

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2015

Public Authority: Harpenden Town Council
Address: Town Hall
Leyton Road
Harpenden
Herts
AL5 2LX

Decision (including any steps ordered)

1. The complainant has requested a copy of the audio recording of a Human Resources Committee meeting. Harpenden Town Council said that the complainant could listen to a recording of the meeting at its offices, but could not make a copy, and provided a link to the draft minutes of the meeting. The Commissioner has decided that it was not appropriate for Harpenden Town Council to refer to the requirements of section 11 of the FOIA in this case. He has also decided that Harpenden Town Council breached section 1(1)(b) of the FOIA by not communicating the requested information to the complainant. However, as the requested information has since been destroyed, the Commissioner cannot order any steps requiring Harpenden Town Council to comply with section 1(1)(b) of the FOIA in this case. Therefore he requires no further action to be taken in respect of this request.

Request and response

2. On 17 March 2015, the complainant wrote to Harpenden Town Council, via the WhatDoTheyKnow website and requested information in the following terms:

“Please can you provide a copy of the audio recording of the Human Resources Committee Meeting held on Monday 2nd March 2015.”

3. The council responded on 25 March 2015. It said that the complainant could listen to a recording of the meeting at its offices but could not make a copy. It referred to a meeting of the Policy and Finance Committee on the 22 October 2014 and said that it was agreed that audio recordings of meetings should not be released upon request to members of the public. It also provided a link to draft minutes of the HR committee meeting on the 2 March 2015 available on its web site.

4. The complainant requested an internal review on 27 March 2015. On 21 May 2015, the council provided its internal review response in which it maintained its original position. It said that it was;

“not aware of any part of the Freedom of Information Act which addressed the provision of copies of audio recordings. The Information Commissioners Office advises that a public authority will comply with the requesters preferred means of communication “so far as reasonably practicable.” Section 11(2) of the Act says that in determining what is reasonably practicable, “the public authority may have regard to all the circumstances, including the cost of doing so” and that “It would be an unreasonable cost for a third tier authority to provide copies of recordings.”

Scope of the case

5. The complainant contacted the Commissioner on 29 May 2015 to complain about the way his request for information had been handled. On 15 June 2015, the complainant wrote again to inform the Commissioner that he believe that the requested recording will be deleted after the minutes of the previous meeting are received by the Committee in line with the council's new procedures. He requested that the Commissioner contact the council and suggest that the recording is not deleted until the investigations are concluded.

6. The Commissioner understands that the requested tape recording was deleted by the council in accordance with its procedures after 17 June 2015 but prior to the Commissioner requesting for deletion to be delayed until after any Tribunal appeal in this case.

7. The Commissioner cannot order any steps to provide a copy of the tape as the information has now been destroyed. However, he has considered the council’s handling of his request under the FOIA and whether it was appropriate for the council to refer to the requirements of section 11 of the FOIA which addresses a public authority’s obligations where it receives a request for information in a particular format.

8. The Commissioner has also considered whether the council breached section 1 of the FOIA.

Reasons for decision

Section 11

9. Section 11(1) of the FOIA states that:

“Where, on making his information request, the applicant expresses a preference for communication by any one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.”

10. Section 11(1) therefore allows an applicant to request a particular means by which the information is communicated to them. It does not state that the public authority must comply but it does state that a public authority must give due consideration to the applicant’s preference for communication and should oblige when this is reasonably practical.
11. This section addresses the practicality of complying with an applicant’s preference not whether the information itself should be disclosed. There will be cases when it is not possible to comply because the information requested is not held in the format requested. However, it is apparent that this is not the case here.
12. It is clear that the requested information was held at the time of the request in the format the complainant requested, that being an audio recording. There is no question here whether the information itself should be released under the FOIA or not, as the council offered the complainant the opportunity to listen to the recording at its offices.

13. The council explained to the Commissioner that a copy of the audio recording was available through the draft minutes of the meeting which when signed would be recognised as the formal statutory and legally binding record of the meeting and that the complainant was directed to this document in the original response.
14. The council also said that the complainant did not request an audio copy of the audio recording but he requested a copy of the audio recording and that as a consequence the draft minutes provided the source material he was seeking.
15. The Commissioner considers that the council is, in effect, stating that providing a link to the minutes of the meeting was providing the requested information in another form.
16. The Commissioner does not consider this is a valid reason under section 11(1) of the FOIA to refuse to disclose the requested information in this case in the form that the complainant requested. Section 11 of the FOIA addresses the means by which communication of the requested information is made. Providing a link to the minutes of a meeting is not akin to providing the information contained in an audio recording of that meeting. The Commissioner has viewed the relevant minutes on the council's website and it is apparent that these are not a verbatim report of the meeting. It is clear that the minutes record less information than an audio recording of the meeting. Therefore, the Commissioner considers that it was not appropriate for the council to state that by provided a link to the minutes of the meeting it had provided the requested information in another form.

Section 1

17. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
18. As stated earlier, the complainant was provided with a link to the minutes of the meeting which constitute less recorded information than the audio recording of the meeting. It is clear to the Commissioner that the complainant did not have the requested information communicated to him.
19. The Commissioner has therefore decided that the council breached section 1(1)(b) of the FOIA. However, the Commissioner cannot require any further action to be taken in respect of this request, as the requested information has now been destroyed.

Other matters

20. The council stated that there would be a financial implication associated with the provision of audio copies and that this would represent an unreasonable cost for a third tier authority, hence its reference to section 11(2) of the FOIA. The Commissioner did not consider this matter in the decision notice because he considered that it was not appropriate for the council to refer to section 11 in this case. However, he would like to point out to the council that public authorities can charge a fee for communicating requested information which can include, for example, purchasing removable media and postage. Further information can be found in the following guidance:

<https://ico.org.uk/media/1163/means-of-communicating-information-foia-guidance.pdf>

https://ico.org.uk/media/1168/fees_cost_of_compliance_appropriate_limit.pdf

21. In this case, the Commissioner made initial contact with the council on 11 June 2015 to inform it that a complaint had been made about the request for a copy of the audio recording of the Human Resources Committee Meeting held on Monday 2 March 2015. On 1 July 2015, after the complaint had been allocated to an ICO case officer, the Commissioner specifically requested that the council did not delete the recording until after a decision in this case, and any subsequent appeal, had been made. In its response of 22 July 2015 to the Commissioner's enquiries, the council said that it was not made clear in the initial letter of 11 June 2015 that the audio recording should not be deleted and as the minutes of the meeting were signed off on 17 June 2015, the audio recording was subsequently erased.

22. The council's policy is that all audio recordings of meetings be deleted after the minutes of the meeting are approved. The Commissioner would like to make it clear to the council that, as a matter of good practice, a public authority should keep all requested information for at least six months to allow for appeals to the Information Commissioner. Further information can be found in the following guidance:

<https://ico.org.uk/media/for-organisations/documents/1160/retention-and-destruction-of-requested-information.pdf>

23. The Commissioner considers that his initial contact of 11 June 2015, informing the council that a complaint had been made regarding this request, should have caused the council to delay the deletion of the audio recording. He does not consider that the council should have only

been alerted to the need to delay deletion until it was specifically requested on 1 July 2015.

Right of appeal

24. 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

25. 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.
26. 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
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