

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 April 2016

**Public Authority:** Keighley Town Council  
**Address:** Keighley Civic Centre  
North Street  
Keighley  
West Yorkshire  
BD21 3RZ

### **Decision (including any steps ordered)**

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1. The complainant has requested recorded information from Keighley Town Council which concerns MH-P Internet Limited's provision of internet/website services. The information which the complainant seeks is subject to the Council's application of sections 21 and 22 of the FOIA.
2. The Commissioner's decision is that Keighley Town Council has correctly applied sections 21 and 22 to the requested information.
3. The Commissioner does not require the public authority to take any further action in this matter.

### **Request and response**

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4. On 3 August 2015, the complainant wrote to Keighley Town Council and requested information in the following terms:  
  
"You are hereby requested to provide copies of all committee and council documents including working papers, reports and internal emails from 31<sup>st</sup> July 2014 to 31<sup>st</sup> July 2015 that make reference to mh-p internet Limited or the website that Keighley Town Council commissioned from mh-p internet Limited on 31<sup>st</sup> July 2014."
5. Having received no response from the Council, the complainant contacted the Information Commissioner to complain.

6. The Commissioner contacted the Council on 29 September to discuss the complainant's request. The Council informed the Commissioner that it had no record of having received the complainant's request. It was however was able to confirm that it had now received a request from the complainant contained in his further correspondence - received on 22 September.
7. The Commissioner asked the Council to respond to the complainant's request within twenty working days of its receipt.
8. The terms of the complainant's request of 22 September are:

"You are hereby requested to provide copies of the agenda, minutes and all background and pre-reading papers submitted to the Civic Centre Committee and the Policy and Governance Committee relating to mh-p between 31<sup>st</sup> July 2014 and 31 July 2015."
9. On 30 September the Council wrote to the complainant about his request. The Council refused to supply the information he seeks in reliance on sections 21 and 22 of the FOIA – where the information is already reasonable available, and where the information is intended for future publication.
10. The Council informed the complainant that, "...most of the documents you are requesting may form part of the Court proceedings against the Council, which you are the claimant. Hard copies are available in the office for you to view."
11. The complainant wrote again to the Commissioner on 22 October. He complained about the Council's refusal to supply to him with the information he seeks, asserting that, "...Whilst some of the agenda and minutes are beginning to appear on the Council's new website, none contain the background information circulated to members on which the members make their decision". He explained his view that, "... if an officer of the Council fails to provide, or provides members with misleading information this will affect any decision that the members and subsequently the Council makes on any given issue. This background information can take the form of third party emails, documents and/or reports written by an officer of the Council".
12. On 3 December 2015, the Council confirmed to the Commissioner that it does not have an internal review procedure.

## Scope of the case

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13. The focus of the Commissioner's investigation was to determine whether the Council has handled the complainant's request of 22 September 2015 in accordance with the FOIA. Specifically, whether the Council is entitled to rely on sections 21 and 22 of the FOIA in respect of any information it is withholding which falls within the terms of that request.
14. This notice sets out the Commissioner's decision.

## Background information

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15. The complainant's company, MH-P Internet Limited, designs, builds and manages websites for town and parish councils.
16. At the time the complainant made his request, MH-P Internet Limited was in dispute with the Council for monies associated with the Council's website.

## Reasons for decision

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17. Section 21 of the FOIA provides an exemption to the duty to disclose recorded information, if the requested information is reasonably accessible to an applicant other than by virtue of section 1 of the FOIA.
18. Section 22 of the FOIA provides an exemption to the duty to disclose recorded information if the public authority intends to publish that information at some time in the future, whether the date of publication is determined or not.
19. The Council has provided the Commissioner of all of the recorded information it holds, which was held at the time the complainant made his request and which falls within the scope of that request. The information is comprised of the following classes of documents:
  - The Council's publication scheme: Class 4 of the scheme relates to the Council's decision making process and to records of its decisions. It provides access to minutes, agendas, reports presented to the Council, responses to consultation papers, responses to planning applications and bye-laws. This information is to be made available to the public as hard copy documents or via the Council's website.
  - A proposal and quotation from the complainant's company- dated April 2014.

