

Cllr John Illingworth: Access to Information Appeal

I am seeking access to the whole of the “working file” for the Council Annual Meeting held in May 2003. Since October 2008, I have been seeking information about the history of the Council’s constitutional changes after local government modernisation, but I only become aware of the existence of this “working file” in the last few weeks.

During the autumn of 2008 the Council supplied me with dated copies of documents that purported to be the constitutions approved each year between 2001 and 2008. It subsequently became apparent that the constitution dated 19 May 2003 had in fact been assembled some time after the event. I was later told, again wrongly, that the Council had not retained any significant records of the 2003 Annual Meeting, but it is now obvious that considerable information has in fact been kept.

These dates are important, because my original request for this information was inside the six year time limit for the retention and automatic inspection of Council documents. It is also important that the information initially supplied to me by the Council was incorrect.

Rights to information are additive. In other words, if a document is available by any legal route, then it must be produced. It cannot be withheld because it would not be available by a different route. This situation is made very clear in the wording of the primary legislation, and it also reflects common sense. Once the genie is out of the bottle, it is not easy to put it back!

I say that the information in this “working file” might well be embarrassing to the Council but it is neither confidential nor exempt. The information that I requested in October 2008 included the revision history of the Council’s constitutional changes. We now know from witness statements in the High Court that this revision history includes handwritten comments on documents, and the use of typing correction fluid. It is therefore necessary to inspect the original papers. An abstract or a photocopy will not do.

It is also necessary to see the whole of the bundle of papers in the “working file”, and not the censored or redacted set that has so far been supplied to me.

This information is held by the Council; it was produced by the Council and is wholly under the Council’s control. The entire bundle should therefore be freely available under the Freedom of Information Act. It is not subject to copyright restrictions, and it is neither confidential nor exempt. It should not contain any personal information that might be subject to the Data Protection Act. In the unlikely event that it does contain significant personal details, which have not already been published by the Council, then these could be redacted from the individual sheets of paper, but this provides no excuse for a blanket ban.

These documents directly relate to Council business, both in 2003 and currently, and should therefore also be available to elected members under ss.100 (A) to (F) the Local Government Act 1972 [as amended] and the corresponding provisions in the “modernisation” legislation more recently in force, such as Statutory Instrument SI 2006 No 88.

It can also be argued that an elected member’s rights to inspect Council documents under Common Law are stronger than their rights under the Local Government Acts. If we cannot see the relevant papers then this makes all our decisions insecure and unsound. The decision about relevance must be for the member. We cannot have a situation where the executive decides what is relevant, because the members would then be unable to hold the executive to account.

It has been suggested to me that the information might be legally privileged, but a moment’s reflection shows this to be a fatuous and nonsensical suggestion. These papers do not reflect a privileged discussion between a lawyer and their client, but are the factual record of actual events in 2003. The Council cannot use arguments based on legal privilege to blank off historical episodes that took place in full public view, long before the current legal action was started.

Cllr John Illingworth
9 December 2009