Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **4 September 2012**

Public Authority: **Kirby Muxloe Parish Council**
Address: **Parish Council Office**
Station Road
Kirby Muxloe
Leicestershire
LE9 2EN

Decision

1. The complainant has requested information relating to gas safety certificates and details of costs associated with the cemetery and memorial area of a specific road. The council asked the complainant to pay a fee of £25 for provision of the information. During the course of the Commissioner's investigation the council provided the information to the complainant electronically.

2. The Commissioner's decision is that the council failed to issue a valid fees notice and failed to confirm or deny whether the requested information was held.

3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 23 December 2011, the complainant wrote to the council and requested information in the following terms:

   (In relation to the bungalow rented out by the council)

   "1. Copies of Gas Safety Certificates for the last five years
   2. Copies of the invoices relating to each of the last five year's Gas Safety Certificates

3. Copies of receipts for payments made for the said Gas Safety Certificates

I also request, again under the Freedom Of Information Act 2000 the following information relating to costs associated with the Cemetry (sic) and memorial area on Station Road:

1. Copies of all quotations received from contractors relating to the cemetery (sic) and memorial sight on Station Road (there should be at least three quotes)
2. Copy of the contract for the chosen contractor ("Sellers" according to the Clerk at a recent parish council meeting)
3. Summary of works carried out to date by the chosen contractor
4. Copies of all invoices since contract was awarded
5. Copies of all receipts of payment made under the contract."

5. The council responded on 11 January 2012. It stated that the complainant was welcome to visit the council offices to inspect the requested information at their convenience.

6. On 23 January 2012 the complainant wrote to the council to advise that it was not convenient for them to attend the council offices and confirmed that they wished to be provided with hard copies of the requested information. The complainant also expressed concerns that the council's response had not made reference to the full scope of their request.

7. On 30 January 2012 the council wrote to the complainant and stated that the "….gas safety certificate for the bungalow will be presented to the members for approval at the PC meeting on February 2nd 2012, a copy of this will be available for you after this date." In relation to the other requested information, the council confirmed that a fee would be payable. It explained that the complainant would be notified of the fee once the sum had been agreed by the council members.

8. On 31 January 2012 the council wrote to the complainant and confirmed that, on payment of a fee of £25, the requested information would be provided.

9. On 31 January 2012 the complainant wrote to the council and confirmed that, as it had failed to provide the requested information, they had submitted a complaint to the Commissioner. The complainant asked the council to confirm whether the fee it had charged was based on the standard rate of 20 pence per photocopied page set out in its publication scheme and that no other charges were being levied. The complainant also noted that the council had charged a fee before it had gained the approval for disclosure referred to in its correspondence of 31 January

2012 and asked it to explain why such approval was, in any event, necessary.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way their request for information had been handled.

11. On the basis of correspondence with the complainant, the Commissioner considers that the scope of his investigation should be confined to the following matters:

    - Whether the council has complied with the duties to confirm or deny if information specified in a request is held and to communicate information it holds.

    - Whether the £25 fee levied by the council has been issued in accordance with The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "fees regulations").

12. Section 50(2)(a) of the FOIA confirms that, on receiving a complaint, the Commissioner will make a decision unless it appears to him that a complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45 (the "code")[1].

13. In this case, the council did not provide the complainant with details of its complaints procedure, nor did it handle the complainant's expression of dissatisfaction with its handling of the request as a complaint under its complaints procedure. In view of this, the Commissioner has, therefore, made a decision.

[1] http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/foi/reference/imprep/codepafunc.htm

Reasons for decision

Section 9 – Fees

14. Section 9 of the FOIA states:

"(1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).

(2) Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.

(3) Subject to subsection (5), any fee under this section must be determined by the public authority in accordance with the regulations made by the Secretary of State."

15. Section 6 of the fees regulations state:

"(1) Any fee to be charged under section 9 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by the public authority in accordance with this regulation.

(2) Subject to paragraph (4), the maximum fee is a sum equivalent to the total costs the public authority reasonably expects to incur in relation to the request in–

(a) informing the person making the request whether it holds the information, and

(b) communicating the information to the person making the request.

(3) Costs which may be taken into account by a public authority for the purposes of this regulation include, but are not limited to, the costs of–

(a) complying with any obligation under section 11(1) of the 2000 Act as to the means or form of communicating the information,

(b) reproducing any document containing the information, and

(c) postage and other forms of transmitting the information.

(4) But a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons undertaking activities mentioned in paragraph (2) on behalf of the authority are expected to spend on those activities."[2]

16. The Commissioner has considered whether the £25 fee charged by the council was calculated in accordance with the fees regulations and section 9 of the FOIA.

