

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 29 August 2007

Public Authority: Argoed Community Council
Address: Community Centre
Mynydd Isa Library Mercia Drive
Mynydd Isa, Mold
Clwyd
CH7 6UH

Summary

1. The complainant requested from the public authority a copy of its procedural standing orders. After initially not responding to the request, the public authority issued a refusal notice, citing the exemption at section 21 of the Act. Following a request for internal review, the public authority withdrew reliance on section 21 and issued a fees notice to the complainant. In addition, the public authority asked the complainant to sign a disclaimer before disclosing the information. The complainant paid the fee but refused to sign the disclaimer. After investigation from the Commissioner, the public authority disclosed the information without receiving the signed disclaimer. However, as the information requested is listed in the public authority's publication scheme, the Commissioner's decision is that the authority breached section 19 of the Act by not making the information available. The Commissioner also considers that the public authority breached section 1 of the Act by insisting upon a signed disclaimer as a pre-condition of supplying the information.

The Commissioner's Role

2. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the 'Act'). This Notice sets out his decision.

The Request

3. On 11 September 2006 the complainant requested the following information from the public authority:

*“Argoed Community Council – Document Publication Scheme (as required by section 19 of the Freedom of Information Act 2000)
Argoed Community Council – Standing Orders for Council Meetings (as required by section 37 of the Local Government Act 2000)”*

4. The public authority responded to the complainant on 11 September 2006, stating that all correspondence will be sent to the Council's legal representatives, Walker Smith and Wey. It is not clear whether this letter relates to the complainant's information request or another piece of correspondence. No further response was received from the public authority.
5. On 22 November 2006 the complainant submitted a complaint to the Commissioner. On 8 December 2006 the Commissioner contacted the public authority, providing a copy of the complainant's 11 September request.
6. On 15 December 2006 the public authority issued a refusal notice in relation to the second part of the complainant's request (relating to the authority's standing orders), citing section 21 of the Act. The public authority stated that, “the information you requested is available from the National Association of Local Councils or One Voice Wales, for which a fee is applicable”.
7. The complainant wrote to the public authority on 4 January 2007, requesting an internal review of this decision. He specifically pointed out that One Voice Wales and the National Association of Local Councils are membership organisations and that neither dealt with members of the public directly. He also alleged that the public authority was not in fact a member of One Voice Wales. In addition, he pointed out that the public authority had not addressed the first part of his request (for the authority's publication scheme).
8. On 8 January 2007 the public authority responded, accepting that the standing orders were not reasonably accessible to the complainant from the two organisations mentioned. A copy of the publication scheme was provided with this letter. The public authority requested a fee of £1.90 for providing a copy of the standing orders, and also requested that the complainant sign a disclaimer. The disclaimer stated:

“I _____ hereby understand and comply with this disclaimer, in that, being supplied with a copy of the Argoed Community Council Standing Orders, I will use the document only for providing information to myself. I will not reproduce or transmit in any form or by any means any part of Argoed Community Council Standing Orders unless the permission of Argoed Community Council has been given beforehand.”
9. On 9 February the complainant contacted the Commissioner to complain about the fact that he was expected to pay a fee and sign a disclaimer before receiving the information. The Commissioner advised that £1.90 appeared a reasonable fee in the circumstances, but that there was nothing in the Act that allows public authorities to require a signed disclaimer prior to disclosing information.

10. On 22 February the complainant paid the fee but indicated his unwillingness to sign the disclaimer. The public authority responded on 1 April by stating that, without the signed disclaimer, it would not provide the information requested. The public authority stated that this was in line with advice received from the Commissioner's office.
11. On 4 April the complainant then complained again to the Commissioner, with reference to the requirement to sign the disclaimer.

The Investigation

Scope of the case

12. On 4 April 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the public authority had applied the Act appropriately in insisting on a signed disclaimer before supplying the standing orders. As the complainant received a copy of the authority's publication scheme prior to his complaint, this Notice only relates to the request for the standing orders.
13. The complainant also raised other issues that are not addressed in this Notice because they relate to other requests for information that were subsequently resolved.

Chronology

14. On 11 April the Commissioner contacted the public authority to ascertain who in his office had provided the advice referred to in the authority's letter of 1 April to the complainant (see paragraph 10, above). The authority responded on 15 April explaining that it had taken advice from the Commissioner, the Office for Public Sector Information and the National Association of Local Councils on the matter of requiring a signed disclaimer before providing the information. The advice from each body was that it was lawful to insist upon such an undertaking. Furthermore, the authority argued that the requests from the complainant could now be considered vexatious.
15. On 11 June the Commissioner wrote to the public authority to explain that, whilst public authorities can place restrictions on the end use of information, they cannot use these restrictions as a pre-condition of supply. Furthermore, the Commissioner noted that procedural standing orders are listed within the authority's publication scheme as information that will routinely be made available to requestors. In these circumstances, the Commissioner asked the public authority to disclose the information requested to the complainant.
16. On 16 June the public authority responded by stating that it still had reservations about providing the information without a signed disclaimer. Nevertheless, the

authority provided an electronic copy of the information to the Commissioner for him to pass on to the complainant.

17. On 26 June the Commissioner wrote to the complainant enclosing a copy of the information requested. He also wrote to the public authority, stating that as the information had been provided to the Commissioner electronically they could no longer charge the £1.90 for photocopying, and providing guidance on the issue of vexatiousness. The authority then returned the complainant's payment.

