

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 03 September 2012

Public Authority: Stithians Parish Council
Address: 18 Edward Street
Tuckingmill
Camborne
Cornwall
TR14 8PA

Decision (including any steps ordered)

1. The complainant requested information relating to '*enforcement proceedings*' from Stithians Parish Council, but was not satisfied that the response was compliant with the requirements of the FOIA.
2. The Commissioner's decision is that the Council breached sections 1, 10 and 17 of the FOIA in that it failed to clearly confirm or deny if it held the requested information, or to give a reason valid under the FOIA for the refusal to disclose some information. It also failed to provide any response to one of the complainant's requests.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a valid response to each of the complainant's requests. This response should clearly confirm or deny whether the requested information is held. In relation to any information that is held, this should either be disclosed, or a reason valid under the FOIA should be given as to why this information will not be disclosed.
4. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 17 April 2012, the complainant wrote to Stithians Parish Council (the Council) and requested information in the following terms:

"Would you please send me copies of the following.

(i) Minutes of the enforcement discussions described as "confidential" covering the PC meetings of January 17, February 21, and March 23.

(ii) Copies of all correspondence sent to the subject of the enforcement proceedings since November 2011.

(iii) Copies of all correspondence received from the subject of the enforcement proceedings since November 2011.

(iv) Copies of any correspondence to or from any legal adviser acting in the matter of the enforcement for either side, excepting any counsel's opinion, since November 2011.

(v) Any advice received by the PC from any source concerning the enforcement, including any from Cornwall Council and Parish Council advisers since November 2011.

(vi) All reports prepared by you on this matter since November 2011.

(vii) Any other document in your possession since November 2011 which refers to this matter.

Documents to include copies of letters, emails, and records of any kind."

6. The Council responded on 17 April 2012 and addressed each part of the request as follows:

(i) "By the very nature of the item being confidential, they are not in the public domain."

(ii) "There isn't any sent by the PC – it would be sent by Cornwall Council."

(iii) "Again, this is dealt with by Cornwall Council."

(iv) "Enforcement matters are dealt with by Cornwall Council – all the PC is doing is receiving information from CC on Enforcement Cases within the Parish."

(v) *"The only advice received, and it was verbal, was from Cornwall Council that all Enforcement matters should be reported confidentially. This is the reason why the PC changed the way enforcement matters are dealt with at meetings."*

(vi) *"These are confidential and therefore not in the public domain."*

(vii) *"None"*

7. In relation to the information that the Council appeared to be confirming was held but that it was refusing to disclose, the Council did not specify any provision of the FOIA in explanation for this.

8. The complainant responded on 13 May 2012 and requested the Council to carry out an internal review. The complainant also made a further information request at this stage as follows:

"Under the FOIA, would you please also send me copies of all emails sent and received by yourself to and from all third parties, including councillors, which relate in any way to my request, excepting those which you have already sent or copied to me".

9. Whilst the Council responded on the same date, this response did not suggest that an internal review had been carried out. No response to the complainant's further information request was provided.

Scope of the case

10. The complainant contacted the Commissioner on 14 May 2012 to complain about the way her request for information had been handled. The complainant specified as her grounds for complaint the refusal to disclose the requested information, the lack of advice provided by the Council about internal reviews, the failure to carry out an internal review and the failure to respond to the further information request made by the complainant.

Reasons for decision

Sections 1, 10 and 17

11. Section 1(1)(a) of the FOIA requires that, upon receipt of an information request, a public authority should confirm or deny whether it holds the information requested. Where information falling within the scope of the

request is held, this should either be disclosed or a reason valid under the FOIA should be given as to why it will not be disclosed.

12. Section 17 sets out what should be included in a response informing the requester that information will not be disclosed. Such a response should specify under what provision of the FOIA the refusal is being made and explain why this is believed to apply.
13. In this case, when responding to the request of 17 April 2012 the Council did not clearly confirm or deny whether the requested information was held. Where the Council appeared to be refusing to disclose information, neither did it state under which provision of the FOIA this refusal was made.
14. Section 10(1) of the FOIA requires a public authority to respond to a request within 20 working days of receipt. The Council had not, however, responded to the complainant's further request dated 13 May 2012 by the date of this notice.
15. For these reasons the decision of the Commissioner is that the Council breached the requirements of sections 1(1)(a), 10(1) and 17(1) of the FOIA. At paragraph 3 above, the Council is now required to provide a response valid for the purposes of the FOIA to all of the complainant's requests. The "*Other matters*" section of this notice provides guidance on the form of this response.

Other matters

16. In its response to the complainant, the Council made reference to some information being confidential. If by this it meant that this information was provided to it by a third party and that third party holds an expectation that this information will be kept confidential, the Council may wish to consider whether it would be appropriate to cite the exemption provided by section 41 of the FOIA.
17. Alternatively, if the position of the Council is that this information should be kept confidential as it contains information relating to an individual, it may wish to consider citing the exemption provided by section 40(2) of the FOIA. Guidance on these and all other provisions of the FOIA is available on the ICO website¹.

¹

http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx

18. The complainant also raised the issue of the failure by the Council to advise of its internal review procedure. It is also recommended for the Council to consult the ICO website for advice on its obligations in relation to internal reviews.

Right of appeal

19. 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

20. 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.
21. 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

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**