

Sandy Town Council

To: Cllrs N Aldis (Chairman), J Ali, C Butterfield, C Osborne, M Runchman, M Scott, P Sharman, R Smith and S Sutton

cc: Cllr A Jackson, M Pettitt and D Sharman

You are hereby summoned to attend a meeting of the Community Services and Environment Committee of Sandy Town Council to be held in the Council Chamber at 10, Cambridge Road, Sandy, Bedfordshire on Monday 26 January 2015 commencing at 7.30 pm

pro Delia Shephard
10 Cambridge Road
Sandy, SG19 1JE
01767 681491
20 January 2015

1 Apologies for absence

2 Declarations of interest

- i) *Disclosable Pecuniary Interests*
- ii) *Other Interests*

3 Minutes of previous meeting

To consider the minutes of the Community Services and Environment Committee held on Monday 8 December 2014 and to approve them as a correct record of proceedings.

4 Public Participation Session

5 Cemetery Regulations

To receive a report from the Cemetery Regulations Working Group regarding the amendment of regulations.

6 Cemetery Paths

To receive and consider quotations for the cost of removing two trees that have caused considerable root damage to a path in Sandy Cemetery.

7 Freedom of Information Request with regard to Sandy Cricket Club Licence

To receive and consider the decision of the Freedom of Information Commissioner with regard to a complaint made regarding the Cricket Club licence.

06 JAN 2015

Delia Shephard
Town Clerk
Sandy Town Council
10 Cambridge Road
Sandy
Bedfordshire
SG19 1JE

5 January 2015

Freedom of Information Act 2000 (FOIA)
Our ref: FS50550704
Your ref: FOI/23.06.2014/05

Dear Ms Shephard

Please find enclosed a decision notice relating to a complaint

The complaint has been considered by the Commissioner and the decision notice sets out the reasons for the decision. If you disagree with the decision notice you have the right to appeal to the First-tier Tribunal (Information Rights).

The Commissioner will publish this decision on the ICO website, but will remove all names and addresses of complainants. If you choose to also reproduce this decision notice, then the Commissioner expects similar steps to be taken.

I hope the above information is helpful.

Yours sincerely



Jonathan Slee
Senior Case Officer
01625 545359



Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2015

Public Authority: Sandy Town Council
Address: 10 Cambridge Road
Sandy
Bedfordshire
SG19 1JE

Complainant:
Address:

Decision (including any steps ordered)

1. The complainant submitted a request to Sandy Town Council (the Council) about its decision to replace the lease agreement it had with Sandy Cricket Club with a licence. The Council provided the complainant with the information he requested with the exception of correspondence it had exchanged with its lawyers about this matter. The Council initially sought to withhold this information on the basis of section 41 (information provided in confidence) of FOIA but subsequently sought instead to rely on the exemption contained at section 42 (legal professional privilege).
2. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 42 and that in all the circumstances of the case the public interest favours maintaining the exemption.

Request and response

3. On 26 June 2014 the complainant submitted a request to the Council concerning the 'Sandy Cricket Club Lease Agreement'. He asked to be provided with the following information:

'a) The existing Lease

b) The draft of the revised Lease

c) the draft of the proposed licence

d) The correspondence between the council and the lawyers in full, including their reasoning and advice on why the original Lease could not be tweaked satisfactorily.

e) A detailed breakdown of proposed costs.'

4. The Council responded on 16 July 2014 and provided the complainant with the information sought at points a), b) and c) of his request and also explained that it did not hold the information sought by point e). In relation to information sought at point d), the Council explained that it considered this information to be exempt from disclosure on the basis of section 41 (information provided in confidence) of FOIA. The Council explained that it did not offer an internal review procedure and advised the complainant to contact the Commissioner if he was dissatisfied with its response.

Scope of the case

5. The complainant contacted the Commissioner on 4 August 2014 to complain about the Council's decision to withhold the information sought by point (d) of his request, ie the correspondence between the Council and its lawyers regarding this matter. The complainant argued that disclosure of this information was in the public interest; the complainant's submissions on this point are considered below.
6. During the course of the Commissioner's investigation the Council explained that it considered the withheld information to be exempt from disclosure on the basis of the exemption contained at section 42(1) (legal professional privilege) rather than section 41.
7. The Commissioner has therefore considered whether the withheld information is exempt from disclosure on the basis of section 42 of FOIA.

