



9 November 2010

**Case reference number FS50301022**

Dear Sir

**Your Complaint against West Devon Borough Council (the Borough Council)**

I write further to our letter to you dated 25 October 2010 concerning your complaint about the Borough Council's response to your request for information **made on 11 January 2010**. Please be advised that I have now taken over this case from [redacted] and as part of that process I have conducted a review of the investigation to date.

**Your request**

From the information which has been provided to us, I understand that you made a request to the Borough Council for a copy of the advice it provided to Lydford Parish Council (the Parish Council) regarding a letter you had sent on 23 November 2009 to the Lydford Parish Clerk. The Borough Council wrote to you on 5 February 2010 requesting your agreement to an extension of the time limit for responding to your request, as a consequence of staff absence due to illness and indicated a response would be forthcoming by 12 February 2010. On 11 February 2010, the Borough Council responded to you confirming that whilst the requested information was held, it was being refused on the grounds that some of it constituted legal advice provided by the Borough Solicitor to the Parish Council and was therefore exempt from disclosure under section 42 of the Freedom of Information Act 2000. The Borough Council also argued that the remainder of the information related to third parties and had been provided to

the Parish Clerk in confidence and was therefore exempt under sections 40 and 41 of the Freedom of Information Act 2000. You requested an internal review of the Borough Council's decision on 14 February 2010, the result of which was provided to you on 4 March 2010. That review upheld the Borough Council's initial decision not to disclose the requested information but cited only section 42 as grounds for withholding the information.

## **The appropriate legislation**

Having examined your complaint, and studied the withheld information in detail, I have reached the conclusion that it should be dealt with under the Data Protection Act 1998 rather than the Freedom of Information Act 2000. This is because you have requested information of which you are the subject, thereby making it your personal information, or data. Section 40(1) of the Freedom of Information Act 2000 states that any requested information of which the requestor is the data subject is exempt from disclosure under the Freedom of Information Act 2000. Therefore, any request of this nature needs to be dealt with under the Data Protection Act 1998.

## **Assessment of your complaint**

The Data Protection Act 1998 provides individuals with the right to find out what information is held about them by a data controller (a person who determines how personal data is processed and for what purposes it is processed) and to have that information communicated to them, subject to certain exemptions. When the Information Commissioner receives a complaint relating to the failure on the part of a data controller to communicate an individual's personal data to him/her, he may make an assessment as to whether the data controller has complied with the provisions of the Data Protection Act 1998.

From the information provided to me by you and the Borough Council I was able to make my assessment. It is my view, from all information available to me, that there is no strong indication that the Borough Council has failed to comply with any of the above provisions in this case.

The Borough Council withheld the information you requested under section 42 of the Freedom of Information Act 2000 on the grounds that it is subject to legal professional privilege and therefore exempt from disclosure. There is a provision under the Data Protection Act 1998 (Schedule 7, Section 10) that personal data

is exempt from disclosure if it consists of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Having had sight of the withheld information and satisfied myself it is information that constitutes legal advice it is my view that the information is likely to fall under the exemption as set out in Schedule 7, Section 10 of the Data Protection Act 1998.

In light of this it is likely that the Borough Council has complied with the Data Protection Act 1998 in this case and the matter is therefore considered as closed.

I have corresponded separately with the Borough Council to advise them of my conclusion.

I appreciate that this might not be the outcome you hoped for but I hope you understand the reasons for my view.

Yours sincerely



**Senior Complaints Officer  
Information Commissioner's Office (NI)**