

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 September 2015

**Public Authority:** Downham Market Town Council  
**Address:** 15 Paradise Road  
Downham Market  
Norfolk  
PE38 9HS

#### Decision (including any steps ordered)

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1. The complainant has made a request to Downham Market Town Council ("the council") for information about a working group involved in local development. The council disclosed held information, but the completeness of this was disputed by the complainant.
2. The Commissioner's decision is that the authority has disclosed all relevant held information.
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 10 October 2013 the complainant wrote to the authority and requested the following:

*"I would like to have electronic and hard copies of the following.*

- 1) *All correspondence (email or otherwise) between the Town Council LDF Working Group members and the borough council LDF Teams since the Issues and Options consultation in 2011 to the present day.*
- 2) *All correspondence (email or otherwise) between the Town Council and the borough council LDF Team/Task groups since the Issues and Options consultation in 2011 to the present day.*
- 3) *A list of all meetings with dates between the Town Council LDF working group members and the borough council LDF Team/Task group.*

- 4) *Any submissions via letter or email from town councillors, for consideration by the LDF working party, prior to its drafting of its statement for the consultation.*
  - 5) *Evidence used by the working group relating to the Clack Close 'egress' issue noted in the town council's statement to the Preferred Options consultation.*
  - 6) *Evidence used by the working party regarding the road safety issues at the junction of Low Rd and Lynn Rd cited in the town council statement."*
5. The council responded on 5 November 2013 and disclosed held information.
  6. The complainant requested an internal review on 11 November 2014.
  7. The council provided an internal review on 27 February 2015. It maintained that all relevant held information had been disclosed.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 24 April 2015 to contest the authority's response. The basis for this complaint was that an email had been disclosed by another public authority that derived from one of the councillors within the council. The complainant asserted that this email should have been disclosed as part of the council's own response on 5 November 2013.
9. The Commissioner therefore considers the scope of this case is the determination of whether the council is likely, on the balance of probabilities, to hold further information relevant to the request that should have been disclosed on 5 November 2013.

### **Reasons for decision**

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#### **Section 1(1) – Duty to make information available on request**

10. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.
11. The FOIA provides a right of access to information in recorded form, and only that which exists at the time of the information request. The FOIA does not require a public authority to generate new information, such as

in the form of an explanation or opinion, in order to respond to a request.

Was the information held by the council for the purpose of the FOIA

12. The complainant has asserted that the email would have represented information held by the councillor on behalf of the council, in accordance with section 3(2)(b) of the FOIA.
13. The council has advised the Commissioner that it considers the information does not represent council business, on the basis that it was a private email from a councillor to which the council was not copied in.
14. The Commissioner has reviewed the email in question, in addition to information provided by both parties, and has identified that the email's sender is stated as the chair of a working group within the council, and has been sent to an officer in another public authority on that basis. It is also apparent that the email provides an agenda for a meeting about local development and parish boundaries, which the council has confirmed was council business. Based on these factors, the Commissioner considers that the email is highly likely to relate to council business, and as such would have represented information held by the council at the time of its creation, albeit by a councillor.

Was the information held at the time of the request?

15. The council has confirmed that it has consulted with the councillor in respect of whether the information was held at the time of the request.
16. The council has provided a written confirmation from the councillor that confirms the email was not likely to be held at the time of the request due to information having been lost after a virus on the councillor's computer. Following this, the councillor also started routinely delete emails once over 1 month old or otherwise trivial.

The Commissioner's conclusion

17. The Commissioner has identified that the original email was highly likely to represent council business, and be held by the councillor on behalf of the council.
18. However, in the circumstances of this case there is no evidence to suggest that the email, which was sent on 4 September 2012, was still held by the council at the time of the request. The Commissioner is particularly mindful of the passage of time between the email being sent and the information request being submitted, and the high likelihood of the email's destruction during that time.

## Other matters

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19. Although they do not form part of this decision notice, the Commissioner would draw the council's attention to the following points.
20. When information is held by councillors that represents council business, the FOIA considers the information to be held by the council. The Commissioner's full guidance on this aspect can be viewed at:  
[https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)
21. When information represents by council business, and is held in the private email account of a council officer or elected representative, the Commissioner considers the information to be held by the council. The Commissioner's full guidance on this aspect can be viewed at:  
[https://ico.org.uk/media/for-organisations/documents/1147/official\\_information\\_held\\_in\\_private\\_email\\_accounts.pdf](https://ico.org.uk/media/for-organisations/documents/1147/official_information_held_in_private_email_accounts.pdf)

## Right of appeal

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22. 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: 0870 739 5836

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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**