- Email correspondence passing between the complainant's company and the Council, which concerns mh-p Limited's proposal and quotation and its use of standard documents and terms and conditions.
  - Information relating to the complainant's County Court action, including the Council's defence documents and the official notice of legal action dated 8 July 2015.
  - A number of invoices from the complainant's company to the Council and emails which concern the transfer of domain name.
  - A memo from the Town Clerk to the Civic Centre Committee concerning the provision of a new website.
  - Email correspondence passing between the complainant's company and the Council which concern the complainant's claim for monies due to his company.
  - A document which sets out the history of the dispute from the complainant's perspective.
20. The Council has made clear to the Commissioner that all of the information listed above is subject to its application of the section 21 exemption. It has also made clear that it holds no further information than that which it has provided.
21. Furthermore, it is the Council's position that this information was sent to the complainant by Her Majesty's Court Service ("HMRC") prior to, or around the time when the complainant submitted his 22 September request to the Council.
22. In respect of the complainant's request for agendas, minutes of meetings and background information, the Council has confirmed to the Commissioner that it is this information which is subject to its application of section 22 of the FOIA. The Council has advised the Commissioner that this information is now available to download to download from the Council's website<sup>1</sup>.
23. The Council has informed the Commissioner that the Council always had the clear intention to publish all of the requested information on its website in the future and to do so within the timeframe provided by the

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<sup>1</sup> [www.keighley.gov.uk](http://www.keighley.gov.uk)

appropriate legislation<sup>2</sup>. Notwithstanding this intention, the Council has also advised the Commissioner that the complainant was told he could view hard copies of the information at its offices.

24. The Commissioner asked the Council to provide him with details of its considerations of the public interest test which is required when section 22 of the FOIA is applied.
25. The Council did not provide its public interest considerations: Instead it has relied on the asserted facts that the complainant has been provided with all of the information the Council holds by virtue of the disclosures made prior to the complainant's Court action or by virtue that the information is now available to the complainant on the Council's website.
26. In addition to its reliance on sections 21 and 22 of the FOIA, the Council has also pointed out that much of the information within the scope of the complainant's request is also subject to an application of the exemption provided by section 40(1) – where the requested information is also the personal data of the applicant. Having examined the information which the Council has provided, the Commissioner is drawn to agree with this position.
27. Ordinarily, information associated with a company is unlikely to be considered as being personal data. In this case however, the company and the complainant may be viewed as being one and the same thing: Here the complainant is inexorably linked with his company and additionally, much of the email correspondence refers to the complainant by his name.
28. In the Commissioner's opinion the Council would be correct to withhold information relating to the complainant's company in reliance on section 40(1) of the FOIA.
29. The Council would be correct withhold the complainant's personal data under the absolute exemption of section 40(1). This is because a disclosure under the FOIA would place information into the public domain which would, in all likelihood, constitute a breach of the Data Protection Act.
30. Where a public authority receives a request for information which constitutes the personal data of the applicant, the Commissioner considers that the appropriate action would be to invite the applicant to

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<sup>2</sup> Local Government (Access to Information) Act 1985

submit a subject access request under section 7 of the Data Protection Act.

*The Commissioner's decision*

31. In the Commissioner's opinion, the Council clearly had a settled intention to publish its agendas, minutes of meetings and background information. This is evidenced by the inclusion of this class of documents of the Council's publication scheme. In respect of this information, it is entirely reasonable for the Commissioner to conclude that section 22 has been appropriately applied.
32. The fact that the complainant had previously been responsible for the Council's website and that the Council had been served with notice of a civil court action, explains why the background papers had not been published on the Council's website at the time the complainant made his request. The Commissioner understands that this delay has now been rectified.
33. The Commissioner is satisfied that the Council is likely to be correct in its belief that the remaining information – the email correspondence, the documents relating to the complainant's court action and information which the complainant had authored himself, have been made available to the complainant via the civil court disclosure procedure. This information was therefore already available to the complainant when he made his request and consequently gave rise to the Council's application of section 21.
34. Having considered the Council's representations, the Commissioner has decided that the Council's actions, both in the past and at the time the request was made, demonstrate that the Council has appropriately applied sections 21 and 22 of the FOIA to the information which the complainant seeks.

## Right of appeal

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35. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**