

4 July 2013 – Responses to Supplementary Questions

Supplementary Question to the Leader from Cllr Wainwright

Councillor Wainwright asked the following supplementary question:

Given the proposal to spend £400k on pools refurbishment and £25k on the Milton Rooms, in addition to what was spent in 2009, why cannot we stop the sale of the Bowling Club and split it into two units to provide a more user friendly facility for the general public?

Councillor Mrs Cowling promised a full written reply but gave a brief initial verbal response:

The decision to sell the Bowling Club with vacant possession could not be changed. Ball park figures suggest that the cost of sub-dividing the building would be almost as much as the Club was worth.

Further to the above response I would like to add the following.

Harrison House is a very different building to the Bowls Club. It has natural separation between the floors and new and old parts of the building having been used as office accommodation. As a result the costs of separating Harrison House so that it can be let as four separate units are not high. The main costs are around the separation of utility supplies. The total cost of the works to separate the units at Harrison House are expected to be under £10,000.

Officers have met with the representatives of the new organisation who are forming to consider bidding to buy the club, involving former members of the bowls club. This group have stated that the costs of converting and separating the bowls club could be as much as the purchase price itself.

If the Council spent this money to split the Bowls Club it would be reasonable to expect a market rent for the site, which would include the value derived from the conversion costs. I do not believe that such tenants would be forthcoming.

Spending money on the pools will ensure their sustainability, if money is not invested Ryedale District Council will not be providing two pools as it stated it wanted to in the approved sports strategy, and a service provided by the Council would be cut. The Milton Rooms are the Council's responsibility under long lease. Any proposed investment by the Council is to help it manage the costs of the obligations under the lease and achieve the Council's objectives. Pools provision and the Milton Rooms are the Council's responsibility, Indoor Bowls provision is not the Council's responsibility.

Supplementary Question to the Leader from Cllr Clark

I must advise you that I have relied on officer advice in replying to your question.

The supplementary question you have asked is as follows:-

“Why do we tell people that their e-mails may be monitored and recorded after they have entered into correspondence with us rather than beforehand? Is the Leader confident that this is legal and right?”

Your supplementary question is believed to relate the District Council’s standard footer on e mail communications with local residents and others which includes the following statement:-

“All GCSx traffic may be subject to recording and/or monitoring in accordance with relevant legislation.”

You appear to be concerned about why the Council informs people that their emails may be monitored and recorded after they have entered into correspondence with the District Council rather than beforehand.

As you will be aware, in order to comply with the first principle of the Data Protection Act 1998, data controllers need to consider whether their proposed processing of personal data will fall within the reasonable expectations of the data subject(s). If they believe that it may fall outside of reasonable expectations, then the Information Commissioner would expect that fair processing information should be provided to the individuals concerned. Fair processing information should generally be provided at the earliest possible opportunity, that is, when the individual’s personal data are first gathered or as soon as is practicable thereafter. This requirement is explained further in the interpretation of the first principle which is set out in Schedule I Part II Sections 1-4 which is available from the following link:-

<http://www.legislation.gov.uk/ukpga/1998/29/schedule/1>

In particular, you will note from the above that the interpretation refers to the need for fair processing information to be provided *“before the relevant time or as soon as practicable after that time.”* The relevant time is defined in the interpretation and generally means the time when the data controller first processes the data.

Clearly, data controllers can explore all available means of providing fair processing information before they actually start processing an individual’s personal data (eg through the use of privacy statements, website statements etc). Nevertheless, there will be occasions when their first contact with an individual may be upon receipt of an email from that person in which case the email disclaimer may be the first opportunity to provide fair processing information. This is why the interpretation allows for the possibility that fair processing information can be provided *“as soon as is practicable thereafter.”*

It must be made clear that the monitoring of GCSx traffic is only used in specific circumstances and therefore, a data controller, could in each case consider whether they could rely on one of the exemptions in the Data Protection Act 1998, even if fair processing information had not been provided to the individuals concerned (as may be the case with the first piece of correspondence received from an individual). As you will be aware, exemptions such as Sections 29 (Crime and Taxation) and 35(1) (Disclosures required by law or made in connection with legal proceedings) of the Data Protection Act 1998 can be used on a case by case basis if the data controller believes they can satisfy the conditions of the exemption.

Finally it must be pointed out that the statement that goes on the District Council's e-mails are referring to lawful business monitoring and not Part I Chapter 1 of the Regulation of Investigatory Powers Act 2000 relating to interception of communications which was the subject of your main question.

I have been advised that the District Council is acting in accordance with the law in relation to the above.