Reasons for decision

Section 42 – legal professional privilege

8. Section 42 of FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings.
9. There are two categories of legal professional privilege: advice privilege and litigation privilege.
10. In this case the category of privilege the Council is relying on is advice privilege. This privilege is attached to confidential communications between a client and its legal advisers, and any part of a document which evidences the substance of such a communication, where there is no pending or contemplated litigation. The information must be communicated in a professional capacity; consequently not all communications from a professional legal adviser will attract advice privilege. For example, informal legal advice given to an official by a lawyer friend acting in a non-legal capacity or advice to a colleague on a line management issue will not attract privilege. Furthermore, the communication in question also needs to have been made for the principal or dominant purpose of seeking or giving advice. The determination of the dominant purpose is a question of fact and the answer can usually be found by inspecting the documents themselves.
11. The withheld information constitutes correspondence between the Council and an external solicitor about the Sandy Cricket Club lease agreement and the Council's preference to replace the lease with a licence. Having examined this information the Commissioner is satisfied that the dominant purpose of this correspondence clearly constitutes the seeking and provision of legal advice. He is therefore satisfied that the withheld information is exempt from disclosure on the basis of section 42(1) of FOIA.

Public interest test

12. However section 42 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in favour of maintaining the exemption

13. The Council explained that at the time of the request the negotiations over the lease/licence were still continuing. It argued that if it disclosed

this information under FOIA then those members of the cricket club who opposed any changes to the terms and conditions of its occupation of the Council's premises would have full sight of the confidential discussions the Council had had with its legal adviser. The Council argued that this would undermine its position during these negotiations.

Public interest in favour of disclosing the information

14. The complainant argued that the replacement of the lease with a licence placed the cricket club in a disadvantageous position because for a sports club of this type to access grant funding they had to demonstrate that it had the security of tenure and a licence did not offer that. The complainant explained that as far as he was aware no other local club had been approached to surrender the security of their lease in favour of a short term licence.
15. He noted that the Council had explained that because of a change in buildings on the site, in its view the original lease cannot be amended and it had to be replaced with a licence. However, the complainant argued that it was unacceptable for the Council to withhold the legal advice upon which this view was based. To do so did not fit with the Council's commitment to openness and transparency. He also argued that the club itself could not afford to pay for its own advice on this matter, which presumably would simply duplicate the Council's own advice. In any event the complainant noted that the local council tax payers, including members of the cricket club, had effectively paid for this advice. Finally, he argued that there was no benefit to keeping this advice secret.

Balance of the public interest test

16. Although the Commissioner accepts that there is a strong element of public interest inbuilt into legal professional privilege, he does not accept, as previously argued by some public authorities that the factors in favour of disclosure need to be exceptional for the public interest to favour disclosure. The Information Tribunal in *Pugh v Information Commissioner* (EA/2007/0055) were clear:

'The fact there is already an inbuilt weight in the LPP exemption will make it more difficult to show the balance lies in favour of disclosure but that does not mean that the factors in favour of disclosure need to be exceptional, just as or more weighty than those in favour of maintaining the exemption'. (Para 41).

17. Consequently, although there will always be an initial weighting in terms of maintaining this exemption, the Commissioner recognises that there are circumstances where the public interest will favour disclosing the

information. In order to determine whether this is indeed the case, the Commissioner has considered the likelihood and severity of the harm that would be suffered if the advice were disclosed by reference to the following criteria:

- how recent the advice is; and
- whether it is still live.

18. In order to determine the weight that should be attributed to the factors in favour of disclosure the Commissioner will consider the following criteria:
- the number of people affected by the decision to which the advice relates;
 - the amount of money involved; and
 - the transparency of the public authority's actions.
19. With regard to the age of the advice the Commissioner accepts the argument advanced on a number of occasions by the Tribunal that as time passes the principle of legal professional privilege diminishes. This is based on the concept that if advice is recently obtained it is likely to be used in a variety of decision making processes and that these processes are likely to be harmed by disclosure. However, the older the advice the more likely it is to have served its purpose and the less likely it is to be used as part of any future decision making process.
20. In many cases the age of the advice is closely linked to whether the advice is still live. Advice is said to be live if it is still being implemented or relied upon and therefore may continue to give rise to legal challenges by those unhappy with the course of action adopted on that basis.
21. In the circumstances of this case the advice is clearly relatively recent and moreover as it is still being relied upon by the Council as a basis of its discussions with the cricket club the Commissioner accepts that it is also still live. In light of this the Commissioner believes that there is a significant and weighty public interest in upholding the exemption.
22. With regard to the public interest in disclosure of the information, in the Commissioner's view the number of people directly affected by the advice is relatively limited, ie those involved with the cricket club in question and potentially other users of the facilities. However, the Commissioner appreciates the complainant's line of argument that the change from a lease to a licence has the potential to have a significant impact on the club in terms of future funding. Moreover, disclosure of the withheld information would provide the public, and thus also the cricket club, with a detailed insight into the Council's legal basis for

