

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2018

Public Authority: Nailstone Parish Council
Address: The Dairy
Village Farm
Main Street
Stanford on Soar
Leicestershire
LE12 5QA

Decision (including any steps ordered)

1. The complainant requested information relating to Nailstone Parish Council's 2018/2019 budget.
2. The Commissioner's decision is that Nailstone Parish Council (the Council) has breached sections 10(1) and 17(1) of the FOIA in that it failed to provide a valid refusal notice within the statutory time frame of 20 working days.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - The Council must issue a response to the request in accordance with its obligations under the FOIA.
4. The Council must take this step 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 20 January 2018, the complainant wrote to the Council and requested information in the following terms:

"Please would you send me a copy of the 2018/2019 budget as agreed by the parish council along with all the supporting documentation, working papers, they used to make their decision to approve this budget."
6. The Council responded on 23 April 2018 confirming that the information was available on its website.
7. Following further correspondence from the complainant and the Commissioner, the Council issued a further response on 12 July 2018. It reiterated its original response and provided a link to the relevant page of its website where it stated the information could be accessed.

Scope of the case

8. The complainant initially contacted the Commissioner on 22 March 2018 to complain about the Council's failure to respond to his information request.
9. On 6 April 2018 the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
10. On 22 April 2018 the complainant contacted the Commissioner to confirm that he had still not received any response from the Council. The Commissioner contacted the Council again on 26 June 2018, instructing it to provide a response within 10 working days. This resulted in the Council providing its response of 12 July 2018.
11. The complainant contacted the Commissioner on 19 August 2018 to request a decision notice in respect of his complaint.
12. The scope of this decision is therefore to consider the Council's compliance with sections 10 and 17 of the FOIA.

Reasons for decision

13. Section 1(1) of the FOIA 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."

14. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt."*
15. Section 17(1) of the FOIA states that if a public authority wishes to refuse any part of a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemptions.
16. The Commissioner considers that the Council's responses of 23 April and 12 July 2018 were not valid for the purposes of the FOIA in that they did not either provide the requested information or issue a valid refusal notice. The Commissioner therefore finds that the Council has breached sections 10(1) and 17(1) and it is now required to respond to the request in accordance with the FOIA.

Other matters

Section 21 – information accessible by other means

17. Section 21 states that information is exempt where it is already reasonably accessible to the requester.
18. The purpose of the exemption at section 21 is to ensure that there is no right of access to information via the FOIA if it is available to the applicant by another route. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside the FOIA.
19. The Commissioner notes that the Council is refusing to provide information because it is available on its website. She considers that in order for the Council's response to meet the requirements of section 17, it should confirm that the requested information is exempt under section 21 of the FOIA. The refusal notice should also provide a link to the particular page of the website where the requested information can be accessed.

Right of appeal

20. 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

21. 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.
22. 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

Ben Tomes
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Wycliffe House
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Wilmslow
Cheshire
SK9 5AF