Findings of the case

18. The National Association of Local Councils is an umbrella body for parish, town and community councils throughout Wales and England. It is a member organisation and is not a public authority for the purposes of the Act.
19. One Voice Wales is an umbrella body for community councils in Wales. It is a member organisation and is not a public authority for the purposes of the Act.
20. The authority's procedural standing orders are listed in its publication scheme within a class of information entitled 'Council Internal Practice and Procedure'. According to the scheme, this is information that the authority publishes or intends to publish.

Analysis

21. The Commissioner has considered the public authority's response to the complainant's request for information. The Commissioner considers that the request for a copy of the public authority's standing orders was a matter that should have been dealt with through the authority's publication scheme, as the standing orders were specifically listed within the scheme.
22. In order to have handled this request in accordance with the Act, the public authority should have responded to the complainant's request within the time for compliance (as set out in section 10) by confirming that it held the information requested. This would have fulfilled the requirement of section 1(1)(a) of the Act. The public authority should then have provided the information to the complainant. The authority could have explained that, technically, the information was exempt from disclosure by virtue of section 21 of the Act, because the information was reasonably accessible to the applicant via its publication scheme, but in any case would have been required to provide the information.
23. By not providing the information to the complainant, the Commissioner considers that the public authority has breached section 1(1)(a) and section 19(1)(b) of the Act. Further details of these breaches are contained below. All sections of the Act referred to in this Notice are reproduced in full in the legal annex to this Notice.

24. However, in this case it appears that the public authority did not consider the request in the context of its publication scheme. If the information had not appeared in the publication scheme, the public authority would have been required by section 1(1) to confirm that the information was held and provide the information to the complainant within the time for compliance, unless any exemptions applied. In this case, the public authority considered that the exemption at section 21 applied, although not because it was accessible through the publication scheme, but because it was accessible via other organisations.

Procedural breaches

Section 1

25. Section 1 of the Act provides a general right of access to information held by public authorities. In responding to requests for information, a public authority is required by section 1(1) to inform the applicant whether or not the information is held and, if it is, to have the information communicated to the applicant.
26. Although the public authority initially relied on the exemption of section 21 of the Act to withhold the information, section 21 does not provide an exemption from the public authority's duty under section 1(1)(a) to confirm whether or not it holds the information requested.
27. Following internal review, the public authority withdrew any reliance on exemptions contained in part II of the Act. However, it refused to supply the information without first receiving a signed disclaimer from the complainant.
28. The Commissioner considers that there is nothing within the Act that allows authorities to require a signed disclaimer as a pre-condition to supply, particularly as the information requested was listed in the authority's own publication scheme. The Commissioner notes that the Act does not preclude authorities from placing restrictions on the end use of information, but that they cannot use such conditions in order to refuse to supply information requested under section 1.

Section 19

29. Section 19 of the Act sets out the duty of every public authority to adopt and maintain a publication scheme. Subsection 1(b) sets out a requirement for authorities to publish information in accordance with their adopted scheme.
30. In this case the information requested – the authority's standing orders – is listed within the authority's publication scheme. The public authority has therefore made a commitment to putting this information into the public domain. By initially refusing to disclose the information in response to a request the authority has failed to fulfill its commitment to publish this information, and accordingly the Commissioner considers this a breach of section 19(1)(b) of the Act.

Exemptions

Section 21

31. Section 21 of the Act provides an exemption for information that is reasonably accessible to the applicant elsewhere. In this instance the public authority withdrew reliance on this exemption following internal review and so the Commissioner is not under an obligation to make a decision in relation to this exemption. Nevertheless, the Commissioner does not consider the information to be reasonably accessible to the complainant from these bodies.
32. However, if the public authority had cited section 21 because the information was reasonably accessible to the complainant via its publication scheme, the Commissioner would consider this to be a valid reason for refusal. Nonetheless, it would not have allowed the public authority to refuse to confirm or deny that the information itself was held.

The Decision

33. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the following requirements of the Act:
 - Section 1, in that it refused to supply the information requested without receipt of a signed disclaimer; and
 - Section 19, in that it did not provide to the complainant information that was listed in its publication scheme.

Steps Required

34. In view of the fact that the information has now been disclosed to the complainant, the Commissioner requires no steps to be taken.

Right of Appeal

35. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 29 day of August 2007

Signed

Anne Jones
Assistant Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Publication Schemes

Section 19(1) provides that –

“It shall be the duty of every public authority –

- (a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a “publication scheme”),
- (b) to publish information in accordance with its publication scheme, and
- (c) from time to time to review its publication scheme.”

Section 19(2) provides that –

“A publication scheme must –

- (a) specify classes of information which the public authority publishes or intends to publish,
- (b) specify the manner in which information of each class is, or is intended to be, published, and
- (c) specify whether the material is, or is intended to be, available to the public free of charge or on payment.”

Section 19(3) provides that –

“In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest –

- (a) in allowing public access to information held by the authority, and
- (b) in the publication of reasons for decisions made by the authority.”

Section 19(4) provides that –

“A public authority shall publish its publication scheme in such manner as it thinks fit.”

Section 19(5) provides that –

“The Commissioner may, when approving a scheme, provide that his approval is to expire at the end of a specified period.”

Section 19(6) provides that –

“Where the Commissioner has approved the publication scheme of any public authority, he may at any time give notice to the public authority revoking his approval of the scheme as from the end of the period of six months beginning with the day on which the notice is given.”

Section 19(7) provides that –

“Where the Commissioner –

- (a) refuses to approve a proposed publication scheme, or
- (b) revokes his approval of publication scheme,

he must give the public authority a statement of his reasons for doing so.”

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”