

10 September 2020

Mr Bill Ellson
request-680990-
933bc2d7@whatdotheyknow.com

Information Governance Team
Corporate Services
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Your ref:202000299

Dear Mr Ellson,

Review of your request – reference 202000299

I write following your complaint relating to the Wiltshire Council response to your recent freedom of information request. On 31 July 2020 you requested the following information;

1. I require a copy of any policy, procedure, protocol or whatever relating to the availability of legal advice to those Council officers drafting reports for committees and / or relating to the advisability of said officers obtaining legal advice from the Council's professionally qualified legal staff before purporting to expound to committee upon what the Council's legal responsibilities are.

On 14 August 2020 the council responded in the following manner:

Under the Freedom of Information Act 2000 (the Act) the Council is obliged to:
Let you know whether we hold the information you have requested
Provide you with the requested information, if held, (subject to any exemptions to disclosure that may apply)

I can confirm that the council holds the information you requested which is as follows;

The Council has a dedicated legal team which are available to support officers drafting reports for committee and advise on the council's legal duties and legal implications of the recommendations. The legal matters relevant each committee decision will vary on a case-by-case basis, and therefore the extent of legal advice needed will also vary.

On 14 August 2020 you emailed the council to say:

I am seeking a review of the response to my Information Request of 31 July 2020.

No information has been supplied, the response effectively repeats parts of my communication back to me.

My request was not about the availability of legal advice, but about how the availability of such legal advice (and the advisability of seeking such legal advice) is made known to officers writing reports for committees.

(If it is the case, as the response tends to infer, that Wiltshire Council relies on 'everybody knowing' that such legal advice is available rather than any document setting out such availability then you do not hold the information requested and should simply say so.)

I have reviewed the handling of your original request and have concluded that we should have been clearer in our response to you – we do not hold the information you have requested. I have revisited this with the service area and now have some additional information which I trust will assist you.

We do not hold such generic policies.

Cabinet reports always have a section on legal implications and will always be reviewed by a legal officer, however for other decisions the extent of legal involvement will vary significantly based on the issue under consideration.

The legal advice and decision-making situations are considered on their own merit so there is no blanket policy. Some committee meetings will have a lawyer present to answer specific legal implications for a report on certain items whilst they are discussed, whilst for others this is not necessary.

Each decision would be considered on its individual circumstances, so the extent of legal involvement would vary.

Legal requirements are prescribed by law not legal advisors. Officers within a service are likely to be very familiar with what legal requirements apply or do not apply to their service and therefore would be suitably qualified to express a view to any committee considering a report within that Officers expertise on what the legal requirements are. If the officer is unsure or there is ambiguity they may seek legal advice to confirm their understanding of how the law does apply to their service. Similarly, normally there is a legal advisor for most regulatory committees and if the decision maker is unsure or issues are raised then the legal advisor can clarify the issue.

In respect of “policies, procedure and protocols” we hold I would point out that paragraph 13.2.1 of Article 13 of Part 2 of our constitution provides: -

All decisions of the Council will be made in accordance with the following principles:
to consult appropriate officers and to seek their professional
advice; (emphasis added)

As our Constitution is part of the Council’s core “policy, procedure or protocols” there is therefore a requirement for officers to seek professional legal advice, when appropriate, for any decision making.

Requests for legal advice may be sought by email or via supplying of a draft report for review and comment. Furthermore, reports to be submitted to Council, cabinet or cabinet member (normally key decisions) are processed via an electronic methodology through Mod Gov whereby the matter is automatically forwarded to Legal Services for checking before being submitted to the decision maker.

If you are still dissatisfied with the council's response to your request for information you have a right to complain to the Information Commissioner. The Information Commissioners contact details are:

Information Commissioners Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel; 0303 123 1113
www.ico.org.uk

Yours sincerely

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