

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2011

Public Authority: Stamford Town Council
Address: Town Hall
St. Marys Hill
Stamford
PE9 2DR

Decision

1. The complainant requested information about matters recorded in minutes of a meeting of Stamford Town Council ('the council').
2. The Commissioner's decision is that the council has not demonstrated that it was entitled to rely on section 42. He consequently requires the council to either comply with section 1(1) or issue a valid refusal notice compliant with section 17.
3. The public authority must take these steps within 35 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 15 December 2010 the complainant emailed the council. She included a schedule making further points in an ongoing exchange with the council regarding minutes of one of its meetings. Some of these comments constituted requests for information. They are listed at Annex A.
5. The council responded on 20 December 2010. However this response appears to have been made as part of 'the course of business' and was not compliant with the Act. The complainant then wrote to the council again on 10 January 2011 and reiterated her requests.

6. On 3 May 2011 the council responded and stated that further information was withheld under section 42(1) of the Act. This position was upheld in an internal review of 25 July 2011.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way her request had been handled.

Reasons for decision

Section 42

8. The council withheld the requested information under section 42 of the Act. The exemption at section 42(1) applies where information is subject to legal professional privilege. Legal professional privilege protects the confidentiality of communications between a lawyer and client.
9. The council has applied this exemption on the basis that it is planning to institute legal proceedings against the organisation represented by the complainant. However, the Commissioner notes that the withheld information does not appear to constitute communications from a lawyer. The Commissioner therefore does not accept that the exemption at section 42 is engaged.
10. The Commissioner therefore requires the council to comply with section 1(1) by confirming whether the requested information is held, and if so, disclosing it to the complainant. The Commissioner notes that the council may not hold any recorded information within the scope of the complainant's requests, and would emphasise that the Act does not require a public authority to create information in response to a request. However, if information within the scope of a request is not held then a public authority must state that this is the case.

Right of Appeal

11. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

12. 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.
13. 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

Annex A

- 1) "What is the information [*from Riverside*] that caused concerns and what are the concerns...?"
- 2) In what way was the response [*from Riverside*] rude and unsatisfactory?
- 3) Why was this [*the council's decision to ask Riverside to produce verified audited accounts*] deemed necessary?
- 4) What measure has the council used to deem that the Festival is too big for the site?
- 5) Are the Town Council suggesting it is now their role to determine and monitor grants offered to us by other public authorities? If so why?"