wanting a licence rather than a lease, and its approach to the negotiations about this matter. In other words, disclosure of the information would be genuinely informative with regard to the Council's position and actions on this issue. That said, in the Commissioner's opinion it would not be correct to argue that there is a complete lack of transparency in respect of the Council's actions. This is because he understands that the Council has held discussions with representatives of the cricket club at which it has explained why it wishes to replace the lease with a licence.

23. The Commissioner has concluded that the public interest favours maintaining the exemption. In reaching this view the Commissioner has taken into account the fact that the Council has already provided the cricket club with an explanation as to why it wishes to replace the lease with a licence. Whilst disclosure of the information would provide the public with a more detailed understanding of the Council's legal basis for such a decision, such a disclosure would realistically only serve the interests of a small group, namely the cricket club itself. Conversely, given that the advice is live, its disclosure risks having a significant and detrimental impact on the Council's ability to secure its preferred course of action and indeed its ability to have confidential discussions with its legal adviser on this matter. In the Commissioner's view this represents a significant risk to the wider public interest.

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: 0300 123 4504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.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



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

Sandy Town Council

Cemetery and Burial Regulations Review.

This report is from the members of the Working Group established by the Town Council following the public meeting where views were aired about aspects of the cemetery. Its remit was to review the Burial Regulations and propose changes where necessary. It has taken some time to complete as members reviewed the regulations of many other councils in a variety of locations around the country.

The report has been delayed by changes in the membership of the group and sickness of both councillors and the office staff which is regretted.

Items in the existing Burial Regulations (dated 1/1/2014) where changes are to be recommended and with suggested changes etc. shown in red.

1.

Change 2 to 3 clear working days

11.

Any persons wishing to purchase Exclusive Rights of Burial in a grave space must pay the appropriate fee. **The Grant of Exclusive Right of Burial does not confer ownership rights of the land to the purchaser.** The Council will confirm purchase by the issue of a certificate entitling the purchaser to the plot for a period of 10 years renewable at no **additional** fee **for a maximum of 50 years.** This is to ensure that the records are correct and that the grave space is still required by the purchaser. Purchases can only be made in the name of individuals.

20.

The headstone or **vase** to be placed at the head of the grave only.

21.

A temporary marker **may** be retained on the grave for a maximum of **2** years after the interment **or until replaced by the headstone or vase, whichever is**

soonest. No planting or fencing is permitted in sections where the cemetery is laid to lawn.

22.

(a) During the period of 15 months following internment any item placed on the grave must be within 300mm of the front of the temporary marker if this has not already been replaced with a permanent headstone and should not interfere with routine maintenance.

(b) Thereafter any item left on a grave must be firmly affixed to the plinth at the base of the headstone and should not be left on or pushed into the ground at the side or edge of the plinth or headstone so as to interfere with or hinder routine maintenance of the cemetery.

(c) The Council reserves the right to remove and dispose of any items not firmly affixed as described and in addition any item(s) and object(s) which in its opinion are objectionable, unsightly and potentially dangerous including items of pottery, tin, plastic or glass plus bricks, blocks and wire mesh or any item likely to cause offence or distress in a cemetery environment.

(d) Council will routinely dispose of withered, fading and dead flowers and wreaths.

33.

Change 28 days to 3 months.

35.

Dogs are not permitted in the cemetery at any time with the exception of Registered Assistance dogs in which case the dog must be on a lead, supervised and under control at all times.

39.

Members of the Working Group are not familiar with the history of the Cemetery linking it with Stonecroft Estate and the entitlement of deceased tenants to make use of the Chapel as a place of rest prior to internment. It is recommended that further research is necessary before any change be considered most appropriately perhaps prior to the opening of the new section of the cemetery.