

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 March 2013

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

#### **Decision (including any steps ordered)**

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1. The complainant requested various, mainly financial, information from Kirby Muxloe Parish Council (the Council). The Council refused to comply with the request until the complainant paid a fee of £25 due to the "*time and effort*" it would be necessary to spend on these requests.
2. The Commissioner's decision is that this was not a valid reason to charge for a request and so the Council breached section 10 of the FOIA in failing to provide a valid response to these requests within 20 working days of receipt.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide a fresh response to the complainant that is compliant with the requirements of the FOIA.
4. The public authority 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**

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5. On 11 April 2012, the complainant wrote to the Council and requested information in the following terms:

*"(i) Confirmation that the Financial Regulations available on the Parish Council website are currently up to date, and if not, forward a copy of the correct version.*

*(ii) Copies of the annual review of the effectiveness of internal audit prepared for and considered by the Council for both the 2009/2010 and 2010/2011 financial years [and] if the same annual review for 2011/2012 has been completed, please provide a copy of that as well.*

*(iii) Copies of the risk policy statements and consequential risk management arrangement reviews by the Council for each of the 2009/2010, 2010/2011 and 2011/2012 financial years.*

*(iv) Copies of the Annual Return (as referred to in the Governance and Accountability for Local Councils – a Practitioners' Guide (England) 2010) for both the financial years 2009/2010 and 2010/2011."*

6. The Council sent an initial response on 30 April 2012. It stated at this stage that providing the information requested would involve "a considerable amount of time and effort" and as a result it required the complainant to pay a fee of £25 for it to comply with the requests.
7. The complainant responded to this on 4 May 2012 and stated correctly that a public authority is not permitted to charge for the amount of "time and effort" involved in complying with a request. By the date of this notice the Council had not provided a valid response to the requests.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 29 May 2012 to complain about the failure of the Council to provide a valid response to her information requests. The Commissioner's office contacted the Council at this stage and advised it that it could not charge a fee for the reasons it had stated and that it should provide a valid response to the complainant's requests. The Council was referred to the guidance published on the ICO website on charging for compliance with an information request<sup>1</sup>. Regrettably, neither the complainant nor the Commissioner received any response to this correspondence.

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/document](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/document)

9. The complainant contacted the Commissioner's office again on 8 October 2012 and stated that she had still yet to receive a response to her information requests. The complainant again confirmed shortly before the date of this notice that she had still to receive from the Council a valid response to her information requests.

## Reasons for decision

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### Section 10

10. Section 10(1) of the FOIA provides that a public authority is required to provide a response to an information request within 20 working days of receipt. Such a response should, in accordance with section 1(1) of the FOIA, confirm or deny whether the requested information is held. In relation to any information that is held, this should either be disclosed, or the requester should be given a valid explanation as to why the requested information will not be disclosed.
11. In this case the Council requested a payment of £25 for compliance with the request. Whilst section 9 of the FOIA provides that a public authority can issue a notice requiring the payment of a fee for compliance with a request, and that it is not required to comply with the request until the payment has been made, the circumstances in which a fee can be charged are restricted by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).
12. The fees regulations essentially provide that a fee can be charged for actual costs incurred in communicating the information, such as photocopying or postage costs. The fees regulations state specifically that no charge can be made for the amount of staff time spent on complying with a request.
13. In this case, the Council stated that it required payment due to the "*time and effort*" that it would be necessary to spend on the request. This is not a valid reason for charging to comply with an information request, and so it was not permissible for the Council to refuse to comply with the requests until payment of this fee.

14. In failing to provide a valid response to the complainant's information requests within 20 working days of receipt, the Council did not comply with section 10(1) of the FOIA. At paragraph 3 above the Council is now required to provide a valid response to these requests.

### **Other matters**

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15. A record has been made within the Commissioner's office of the issues that have arisen in this case. This covers the failure of the Council to engage with the Commissioner's office, or with the complainant, when its failure to provide a valid response was raised with it.
16. The Council should ensure that it is now aware of the circumstances in which it can levy a fee for compliance with an information request. The issues brought to light in this case may be revisited if they arise in future cases.

## Right of appeal

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17. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

18. 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.
19. 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 .....**

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