

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 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 request that it has not, to date, disclosed. However, in failing to disclose some of 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 four requests for information during the period 18 October 2018 to 30 November 2017, as detailed below.
 - On 18 October 2017 he requested a copy of the minutes of Council meetings for the period from August to December 2016;
 - On 1 November 2017 he requested a copy of the minutes of Council meetings for the period from January to March 2017;

- On 16 November 2017 he requested a copy of the minutes of Council meetings for the period from April to June 2017;
- On 30 November 2017 he requested a copy of the minutes of Council meetings for the period from July to October 2017.

The complainant indicated that he was happy to either receive copies of the documents requested or for them to be uploaded on to the Council's website and links provided to the information.

3. On 4 December 2017 the Council provided copies of some minutes.
4. On 5 December 2017 the complainant wrote back to the Council and indicated that he did not consider the Council had provided copies of all minutes for the period covered by his four requests.
5. The Council made an additional disclosure of information on 26 January 2018.

Scope of the case

6. The complainant contacted the Commissioner on 17 and 30 November 2018 to complain about the way his requests for information had been handled.
7. The Commissioner wrote to the Council on 21 December 2017 regarding the four requests and reminded it of its obligations to issue a response which complies with the requirements of the FOIA within the statutory timescale. The Commissioner suggested that the Council treat the complainant's communication of 5 December 2017 as a request for an internal review and issue a response which complies with its statutory obligations.
8. The complainant contacted the Commissioner on a number of occasions between January and February 2018 to confirm that he had received some additional information from the Council but he had still not received all of the information which he had requested.
9. On 25 May 2018 the complainant clarified to the Commissioner the information he considered was outstanding in relation to his requests.
10. The Commissioner wrote to the Council on 13 June 2018 setting out the information she required in order to commence her investigation. Despite several reminders and telephone calls to the Council it failed to provide the Commissioner with a substantive response to her enquiries about this complaint. As a result, on 26 October 2018 the Commissioner

issued an Information Notice (IN) to the Council in accordance with her powers under section 51 of the FOIA. The IN required the Council to furnish the Commissioner with the information outlined in her letter of 13 June 2018.

11. Following further exchanges of correspondence and discussion between the Commissioner and the Council, the Council disclosed additional information to the complainant on 19 January 2019 and provided a full response to the Commissioner's enquiries on 21 January 2019. The Council made a further disclosure of some minutes on 20 February 2019.
12. Accordingly, 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. However, the Council acknowledged that it was unable to locate minutes for a number of meetings listed below:

3/10/16	Policy Sub Committee Meeting
21/10/16	Christmas Lights Sub Committee Meeting
7/11/16	Policy Sub Committee Meeting
21/3/17	Personnel Committee Meeting
15/5/17	Annual General Meeting
22/5/17	Full Council Meeting
20/6/17	Personnel Sub Committee Meeting
3/7/17	Planning & Environment Su-Committee Meeting
26/10/17	Personnel Sub-Committee Meeting
20. In relation to the meetings above, the Council identified some agendas and attendance registers for 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 some of the meetings did not go ahead due to a lack of attendees and minutes for other meetings were never actually created. For example, the attendance register for the meeting on 3 October 2016 only shows one member in attendance. As this number does not satisfy the quorum for attendance, it is likely the meeting did not take place.

21. The Council confirmed to the Commissioner that, as a result of this complaint, it will 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.
22. 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.
23. 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. 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

24. 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.
25. In this case the four requests which are the subject of this notice were submitted on 18 October 2017, 1, 16 and 30 November 2017. The Council provided some information relevant to the requests on 4 December 2017 and disclosed additional information on 26 January

2018 and during the Commissioner's investigation. 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

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

Engagement with the Commissioner's investigation

27. When dealing with complaints the Commissioner is reliant upon the cooperation of public authorities in her investigation. Where public authorities fail to provide timely, comprehensive responses to her enquiries, this can result in the Commissioner's investigation being unnecessarily prolonged. As an investigation can result in information previously withheld or not identified being disclosed to complainants, the Commissioner considers that such delays represent a failure by the authority in question to act within the spirit and the letter of the FOIA.
28. The Council's repeated failure to respond to the Commissioner's enquiries in this case resulted in her issuing an Information Notice to compel it to respond. The Commissioner is disappointed that, even after she had taken this step, the Council still failed to provide a response until being further prompted to do so.
29. The Council confirmed to the Commissioner that as a result of this complaint it is taking steps to address a number of issues around its procedural handling of requests in the future. This includes reviewing its website, complaint procedures and formal records management policies, and providing additional training to staff and members to ensure they are fully aware of their responsibilities.
30. The Commissioner is pleased to note that the Council is taking steps to address issues which have arisen as a result of this complaint and she expects that, in the future, it will provide timely and adequate responses to her correspondence.

Records Management

31. 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

32. 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.
33. 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.
34. 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

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

Website: 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

Joanne Edwards
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