 of the request, the Commissioner considers that the terms "who it went out to" "and via what platform" are both ambiguous statements and open to misinterpretation.
17. Given the above, the Commissioner considers that the parish council should have relied on section 1(3) of FOIA in order to seek clarification from the complainant as to what they specifically meant by the terms that they used in part 1 of their request, before going on to respond.
18. As the Commissioner has decided that the parish council did not meet its duty to provide advice and assistance to the complainant in relation to part 1 of the request, by way of clarifying the information that they were seeking, he finds that the parish council has breached section 16(1) of FOIA.
19. The parish council should now seek further clarification about the information that the complainant requires in response to part 1 of their request, and then issue a response that complies with its obligations under FOIA.

¹ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

² [Section 16 – Advice and Assistance | ICO](#)

Part 2 and Part 3 of the request

20. The Commissioner considers that there is only one objective reading of part 2 of the request, that being that the complainant required;
 - Copies of the estimates held by the parish council that were received from the various companies bidding for the contract to carry out the works.
 - A copy of the information contained within the work specification document (or similar) that was given to, and used by, the bidders to submit their estimates.
21. It is the Commissioner's view that there is also only one objective reading of part 3 of the complainant's request, that being:
 - Copies of all of the information held that relates directly to the decision made to choose the bidder that was successful.
22. Given the above, it is the Commissioner's view that the parish council has misconstrued part 2, and part 3, of the complainant's request, as it did not provide copies of the information relevant to these parts of the request, or confirm that it was not held. The Commissioner has therefore found a breach of section 1 of FOIA.
23. The parish council should, after taking into account paragraphs 20 and 21 above, reconsider parts 1 and 2 of the request, and respond to the complainant again as required by section 1 of FOIA.

Other matters

24. Whilst the Commissioner has decided that the parish council should respond to the request again, the steps specified in paragraph 4 above do not necessarily require the parish council to disclose information it now identifies as being relevant to the request.
25. The parish council's fresh response could be in the form of a refusal notice, if it considers that relevant exemptions under FOIA apply.

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
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