

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2013

Public Authority: Prestatyn Town Council
Address: 7 Ffordd Llys Nant
Prestatyn
LL19 9LR

Decision (including any steps ordered)

1. The complainant requested information about the Wales in Bloom competition. Prestatyn Town Council ('the Council') initially stated it did not hold the information. At the internal review stage the Council applied section 14 of the FOIA to the request as it considered it to be vexatious. During the course of the Commissioner's investigation, the Council stated that the information requested was not held. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the information requested. He does not require any steps to be taken.

Request and response

2. On 17 January 2011 the complainant wrote to the Council and requested information in the following terms:

"Please may I under the Freedom of Information Act. Request a viewing of the original file and documents for Prestatyn Town Councils paid for or otherwise. Involvement in Prestatyn Town, Ty Pendre memorial gardens or other entry into Wales in Bloom 2008, 2009 and 2010. All documents relating to such activities and councillors involvement or lack of it for this prestigious award is required, please".
3. The Council responded on 3 February 2011 advising that it was generally supportive of the Wales in Bloom competition and is willing to assist groups wishing to participate in the event. It confirmed that the Council was not responsible for entry documents and did not have a separate budget for the competition. It suggested that, for more information on the Wales in Bloom competition the complainant would

need to contact the relevant coordinator for the competition and provided the names of the coordinators.

4. On 24 March 2011 the complainant submitted a request to one of the named coordinators who, at the time of the request, was also a Town Councillor. The request was submitted via the whatdotheyknow.com website to the Council but addressed to the individual Councillor and requested information in the following terms:

"Would it be possible to have a copy of the Wales in Bloom judges report from 2007 please?"

[name of Clerk to the Council] has guided me to yourself as the best person to know as to what was happening in 2007".

5. The Council responded on 19 July 2011 stating that the request appeared to be "outside the scope of legislation although I have spoken to [named Town Councillor] who advises all correspondence has been passed onto the present independent Wales in Bloom Committee organised by [name of Town Councillor]".
6. On 29 February 2012 the complainant wrote to the Council asking for an internal review of its handling of his request.
7. The Council provided the outcome of its internal review on 20 July 2012. It stated that it was refusing the request on the basis that section 14(1) and section 14(2) of the FOIA applied as the request was considered to be repeated and vexatious.

Scope of the case

8. The complainant contacted the Commissioner on 10 September 2012 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the Council was correct to categorise his request as vexatious under section 14 of the FOIA. He also asked the Commissioner to consider whether the information requested was held by the Council.
9. During the course of the Commissioner's investigation, the Council stated that it had applied section 14 of the FOIA to the request of 17 January 2011 in its internal review of 20 July 2012 due to continuous requests received after the original request relating to the subject matter ie the Wales in Bloom competition. However, it stated that with hindsight it should have maintained that the requested information was not held by the Council and believed it had made this point clear in its original response of 3 February 2012.

10. Given the fact that the Council notified the Commissioner that it had withdrawn reliance on section 14 and considered the most appropriate response to the request was to confirm that the information was not held, the Commissioner has focused his investigation on whether it was correct to say that it did not hold the requested information

Reasons for decision

Section 1 – General right of access

11. Section 1 of the FOIA provides 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. Although the Council's initial response to the request was that it did hold the requested information, it altered its position at the internal review stage and claimed the request was vexatious. However during the course of the Commissioner's investigation, the Council informed him that the requested information was not held.
13. 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 ascertain information falling within the scope of the request and he will consider if the authority is able to explain why further information was not held. For clarity, the Commissioner is not expected to prove categorically whether additional information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"¹. Therefore, the Commissioner will consider both:
 - the scope, quality, thoroughness and results of the searches and
 - other explanations offered as to why further information is not held.

