

Freedom of Information Act 2000 (Section 50)

Environmental Information Regulations 2004

Decision Notice

Date: 11 January 2010

Public Authority: Somerton Town Council
Address: Council Office
8 Cary Court
Somerton Business Park
Somerton
TA11 6SB

Summary

The complainant submitted a request to Somerton Town Council (the Council) for access to the minutes of the Council, its committees and sub-committees. The Council refused to respond to the complainant's requests. The Commissioner found that to the extent that any information held would be environmental information the public authority has breached regulation 5(2) of the EIR by not providing a response within 20 working days. To the extent that this does not apply the Commissioner found that Somerton Town Council failed to comply with section 10(1) of the Act by not providing a response within 20 working days. The Commissioner requires the public authority to comply with regulation 5 of the EIR and/or section 1(1) of the Act within 35 days of the date of this notice.

The Commissioner's Role

1. The Commissioner's duty 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.
2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR. This Notice sets out his decision.

The Request

3. The complainant in an email to Somerton Town Council dated 13 July 2009 made a request in accordance with section 1 of the FOIA for;

“Council minutes covering the years 1999, 2000, 2001, 2002 and 2003. I would also like to see the minutes and budgets for the sub-committees, specifically ‘Highways’ and covering the financial years 1999/2000 to 2008/2009 inclusive.”
4. The Council provided a response on 30 July 2009, stating that it would not enter into any correspondence with the complainant, due to the content of his letters and a reference he previously made to making a complaint to the Information Commissioner's Office.

The Investigation

Scope of the case

5. On 25 August 2009, the complainant contacted the Commissioner to complain about the way his request for information had been handled.

Chronology

6. The Commissioner contacted the Council on 4 November 2009 stating that a complaint had been received.
7. On 6 November 2009, the clerk to the Council contacted the Information Commissioner's Office. He explained that a majority of the Town Councillors had recently resigned, leaving the public authority suspended. He stated that he would therefore be unable to respond to any communication until the Council became operational again.
8. Councillors from Somerset District Council were temporarily introduced onto Somerton Town Council until elections for permanent councillors could be held. The first meeting of this temporary Council was held on 24 November 2009. Elections for permanent councillors were held on 7 January 2010. It is the Commissioner's view that the Council is therefore now active as a public authority for the purposes of the Act.

Analysis

9. Aside from an acknowledgment letter of 30 July 2009, the Council has completely failed to respond to a request for information. In this scenario, without having information covered by the request available to view, it is not immediately evident

whether the appropriate access regime will be the Act or the EIR. The Commissioner considers however that from the wording of the request, it is at least possible that if information is held some of it may be environmental information as defined by regulation 2(1) of the EIR. Equally however, it is also possible that if information is held some or all of it is not environmental information and thus should be properly dealt with under the Act. For this reason the Commissioner has considered the Council's compliance with both pieces of legislation.

Procedural Requirements

The full text of relevant sections of the Act and the EIR are provided in the Legal Annex.

EIR Regulation 5

10. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than twenty working days after the date of receipt of the request. To date no response has been received and the Commissioner therefore finds the Council breach of regulation 5(2).

FOI Section 1

11. Section 1(1) of the Act states 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.”

FOI Section 10

12. Section 10(1) of the Act states 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.”

The Commissioner considers that Somerton Town Council has breached section 10(1) of the Act as it failed to respond to the request within twenty working days following the date of receipt.

The Decision

13. To the extent that any information held is environmental information as defined by regulation 2(1) of the EIR, the public authority has breached regulation 5(2) by failing to provide a response compliant with regulation 5 of the EIR within twenty working days of the receipt of the request.
14. To the extent that paragraph 13 does not apply, the Commissioner's decision is that Somerton Town Council has breached section 10(1) of the Act in failing to comply with section 1(1) within twenty working days following receipt of the request.

Steps Required

15. To the extent that any information held is environmental information as defined by regulation 2(1) of the EIR, the Commissioner now requires the Council to either provide the information or issue a valid refusal notice that complies with regulation 14 of the EIR. Unless the exception from the duty to confirm or deny under 12(5)(a) is claimed then any refusal notice should explicitly confirm or deny whether the information is held.
16. To the extent that paragraph 15 does not apply, the Commissioner requires Somerton Town Council to respond to the complainant's request in accordance with section 1(1)(a) of the Act by informing the complainant whether it holds the information, or issuing a refusal notice explaining why it is exempt from the section 1(1)(a) duty to confirm or deny if the information is held. If the exclusion from the duty to confirm or deny does not apply, and the information is held, then Somerton Town Council should respond to the complainant's request in accordance with section 1(1)(b) by either communicating the information to him or issuing a valid refusal notice. Any refusal notice issued should comply with the requirements of section 17.
17. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

18. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

19. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 11th day of January 2010

Signed

**Lisa Adshead
Senior FOI Policy Manager**

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

Legal Annex

FOIA

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.”

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.”

“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.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

EIR

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 5(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Regulation 14 - Refusal to disclose information

Regulation 14(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3) The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Regulation 14(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public

authority preparing the information and the estimated time in which the information will be finished or completed.

Regulation 14(5) The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11;
and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.