

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2022

Public Authority: Tonbridge and Malling Borough Council
Address: Gibson Building,
Gibson Dr,
Kings Hill,
West Malling
ME19 4LZ

Decision (including any steps ordered)

1. The complainant requested from Tonbridge and Malling Borough Council all internal correspondence relating to the Planning Committee Three meeting held on the 19th of November 2020.
2. The Commissioner's decision is that, on the balance of probabilities, Tonbridge and Malling Borough Council does not hold any additional information apart from that already disclosed.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 23 May 2021 the complainant wrote to Tonbridge and Malling Borough Council (the Council) and requested information in the following terms:

"Please may I make the two following requests under the Freedom of Information Act 2000, please can I be provided with/ have copies of:-

1. All, and any TMBC internal correspondence for the period 05 November 2020 up to and including 23 May 2021, (including but not limited to emails, notes, memo's) between any, or all of the following people (name redacted), (name redacted), (name redacted), and (name redacted), with regard to any matters at

all relating to Planning Committee Three meeting held on the 19th November 2020.

2. A list of the attendees, the agenda, all attendees' notes, minutes, paperwork and all and any internal correspondence relating to the Pre-meeting that was held (probably virtually and at an unknown date) prior to TMBC Planning Committee 3 that was held on 19 November 2020".

5. The Council responded to the request on 29 June, 20 July and 6 September 2021. In respect of the first question, it disclosed all the recorded information it said it held with some redactions made under Section 21 (information reasonably accessible elsewhere), Section 36 (inhibit free and frank provision of advice or exchange of views or prejudice effective conduct of public affairs), Section 40(1) (the complainant's personal data) and Section 40(2) (third party personal data). Furthermore, it stated that, if additional documents did exist, these would also be subject to the above exemptions.
6. In relation to the complainant's second question, the Council disclosed the information it held with some redactions made under Section 21 (information reasonably accessible elsewhere) and Section 42(1) (legal professional privilege).
7. On the 8 November 2021 the complainant submitted a second request when he expanded the scope and date parameters of his first one to 29 September 2021.
8. In response to his second request, the Council disclosed further information, some of which the complainant believed fell within the scope of his first one together with some information it previously redacted under Section 42(1) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 21 October 2021 to complain about the way his request for information had been handled. In particular, he was unhappy with the Council's statement that it had disclosed all the recorded information falling within the scope of his request. The complainant has confirmed that the scope his complainant may be limited to the Council's response to question 1 of his request

dated 23 May 2021 on the basis that it has failed to identify and disclose all the information held.

10. The scope of the Commissioner's investigation will therefore be to determine whether, on a balance of probabilities, the Council has identified and disclosed all the recorded information it held falling within the scope of question 1 of the complainant's initial request dated 23 May 2021. This request overlaps with his second one on dated 8 November 2021 when similar information was requested but with an extended date parameter.

Reasons for decision

Section 1 general right of access 10.

11. Section 1 of 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".

12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held, and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
13. The Commissioner has therefore sought to determine whether, on the balance of probabilities, the Council holds any further information relevant to the scope of request.
14. In response to the Commissioner's request, the Council's Head of Legal and Democratic Services provided details of the enquiries and searches it carried out in relation to both the complainant's request of 23 May 2021 and of 8 November 2021.
15. The Council's Head of Legal and Democratic Services informed the Commissioner that a search was carried of his email "Netgovern Archive" system. In relation to the complainant's first request, the

search was restricted to any documents held between 5 November 2020 and 23 May 2021. In relation to the complainant's second request, the search was restricted to any documents held between 5 November 2020 and 29 September 2021.

16. In relation to the complainant's second request, the Council's Head of Legal and Democratic Services referenced an email to the officer who conducted the internal review regarding the search terms used. These were "ditton edge", "area 3" and "apc3". The term "apc" being a reference to "Area Planning Committee" which was the subject of the complainant's request. Although the Council's Head of Legal and Democratic Services did not have a specific record of the search terms used for the complainant's first request, he believes they would have been very similar.
17. The Council's Head of Legal and Democratic Services also asked two of its officers named in the request to undertake a search. He did not ask one of the others named as he believed their emails would have been picked up by himself and the other individuals' email inboxes. Similarly, he did not ask the officer who carried out the internal review to conduct any additional searches because all correspondence would have been covered by the previous searches he carried out.
18. The outcome of these additional enquiries and searches was that no further recorded information was located by the Council falling within the scope of the complainant's request.
19. The Commissioner has noted the complainant's belief that the Council should and does hold further information which is yet to be disclosed. This belief is partially based on the fact that his second overlapping request resulted in further information being disclosed falling within the scope of his first one.
20. The Commissioner has communicated the complainant's beliefs and views to the Council which has provided an explanation why no additional information is held. It has also carried out further searches and enquiries as stated above.
21. The Commissioner has made the complainant aware of the Council's explanation, but he has confirmed he still wishes to pursue his complaint.
22. In a case like this one where a requester thinks there might be additional information held, the Commissioner is not required to prove whether or not further information is held, he simply must make a decision on the balance of probabilities as to whether it is more likely than not that further information is held. In this case, on balance, the

Reference: IC-136503-F9P7

Commissioner is satisfied that no further information falling within the scope of the complainant's first request is held by the Council.

23. He is therefore satisfied that the Council has complied with its obligations under Section 1(1)(a) FOIA in this case.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

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