17. The council's website confirms that the provision of photocopies of information is charged at a rate of 20 pence per A4 page.[3]

18. In order to determine whether 20 pence is a reasonable rate, the Commissioner has referred to the Information Tribunal's ("IT") decision in the appeal of *Markinson v the ICO (EA/2005/0014)*[4]. Although this decision relates to a request made under the Environmental Information Regulations 2004 (EIR), it is partly based on a consideration of guidance issued in relation to the fees regulations and is transferable to the question of reasonable costs under the FOIA.

19. The Commissioner's published guidance, following the IT, clarifies that it is for a public authority to satisfy itself that any charges made do not exceed a reasonable amount but in reaching its decision it must only take into account relevant considerations (for example, the actual cost of photocopying) and must disregard any irrelevant ones (for example, the impact of charges on the revenue of the public authority). In any event, the charges should not exceed the cost of providing the information[5].

20. The Commissioner considers that the cost of providing information may include, for example, the cost of the paper for photocopying or printing the information and a covering letter and the cost of postage. It should not include the cost of staff time in maintaining, identifying, locating or retrieving from storage the information in question.

21. In relation to photocopying charges, the Commissioner's guidance follows the IT in confirming that these should be comparable to rates levied in the commercial sector and should not, therefore, exceed 10

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[2] http://www.legislation.gov.uk/uksi/2004/3244/regulation/6/made
[3] http://kirbymuxloe.leicestershireparishcouncils.org/parish-information-all-you-need.html
[4] http://www.informationtribunal.gov.uk/DBFiles/Decision/i161/Markinson.pdf
[5] http://www.ico.gov.uk/foikb/PolicyLines/FOIPolicyReasonableamount.htm

pence per A4 sheet of paper. The Commissioner notes that public authorities are entitled to exceed this rate but only where:

- it can demonstrate a good reason for doing so;
- a statute or regulations specify charges to be made for providing information;
- there has been proper study, scrutiny, decision and authorisation for such a charge; and
- the process for arriving at the higher charge is published and available for scrutiny.

On the basis of the available evidence the Commissioner considers that none of these exceptional factors are applicable and he has concluded that a 20 pence fee is not a reasonable charge under the terms of the fees regulations.

22. As the £25 fee charged by the council has not been calculated in accordance with the fees regulations, the Commissioner has determined that the fees notice issued by the council does not comply with section 9 of the FOIA.

23. During the course of the Commissioner's investigation the council confirmed that it was reducing its fee for provision of the information to £5. However, as it subsequently provided the complainant with the information in electronic form the Commissioner has not made a determination as to whether this revised fee complies with section 9 of the FOIA.

Section 1 – duty to confirm or deny

24. Section 1(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."

25. Section 9(2) of the FOIA confirms that, when a requester has been provided with a fees notice, an authority is not obliged to comply with the duty under section 1(1) until the fee has been paid.

26. As the Commissioner has concluded that the council did not issue a valid fees notice, he considers that the duty to comply section 1(1) was not disapplied. He has, therefore, concluded that the council failed to confirm or deny whether the requested information was held within the time for compliance.

27. As the complainant has now been provided with the information the Commissioner does not require the council to take any steps.

Other matters

28. Although they do not form part of this notice, the Commissioner wishes to note the following areas of concern.

Engagement with the Commissioner's investigation

29. During the course of his investigation the Commissioner has found the council to be unwilling to assist with his enquiries, to the extent that he was forced to take the relatively unusual step of issuing an Information Notice. As a result of the council's failure to engage, the Commissioner's investigation has been unnecessarily prolonged.

30. In the Commissioner's view, the council's practice in this regard is not within the spirit or the letter of the FOIA and he expects that it, in future, it will provide timely and adequate responses to his correspondence.

Internal Review

31. Part VI of the code of practice issued under section 45 of the FOIA (the "code") recommends that public authorities should have in place a complaints procedure or 'internal review' procedure for dealing with complaints about the handling of requests. The code advises that any written reply from an applicant which expresses dissatisfaction with a request response should be treated as a complaint and dealt with via the internal review procedure.

32. The Commissioner supports the code's recommendations and considers that internal reviews provide authorities with an opportunity to correct any mistakes and can avert the need for complaints to be made to the Commissioner. In this instance, he notes that, despite receiving expressions of dissatisfaction from the complainant, the council failed to carry out an internal review. He considers that this failure, in combination with the levels of engagement the council displayed during the course of his investigation has resulted in unnecessary delays. In future, he expects that the council will deal with requests in accordance

with the FOIA and with reference to the codes of practice and the Commissioner's guidance.

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: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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 ……

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF