

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 February 2012

**Public Authority:** Bretforton Parish Council  
**Address:** 6 Station Road  
Bretforton  
Worcestershire  
WR11 7HX

#### Decision (including any steps ordered)

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1. The complainant has requested a copy of a page of a deaths register.
2. The Commissioner's decision is that Bretforton Parish Council has breached the Act in that it did not respond to the complainant within 20 working days.
3. The Commissioner has also decided that the council was however correct to rely upon the exemption in section 21 of the Act.

#### Request and response

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4. On 9 August 2011 the complainant wrote to Bretforton Parish Council and requested information in the following terms:

*"Under the terms of the Freedom of Information Act I require the following from Bretforton Parish Council.*

*A copy of the page from the Public Graves Register that contains the recorded entries for Grave numbers 49 through 56. I specifically require this as a digital JPEG photographic file. Unfortunately a normal photocopy will not be sufficient for my requirements on this occasion.*

*Please can you supply this to me as an attachment within an email reply"*

5. The council responded on 13 September 2011. It stated that it would comply with the request on receipt of £10 from the complainant. The

complainant wrote back on the same date questioning the charge which the council was seeking to make.

6. The council responded the next day stating that the fee referred to making searches and providing certified copies of the information as provided by the Local Authorities Cemeteries Order 1977 section 11A.
7. The complainant further questioned the imposition of the charge under the FOI Act, however he subsequently paid the fee on 20 September 2011 and the information was provided to him on 21 September 2011.
8. The complainant wrote back to the council on the same day stating that the information which was provided had not been provided in the manner he had requested it in. It had been provided to him by the council in the form of 2 separate JPEG photographs, rather than one JPEG document as he had requested.
9. The council responded on 4 October 2011 stating that it was not practical to provide the information to him in that way due to the size of the original document. It stated however that as regards the request being made under the Act, the exemption in section 21 was applicable as the information was already reasonably accessible under the terms of the Cemeteries Order.

### **Scope of the case**

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10. On 30 November 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled by the council. He argued that
  - the information was provided outside of the deadline under which the council was due to respond
  - the council failed to notify him of, and give a reason for the delay that followed
  - the council failed to address his concerns and questions, particularly when it was clear that he thought that the request had been misunderstood by the council
  - the council did not provide the information in the format in which he had requested it
  - the charge for the information was inappropriate under the FOI Act and the council failed to review that when requested

- the council used the wrong legislation, namely the Local Authorities Cemeteries Order 1977 to comply with his request.

11. The Commissioner considers that the complainant's complaint relates to the above matters.

## Reasons for decision

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12. Section 21(1) of the FOI Act states that

*"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."*

13. This means that where a complainant is reasonably able to obtain the information from another source then the information is exempt from disclosure under the FOI Act.

14. Section 21(2) (a) states:

*"information may be reasonably accessible to the applicant even though it is accessible only on payment,"*

15. This means that even where the complainant would be required to pay a fee to obtain the information from the other source the exemption will still be applicable.

16. Section 22(2)(b) states that

*"Information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."*

17. This means that where an authority is obliged to provide that information to a requestor by law then that information will be deemed to be reasonably accessible for the purposes of the exemption. The proviso is if the authority is only required to provide the information by inspection then the presumption that the information is reasonably accessible will not apply.

### Is the information reasonably accessible under other legislation?

18. The council argued that the information was not provided under the Act, but under the provisions of section 11A of the Local Authorities Cemeteries Order 1977. Section 11(7) & (8) states that:

*"Registration of burials and disinterments*

- (7) *Registers of burials and records of disinterments shall at all reasonable times be available for inspection by any person free of charge.*
- (8) *A burial authority may charge such fees as they think proper for the making by them of searches in, and the provision of certified copies of entries in, a register of burials or a record of disinterments."*
19. It is clear from section 11(7) that the information which the complainant has asked for is required to be made available to members of the public 'by inspection'.
20. However section 11(8) also makes clear that an authority is able to search for, and make certified copies of the information available and in doing so it may charge a fee.
21. The above order therefore provides a right for the complainant to access the information, and he may also request copies of it under the terms of that legislation, albeit at a fee.
22. Given this, it is clear that the complainant has access to the information under Cemeteries Order, and that there is provision within that legislation for him to receive copies of the information in addition to being able to inspect it.
23. The Commissioner is therefore satisfied that the requested information was reasonably accessible to the complainant through the Cemeteries Order. The council was therefore correct to apply Section 21 of the FOI Act.
24. As the provision of the information was therefore made under the terms of the Cemeteries Order rather than under the FOI Act the Commissioner cannot consider either the fee charged to the complainant for the information nor the format in which it was provided to him.
25. However the complainant made his request under the FOI Act and so the council was still under a duty to refuse the request following the requirements of that Act, even if the information was subject to a valid exemption. It still needed to issue a refusal notice to the complainant stating that the information was exempt from disclosure under the Act within 20 working days.
26. The council did not issue a refusal notice to the complainant stating that it was applying the exemption in section 21 of the Act until 4 October

2011. The complainant's request was made on 9 August 2011. This therefore falls outside of the 20 working day limit which is required for responses under the Act by section 10.

27. The Commissioner's decision is therefore that the council breached section 10 of the Act in failing to respond to the request within the required deadline.
28. Given that the information was however provided to the complainant the Commissioner has decided that he need not order further steps on this occasion.

## Right of appeal

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29. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**