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

14. The complainant has argued that the information is held by the Council and "is part of the official, ratified, paid for Prestatyn and Meliden Town events".
15. In its initial response to the request of 3 February 2011, the Council stated that, whilst it was supportive of events such as the Wales in Bloom competition, it was not responsible for entry documents and did not have a separate budget for the competition. It suggested that, for more information on the Wales in Bloom competition the complainant would need to contact the relevant Wales in Bloom Prestatyn coordinator (WIB coordinator), and provided contact information for the WIB co-ordinators.
16. The complainant subsequently submitted a request via the whatdotheyknow.com website to one of the named WIB co-ordinators. The request was sent to the Council as the WIB co-ordinator was at the time a Town Councillor. The individual carried out the role of WIB coordinator, prior to being elected as Town Councillor. The Council responded stating that the request was outside the scope of the FOIA. It also advised the complainant that all correspondence about the Wales in Bloom competition had been passed to the present WIB coordinator, and provided the name of the current organiser (who also at the time was a Town Councillor).
17. The Council confirmed that the Wales in Bloom Prestatyn Committee ('WIB Committee') is a completely separate organisation to the Council. It has its own constitution, operating structure, identity and budget/bank account. The Council's involvement in the national Wales in Bloom competition is limited to encouraging volunteer individuals and groups in the local area to work together to improve the town's environment, and signposting individuals to relevant bodies/persons.
18. The Council advised the Commissioner that it directed the complainant to named individuals as they were the appointed coordinators for the WIB Committee. Some of the WIB coordinators are present or former Town Councillors and they undertook their role as WIB coordinator at the same time they were Town Councillors. However, their role as WIB coordinator is undertaken in a private and personal capacity and not as part of their role as Town Councillors. The Council has no management involvement in the WIB Committee or the national Wales in Bloom competition/organisation. The Council does not know how the WIB Committee appoints its coordinator or members.
19. The Council confirmed that the only documentation held relating to the Wales in Bloom competition related to ensuring Ty Pendre Gardens area was maintained by the Council and in good order. Details of the Council's appointed contractor, worksheets, payments and contract

details have all been provided to the complainant in response to separate information requests, one of which was the subject of a previous decision notice issued by the Commissioner². Following the decision notice, the Council confirmed that inspection of documents relating to Ty Pendre Gardens was provided to the complainant.

20. The Council has also provided financial support to a voluntary group organising the Wales in Bloom (Prestatyn) entry in 2011. Copies of the grant application form and payment details were provided to the complainant on 27 July 2011 in response to a separate information request he made.
21. The Council advised that no searches were carried out in respect of the request for the Wales in Bloom report/portfolio or the judges report as the Council is not responsible in any way for this material and copies of the information is not held. The reason for this is that whilst certain Town Councillors have undertaken their role with WIB at the same time as being a Town Councillor, the roles are completely separate. The Council understands that entries to the national Wales in Bloom competition for the Prestatyn area are submitted by the relevant WIB coordinator. Once judging has been completed the Council understands that the judge's report is sent to the WIB co-ordinator together with the results. The judge's report is, therefore the property of the relevant WIB coordinator and access to the report is controlled by the WIB coordinator, not the Council.
22. The Council is aware that the Wales in Bloom report 2008 was passed from one coordinator to the next co-ordinator via its offices. The Council confirmed that this is an unusual occurrence and the Council is not normally party to this process. The Council advised that it happened because of the personal circumstances of the previous coordinator (who was a Town Councillor). The Council offered to hold the information in storage temporarily until a new WIB coordinator was appointed and the report was subsequently passed to the new WIB coordinator (who was also a Town Councillor). The Council maintain that the information was held in its offices purely in a storage facility capacity for the WIB Committee and at no time was the information considered to be held by the Council for the purposes of the FOIA. It had no control over the document and the information remained the property of the WIB Committee/coordinator. The Council has been unable to provide the

² http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fer_0382509.ashx

exact dates that it held the 2008 Wales in Bloom report but indicated it was for several months in 2011

23. Based on the representations submitted by the Council, the Commissioner is satisfied that the WIB Committee is a completely separate organisation to the Council. The Commissioner is also satisfied that where WIB coordinators were also Town Councillors, the role of WIB coordinator was undertaken in a private and personal capacity and was not linked in any way to their role as Town Councillors.
24. The Commissioner notes that the Council did hold a copy of the Wales in Bloom 2008 report for a period of time. Under section 3(2)(a) information will be held by the public authority for the purposes of FOIA if it is held to any extent for its own purposes. Only if information is held solely on behalf of another person will the public authority not hold it for the purposes of FOIA. Based on the Council's representations, the Commissioner accepts that the Wales in Bloom report was held by the Council solely for another person (the WIB coordinator). This is because:
 - access to the information was controlled by the other person (the WIB coordinator);
 - the Council does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; and
 - the Council was merely providing storage facilities for the information until the new WIB co-ordinator was appointed.
25. Taking into account the available information on this matter, the Commissioner's view is that the Council's explanation of why it does not hold the requested information is reasonable in the circumstances. He therefore finds that, on the balance of probabilities, the Council does not hold the requested information.

Right of appeal

26. 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

27. 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.
28. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF