

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2016

Public Authority: Trefeglwys Community Council

Address: c/o 1 Glandwr Terrace
Trefeglwys
Powys
SY17 5QF

Decision (including any steps ordered)

1. The complainant has requested a copy of a draft letter dated 25 October 2012 and read out by her at a meeting of Trefeglwys Community Council on the same date. The Council responded informing the complainant that it does not hold a copy of the draft letter. The Commissioner's decision is that Trefeglwys Community Council does not hold the requested information and has therefore complied with its obligations under section 1(1) of the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 23 February 2016, the complainant wrote to Trefeglwys Community Council ('the Council') and requested the following information:
"...Copy of draft letter, dated 25 October 2012 that was read out by me at the Council Meeting on the same date."
3. The Council responded on 20 March 2016. It informed the complainant that it had no records which indicated that she had sent the Councillors a copy of her draft letter dated 25 October 2012, which she read out at the Council meeting on the same date. It further informed her that if she removed the amendments marked in red then she would have the draft copy she read out and was requesting.
4. The complainant was not satisfied with this response, and informed the Council that she did not request a document which indicated she sent the Councillors a copy of the draft, but a copy of the draft letter itself.

5. Following an internal review the Council wrote to the complainant on 7 May 2016. It reiterated that the letter which the complainant had read out at the Council meeting of 25 October 2012 had not been circulated to the Councillors beforehand, otherwise she would simply have referred to the letter. It further informed the complainant that it had correspondence which proves that she forwarded the letter with amendments (in red) to a third party organisation. The Commissioner considers that the Council is therefore maintaining that it does not hold a copy of the original draft read out at the meeting.

Scope of the case

6. The complainant contacted the Commissioner on 22 May 2016 to complain about the way her request for information had been handled. She is not satisfied with the Council's response and in particular feels that the Council has not confirmed for definite whether it has the actual draft or not. She has further stated that the Council suggested that she removes all the red writing to obtain the original, but has stated that this would create a nonsensical letter and one which she considers would not be as per the original draft.
7. Although the Commissioner notes that the request of 23 February 2016 contains five separate items, it is only item one which the complainant remains dissatisfied with. Items two to five have not therefore formed part of the scope of this notice with the scope focussed solely on whether the Council has complied with its obligations under section 1(1) of the FOIA in respect of item one of the request.
8. The complainant and the Council were in dispute relating to a number of issues from when the complainant had been the Council's Clerk. The complainant contacted the Council to request that her concerns were escalated to One Voice Wales (OVW), (an umbrella organisation in Wales for Community and Town Councils).

Reasons for decision

Section 1 – General right of access to information held

9. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.

10. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
11. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
12. In this particular case, the complainant is not satisfied with the Council's response which she considers amounts to a lengthy explanation which does not confirm for definite whether it holds a copy of the draft of the letter she has requested.
13. The Commissioner therefore asked the Council to confirm whether it does hold a copy of the draft in question, and to provide details and evidence of its search.
14. The Council has stated that a draft of this letter was read out by the complainant in the Council meeting of 25 October 2012. However, during the meeting, no hard copy of the draft letter was produced/distributed by the complainant, and the Council has alleged that the requested draft letter was subsequently amended by the complainant and sent to third parties. It does not consider that it has ever held a copy of the draft read out by the complainant, which is the subject of this request and has provided details and evidence of the search undertaken for this draft.
15. As part of the search, the Council has looked through 13 boxes of correspondence and is unable to find the requested draft.
16. The Council has also confirmed that it would have expected the batch of documents sent to OVW as part of its related investigation to contain the requested draft if it was held. However, having requested a copy of this documentation from OVW and having made a thorough examination of it, it does not contain a copy of the draft the complainant is requesting.
17. Additionally, the Council looked through all the copies of correspondence that was returned from the associated landowners, in response to their FOIA requests, as they would have expected if they had ever held a copy of the draft the complainant is requesting, that it would have been

included in this documentation. However, it has confirmed that they cannot find any trace of the draft subject to this request, only the altered versions.

18. The Commissioner has considered the arguments put forward by the complainant, and the explanation provided by the Council. She has also considered the details of the search conducted by the Council which she considers both reasonable and proportionate. She has therefore concluded, based on the balance of probabilities, that the Council does not hold a copy of the requested draft of the letter and has complied with its obligations under section 1(1) of the FOIA.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Andrew White
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