

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2019

Public Authority: Boroughbridge Town Council
Address: 1 Hall Square
Boroughbridge
North Yorkshire
YO51 9AN

Decision (including any steps ordered)

1. The complainant has requested an audio recording of a committee meeting. Boroughbridge Town Council ("the Council") refused to provide the information.
2. The Commissioner's decision is that the Council has failed to issue an adequate refusal notice. It has thus not complied with its duty on section 1(1) of the FOIA and has breached section 17 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Either provide the complainant with a copy of the requested information or issue a refusal notice which complies with section 17 of 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 June 2019, the complainant wrote to the Council and requested information in the following terms:

Please could I ask whether an audio recording was made of agenda point three for the public questions and statements at the joint

meeting of the Boroughbridge Town Council Finance & Human Resources Committee and the Cemeteries & Council Assets Committee held on Thursday 20th June? If so, I request to be sent a copy of this recording or a written transcript of what was said in the public sections of this meeting.

6. The Council responded on 11 July 2019 in the following terms:

"The Town Council is unable to provide any recording or transcript of the meeting under the DPO guidelines which quote:

"Exemptions exist to protect information that should not be disclosed, for example because disclosing it would be harmful to another person or it would be against the public interest."

"The Town Council believes this exemption is relevant to your request."

7. Following an internal review the Council wrote to the complainant on 7 August 2019. It stated that:

"The result was that the Town Council upheld their decision not to release this information on the following grounds:

"Exemptions exist to protect information that should not be disclosed, for example because disclosing it would be harmful to another person or it would be against the public interest."

"The Council believes that the information on the recording that you are requesting is exempt as the speaker had not given permission for the recording to be released and in releasing the recording, it would contravene her rights of privacy."

Scope of the case

8. The complainant first contacted the Commissioner on 18 July 2019 to complain about the way his request for information had been handled. At that point the Council had yet to complete its internal review. On receipt of the internal review outcome, the complainant contacted the Commissioner again on 7 August 2019 to consider the Council's refusal to provide the requested information.

9. As the Commissioner considers that Council's refusal to provide the requested information is clear, but its reasons for doing so are not, she considers that a decision notice is appropriate in the circumstances.
10. The scope of the analysis that follows considers whether the Council has provided a proper refusal notice in response to the request.

Reasons for decision

Section 17 – Refusal Notice

11. Section 1(1) 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.*

12. Section 17(1) of the FOIA states that when a public authority wishes to withhold information or to neither confirm nor deny holding information it must:

within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,*
 - (b) specifies the exemption in question, and*
 - (c) states (if that would not otherwise be apparent) why the exemption applies.*
- (3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—*
- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or*

Other matters

16. The complainant notified the Commissioner that, at a Council meeting on 6 August 2019, a councillor suggested the possibility of deleting the requested information prior to the outcome of the Commissioner's investigation. Whilst this suggestion was not recorded in the minutes and was apparently rejected at the meeting, the Commissioner would remind the Council that such actions are completely contrary to the spirit of openness and transparency.
17. The Commissioner also notes that section 77 of the FOIA makes it a criminal offence for someone to block, destroy or conceal information deliberately, in order to frustrate an information request.
18. Should it decide that it wishes to issue a refusal notice in respect of this request, the Commissioner will expect the Council to be in a position to provide her with a copy of the withheld information for the purposes of continuing her enquiries.

Right of appeal

19. 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

20. 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.
21. 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

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