

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2013

Public Authority: Enford Parish Council

Address: Blake House
High Street
Figcheldean
Salisbury
SP4 8JJ

Decision (including any steps ordered)

1. The complainant requested a tape recording of a parish meeting from Enford Parish Council ("the council"). The council refused to supply the information.
2. The Commissioner's decision is that the council breached section 1(1)(a) and (b) of the Freedom of Information Act 2000 ("the FOIA") by failing to state that it held the information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a copy of the tape recording of the meeting to the complainant unless a valid exemption applies under the FOIA. If an exemption is considered to apply, the authority should issue a refusal notice to the complainant in accordance with the obligations under section 17.
4. 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

5. On 7 April 2012, the complainant wrote to the council and requested information in the following terms regarding a parish meeting held on 4 April 2012:

"There are a couple of queries in the reporting of the final item on the agenda and I would be grateful if I could listen to the tape recording after Easter. Perhaps we can liaise over a date and time".

6. The parish clerk responded on 8 April 2012 and refused to provide the information.
7. The complainant then wrote to the chairman of the council and asked for a copy of the tape.
8. She was copied into another email from the parish clerk, reiterating the refusal to provide the information. The complainant received no further response from the council.

Scope of the case

9. On 23 August 2012, the complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider whether the council had correctly refused to provide the information she had requested.
10. For clarity, the clerk told the Commissioner that the tape in question is his personal property and contains personal information. For the avoidance of any doubt, the Commissioner understands that the complainant is only interested in the recording of the meeting and that is the scope of this particular request. Nothing in this notice relates to other information that may be recorded on the same tape and appropriate steps should be taken to only disclose the relevant recording of the meeting when complying with this notice.

Reasons for decision

Section 1(1) – Was the information held?

11. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. When a request for information is made, a public authority must confirm whether it holds

information of the nature specified in the request and if it does, it must provide it to the requester unless a valid reason exists for not doing so under the FOIA.

12. For the purposes of the FOIA, information is held by a public authority if –
 - (a) It is held by the authority, otherwise than on behalf of another person, or
 - (b) It is held by another person on behalf of the authority
13. When information is solely held by a public authority on behalf of another person, it is not held for the purposes of the FOIA. However, the information will be held by the public authority if the authority is also holding it *to any extent for its own purposes*. The Commissioner has published guidance which, for ease of reference, is available at the following link:

http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx
14. As explained in the Commissioner's published guidance, each case needs to be reviewed individually to determine whether a public authority holds information for its own purposes or solely on behalf of another person. However, there are various factors that will assist in determining whether the public authority holds the information for the purposes of the FOIA. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.
15. Factors that would indicate that the information is held solely on behalf of another person include:
 - The authority has no access to, use for, or interest in the information
 - Access to the information is controlled by the other person
 - The authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information or
 - The authority is merely providing storage facilities, whether physical or electronic.
16. Factors that would indicate that the information is also held by the public authority include:
 - The authority provides clerical and administrative support for the other person, whether legally required to or not
 - The authority controls access to the information

- The authority itself decides what information is retained, altered or deleted
 - The authority deals with enquiries about the information or
 - Costs arising from holding the information are included in the authority's overall budget.
17. The council told the Commissioner that the meeting the tape recording relates to was not a parish council meeting. It was an annual parish meeting. The council explained that it is customary for these meetings to be arranged by the council's clerk however in theory any organisation within the village could do the same.
18. The council said that the chairman of the parish council acted as chairman of this meeting and the council's clerk acted as secretary. The clerk issued invitations to all the village organisations and was present to minute the proceedings. The clerk stated at the beginning of the meeting that it would be recorded to assist him when completing the minutes afterwards. The clerk told the Commissioner that the recording device used is his own property and contains personal information.
19. The Commissioner has decided that in the circumstances, the tape recording was held by the council for its own purposes to some extent. The Commissioner accepts that the meeting was not a parish council meeting however it is clear that the parish council made contributions to that meeting in its capacity as a parish council. The Commissioner has seen a copy of the written minutes of 4 April 2012 and section 8 of those minutes, for example, comprises a report by the chairman of the council and includes details about income and expenditure at the council, as well as other parish council matters.
20. It is true to say that other contributions in the minutes were not made by the parish council, however not only was the council involved in the meeting, it was providing administrative support by recording the meeting and writing up the minutes. The purpose of the tape was to assist the clerk in performing this administrative role. Given the circumstances, the Commissioner considers that on the balance of probabilities, the information was held by the council to some extent for its own purposes and was therefore held for the purposes of the FOIA. There are no particular factors that suggest to the Commissioner that the information was held solely on behalf of another person.
21. For clarity, the Commissioner does not consider that the fact that the actual tape recording device and the tape are owned personally by the clerk makes a difference to whether or not the information was held by the council for the purposes of the FOIA. While ownership of the tape still rests with the clerk, the fact is that when he used that equipment to record information for the purposes of council business, the information

recorded comes within the scope of the legislation. The focus should always be on the actual recorded information rather than the medium by which the information is recorded or exchanged when considering whether information was held for the purposes of the FOIA. For example, information may be recorded in personal email accounts or in personal notebooks but could still be covered by the scope of the FOIA.

22. Finally, the council suggested to the Commissioner that there would be no need to supply the tape since the written minutes constitute a copy of the information. The Commissioner was not persuaded that the information would be the same. Moreover, even if the information was the same, the Commissioner would like to draw the council's attention to section 11 of the FOIA which provides that when a requester expresses a preference relating to the way in which the recorded information is provided, the public authority should so far as reasonably practicable give effect to that preference.

Procedural issues

23. It is apparent that the council failed to respond to the request appropriately under the FOIA on this occasion because it did not comply with its obligations under section 1(1) to state whether recorded information was held. The council told the Commissioner that it did not consider that it had been asked to confirm whether the information was held. This argument is misconceived. The legal obligation to do this exists whenever a request for information is made to the council, whether or not the question is asked directly. The failure to do this was a breach of section 1(1)(a).

Right of Appeal

24. 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

25. 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.
26. 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