

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 August 2012

Public Authority: Holbrook Parish Council
Address: 73 Belper Road
Bargate
Belper
Derbyshire
DE56 0SU

Decision (including any steps ordered)

1. The complainant has requested information related to correspondence between Holbrook Parish Council ('the council') and a named firm of solicitors. Despite the intervention of the Commissioner, the council has not provided an adequate response to the request in accordance with the Freedom of Information Act. The Commissioner therefore reminds the council of its obligations under the Freedom of Information Act and requires that it either respond to the request in accordance with the legislation or issue a valid refusal notice under section 17(1).
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. On 31 October 2011 the complainant made a request for information to the chairman of the council as follows:

"At the meeting last week of the Finance Sub-Committee you acknowledged that meetings and other communications had taken place involving yourself and Flint Bishop since 18th May 2011. I have

not been advised of these matters and would, therefore, ask you to provide me with the following information please.

Re Holbrook Arkwright Hall

Given that at the close of the April 2011 Parish Council meeting, which you attended as a Councillor, the situation was that:

The Surrender and Transfer documents between the Arkwright Memorial Hall Trust and Holbrook Parish Council (HPC) had been agreed and signed and were awaiting exchange

The irrevocable agreement between HPC and Holbrook Arkwright Hall Village Community Centre Trust (HAHVCC), re the relevant long term project funds, had been agreed, signed and exchanged

The Deed of Grant involving HPC, HAHVCC, Derbyshire County Council and the Derby Diocesan Board of Education had been agreed and signed and was awaiting exchange

please advise me of

the subject of the advice

the nature of the advice

any significant correspondence including letters and emails

I would expect the documents to include the initial brief to Flint Bishop, and their acknowledgement, progress documents and conclusions.

Non Arkwright Hall matters

please advise me of

the subject of the advice

the nature of the advice

any significant correspondence including letters and emails

I would expect the documents to include the initial brief to Flint Bishop, and their acknowledgement, progress documents and conclusions"

4. An information request was then made on 2 December 2011 to the parish clerk as follows:

"I am sorry to have to write to you in this manner but I have been unable to obtain this information through a reasonable request to The Chairman.

As provided for in the Freedom of Information Act 2000 I request that you as Clerk and Proper Officer of Holbrook Parish Council make available for inspection by me at a place, date and time that is mutually agreeable, all significant correspondence including letters, emails and meeting notes relating to advice sought from Flint Bishop LLP by Holbrook Parish Council or The Chairman and/or The Vice Chairman purporting to act on its authority since 18th May 2011.

I would expect the documents to include the initial brief to Flint Bishop and their acknowledgement, fees, progress documents and conclusions."

5. After the complainant chased a response on 11 January 2012, the council responded on 13 January 2012. The parish clerk stated that despite asking for the requested information from the chairman, vice-chairman and the solicitors, she did not hold the information on behalf of the council. She also informed the complainant that it had been pointed out to the council that all documents, correspondence etc. should go to and be held by the Clerk.
6. An internal review was requested on 25 January 2012 and the complainant chased a response on 13 March 2012. On 14 March 2012 the parish clerk informed the complainant that despite forwarding the internal review request to all Councillors on 30 January 2012 no decision has been taken.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner will consider whether the council have responded to the request in accordance with the FOIA.

Reasons for decision

9. Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled -

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him."
- 10. The Commissioner notes that the initial request of 31 October 2011 was made to the chairman of the council as an individual councillor rather than to the public authority. Councillors are not public authorities in their own right and therefore they have no obligation to respond to a request for information addressed to them individually. However, the Commissioner considers that as a matter of good practice, a councillor should explain this to the requester and, with the permission of the requester, pass on to the local authority any requests for council information.
- 11. However, a request for the same information was made to the parish clerk on 2 December 2011.
- 12. Section 1(3) provides that –
 - “Where a public authority –
 - (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”
- 13. In correspondence to the Commissioner on 30 April 2012, although the council did not specifically cite section 1(3) as a reason for not responding to the request, it stated that it did not feel it could respond without the request being qualified by the complainant who had been verbally asked to do so on several occasions.
- 14. In such situations, the Commissioner must make an assessment about whether in his view the request for a clarification was reasonable to identify the information requested. As the requests for clarification were verbal, the Commissioner has not seen evidence of these and so cannot comment as to whether the requests for clarification themselves were reasonable, by for example, explaining why the council required more information or offering advice and assistance to enable the complainant to clarify his request.
- 15. However, it is the Commissioner's view that the request, as it stands, is a valid request requiring specific information. The widest interpretation of the request would be for all information relating to the advice sought from Flint Bishop LLP by Holbrook Parish Council or the chairman and/or the vice chairman purporting to act on its authority since 18th May 2011.

16. In a telephone conversation with the Commissioner on 3 July 2012, the parish clerk stated that all the requested information is in the hands of ex-chairman. The Commissioner notes that the ex-chairman was in position at the time of the request.
17. The parish clerk wrote to the ex-chairman on 2 July 2012 requesting that all information held by him within the scope of the request be forwarded to her.
18. The ex-chairman responded on 12 July 2012. He stated that individual councillors are not covered by the FOIA, that 'notes' are excluded from the FOIA and that all discussions with Flint Bishop were confidential.
19. Section 3(2) outlines when information is held by a public authority for the purposes of the FOIA. Information is covered if it is held:
 - by the authority, except solely on behalf of another person; or
 - by another person on behalf of the authority.
20. Information produced or received by councillors may be held on their own computers or in their own homes or offices, or it may be held on local authority premises or computer systems. However, the purpose of the information and the capacity in which it is being held is more helpful when deciding whether information is covered by the FOIA.
21. Information received, created or held by an individual councillor will therefore be subject to the FOIA if the councillor is acting on behalf of the local authority. Furthermore, a cabinet member acting in their executive function is acting on behalf of the local authority. Therefore, information produced or received by them in that role is produced or received by the local authority.
22. The Commissioner understands that in this case, the requested information relates to council procedures and the employment of the parish clerk. He considers that such information is held by the ex-chairman on behalf of the council and therefore within the scope of the FOIA.
23. The FOIA applies to all recorded information, regardless of format, therefore 'notes' are covered by the FOIA.
24. The Commissioner acknowledges the ex-chairman's position that the discussions subject to the request for information were confidential. However, the council has not cited an exemption in response to this request therefore the Commissioner has not considered the issue of confidentiality.

25. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days.
26. It is clear to the Commissioner that, in this case, the council has failed to adequately respond to the request in accordance with the legislation.

Right of appeal

27. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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
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Wycliffe House
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SK9 5AF