

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2021

Public Authority: Caldecote Parish Council
Address: 20 St. Martin's Road
Chatteris
Cambridgeshire
PE16 6JF

Decision (including any steps ordered)

1. The complainant requested from Caldecote Parish Council ("the Council") information relating to the risk assessment carried out prior to the renovation of a playground. By the date of this notice the Council had not provided a substantive response to this request.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request in accordance with its obligations under the FOIA.
4. The Council 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 20 October 2020, the complainant wrote to the Council and requested information in the following terms:

"I saw on Facebook at the weekend that the old wooden play equipment was being removed by a volunteer group.

I've got a few concerns that i hope you can help me with. I appreciate that the volunteers are giving up their time for free but I have seen situations like this go very wrong in the past.

Was this removal agreed by the Parish Council? I haven't been able to find this in the minutes. I note that in October a contract was agreed for the new equipment was agreed for installation in the spring, but this now means that there is 6 months of no equipment for the children to use.

Were the group insured to carry out the work on public land? Could you please send me confirmation and a copy of the risk assessment?. One photo appeared to show someone using a chainsaw but there was little to no PPE to be seen.

Some of the photos on Facebook also seemed to show some questionable social distancing including a group photo with everyone packed in together. Given that we are at the start of the second wave this seems to be irresponsible, especially as a Councillor was arranging the event."

6. The Council wrote to the complainant on 21 October 2020 and asked the complainant to clarify her request for information.
7. On 22 October 2020 the complainant wrote to the Council to explain why she submitted her request for information.
8. The Council responded to the complainant on the same date to provide the complainant with some background information but did not provide the complainant with the information she requested.
9. On 23 October 2020 the complainant wrote to the Council again to reiterate her request for a copy of the Council's risk assessment.
10. As the complainant had not received a response to her request for information, on 3 November 2020 the complainant wrote to the Council to confirm that her email had been received by the Council.

11. On 3 November 2020 the Council responded and asked the complainant to write to the Parish Clerk to request information from the Council. The complainant wrote to the Parish Clerk on the same date and requested a copy of the Council's risk assessment.
12. The Parish Clerk responded to the complainant on 4 November 2020 and asked the complainant to explain why she had made her request for information. The complainant wrote to the Council on the same date to explain why the request for information had been submitted to the Council.
13. The Council responded on 4 November 2020 and requested that the complainant provide her postal address. On the same date the complainant wrote to the Council and refused to provide her postal address.
14. On 23 November 2020 as the complainant had not received a response to her request for information, she wrote to the Council for an update on the Council's response to her request for information.
15. The complainant wrote to the Council again on 26 November 2020 to complain about the Council's delay in responding to her request for information.
16. The Council responded on 27 November 2020 and informed the complainant that it considered the matter to be closed as the complainant had not provided her postal address. The complainant wrote to the Council again on the same date to complain to it about the handling of her request for information.

Scope of the case

17. The complainant contacted the Commissioner on 30 November 2020 to complain about the Council's failure to respond to her request.
18. The Commissioner contacted the Council on 16 December 2020 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
19. The Commissioner also contacted the complainant on 16 December 2020 to explain that the Council had been given 10 working days from that date within which to provide a response to her request.
20. The Council did not acknowledge or respond to the Commissioner's correspondence of 16 December 2020.

21. The complainant has provided evidence that she has received an acknowledgement from the Council but, by the date of this notice, had not received a substantive response to her information request.
22. The scope of this notice and the following analysis is to consider whether the Council has complied with section 10 of the FOIA.

Reasons for decision

23. Section 10 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.*
24. The Commissioner understands that the Council has not responded to the request as it considers it necessary for the complainant to provide a postal address before providing its response.
 25. However, the Commissioner considers that the request in question fulfilled the above criteria and therefore constituted a valid request for recorded information under the FOIA.
 26. Section 10 of the FOIA states that responses to requests made under the Act must be provided, "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
 27. The Council did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that the Council has breached section 10 of the FOIA.

Other matters

28. The Commissioner would like to remind the Council that a request for information is considered to be received by an authority as soon as the request arrives at the authority. This includes information requests submitted by email.
29. As the request was sent to a valid email address at the Council, the Commissioner considers the request to have been received by the Council. The Council should not have asked the complainant to resubmit

her request to the Parish Clerk. The Commissioner notes that, in any event, the information request was originally submitted to the Parish Clerk.

30. Where an information request is submitted to a public authority by email, the public authority should respond by email unless stated otherwise by the requestor, or if doing so is not reasonably practicable.
31. In this case there appears to have been no valid reason for the Council to request a postal address from the complainant before responding to the request.
32. Under the FOIA there is no requirement for the requester to explain why they need the information or to provide justification for their request. It was, therefore, inappropriate for the Council to ask the complainant to explain why she submitted her request.

Right of appeal

33. 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@justice.gov.uk

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

34. 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.
35. 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
Team Manager
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Wycliffe House
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SK9 5AF