

The Ombudsman's decision

Summary: The Ombudsman will not investigate this complaint about the Council's practice in relation to the retention minutes of Development Management Committee ("DMC") meetings and the destruction of audio recordings. This is because the complaint is late and there are no good reasons to exercise the Ombudsman's discretion to investigate it now.

The complaint

1. The complainant, who I refer to here as Mrs X, complains that the Council does not retain minutes of DMC meetings in line with their responsibilities under the Local Government (Access to Information) Act 1985 ("the legislation"). She also complains that audio recordings of the meetings are destroyed after one year. Mrs X first became aware of this concern in February 2017.

The Ombudsman's role and powers

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - the fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify our involvement.

(*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

5. I reviewed the information provided by Mrs X and made enquiries of the Council. A copy of the draft decision has been sent to Mrs X for her comments.

What I found

6. In 2015 a DMC meeting took place for an outline planning application in relation to a housing development near to Mrs X's house. Members of the public expressed their views at the meeting about the proposed number of houses.
7. In February 2017, a reserved matters meeting took place. Prior to this meeting, Mrs X looked online for the audio recording of the 2015 meeting. She was informed that the audio recording had been destroyed. Mrs X says that, as this recording no longer exists, there is no record of the views expressed by members of the public.
8. Mrs X raised this with her MP, who said that he would raise the matter with the CEO of the Council. In June 2018 Mrs X complained to the Council that its practice of destroying 'audio minutes' of meetings was continuing. She referred to the legislation, which states that minutes should be kept for six years.

Assessment

9. Mrs X states that she looked for the audio recording as soon as she became aware that that a reserved matters meeting would be taking place in February 2017. This means it is more than 12 months since Mrs X became aware of the alleged fault, and the complaint is therefore late.
10. We are not able to investigate late complaints unless there are specific reasons to do so. In this instance, my view is that there are no suitable reasons that would enable the Ombudsman to exercise its discretion to investigate the late complaint.
11. In deciding not to exercise discretion, I have considered the likelihood we would find fault with the Council's process. On the documents provided it is unlikely we would find fault as written minutes of meetings are kept for six years, in line with the legislation. The audio recordings do not form part of the formal record of the meeting and there is no requirement to keep them for more than one year.
12. I have also considered to what extent Mrs X has suffered any injustice. It is unlikely the destruction of the audio records, in of itself, would cause significant injustice to Mrs X. The predominant concern she has is with the DMC's substantive decision about the number of houses being built. Mrs X has already complained to the Ombudsman on this matter and a decision was made not to investigate. We will not revisit decisions previously made.

Decision

The Ombudsman will not investigate this complaint because the complaint is late and there are no good reasons to exercise the Ombudsman's discretion to investigate it now.

Investigator's decision on behalf of the Ombudsman