

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2016

Public Authority: Rolvenden Parish Council
Address: c/o 33 Caxton Close
Tenterden
Kent
TN30 6JW

Decision (including any steps ordered)

1. The complainant requested information from Rolvenden Parish Council (the Parish Council) about a specified address as well as information relating to various parish council meetings.
2. The Parish Council provided some information in response to the request but the complainant believed that it must hold further information within the scope of the request.
3. The Commissioner's decision is that, on the balance of probabilities, no further relevant information is held. The Commissioner does not require the Parish Council to take any steps.

Request and response

4. On 23 May 2016, the complainant wrote to Rolvenden Parish Council and requested information in the following terms:

"I am formally requesting a FOI request for all information relating to [address redacted]."

Detail of the request:

A: Request for all information relating to [address redacted]

B: Request for all information held regarding the consultation of 16/00163/AS as discussed in April/May Parish meetings.

C: Request for information relating to Comments made by councillors during April meeting alleging that [name redacted] called the parish council 'incompetent' and all evidence the parish council have relating to this".

5. The Parish Council responded, in undated correspondence, in which it detailed the information that was enclosed with the response. It also advised:
- that the agendas would be published on the Council's website as would the Minutes once they had been approved; and
 - that the letter to Ashford Borough Council was in the public domain but would, in addition, be published on the Council's website.
6. In correspondence dated 20 June 2016, the complainant told the Parish Council:

"Please be advised that I received some of the information requested in the FOI but not all of it..."

7. He told the Parish Council:

"The information that I know is missing:

1: The original correspondence request for consultation from ABC [Ashford Borough Council] regarding planning notification 00163/AS. (You sent me a copy of your reply but not the original request).

2: The meeting notes regarding your decision to this consultation 00163/AS.

3: A copy of the written representation from residents which formed the basis of the Parish councils object (You do have a copy as it was seen that this was given to your during the Parish meeting).

4: Copies of the notes taken by the clerk during the parish meetings related to what upset my sister when the councillor (who you have not yet named) slandered myself and my farther [sic]"

8. The Commissioner wrote to the Parish Council on 25 August 2016 advising that, although there is no statutory time set out in the FOIA within which public authorities must complete a review, she considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, or 40 working days in

exceptional circumstances. She advised the Parish Council, if it had not already done so, to issue its internal review decision to the complainant within 20 working days.

Scope of the case

9. Following earlier correspondence, the complainant contacted the Commissioner on 22 September 2016 and 27 September 2016 to complain about the way his request for information had been handled. He advised that he had not received the Parish Council's internal review response.
10. The complainant disputes that the Parish Council has responded fully to his request for information. He also complained about the address the Parish Council had used when it provided its response.
11. The Commissioner used her discretion to accept the case without the Parish Council having conducted an internal review.
12. The analysis below considers whether, on the balance of probabilities, the Parish Council holds any further information relevant to the request which it has not disclosed to the complainant.
13. The Commissioner has also considered, in Other matters, the address used by the Parish Council in its correspondence with the complainant.

Reasons for decision

Section 1 general right of access

14. Section 1 of FOIA states 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."

15. In this case, the Parish Council told the complainant:

"we are pleased to enclose copies of all documentation that we have in our possession to comply with this".

16. The complainant disagrees that the Parish Council has provided him with all the information it holds within the scope of the request. He provided the Commissioner with a list of the information that he considered that the Parish Council holds but has not provided, including, for example, meeting notes and the original correspondence request for consultation regarding the planning notification.
17. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
18. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information – or, as in this case, any further information – which falls within the scope of the request (or was held at the time of the request).
19. In applying this test the Commissioner will consider:
 - the scope, quality, thoroughness and results of the searches; and/or
 - other explanations offered as to why the information is not held.
20. In progressing her investigation, the Commissioner asked the Parish Council to respond to her, including with respect to:
 - what searches it had carried out for information falling within the scope of the request and why those searches would have been likely to retrieve any relevant information;
 - the search terms used;
 - whether any recorded information relevant to the scope of the complainant's request had ever been held but had been deleted/destroyed; and
 - if relevant recorded information was held but is no longer held, when the Parish Council ceased to retain such information.
21. In its correspondence with the Commissioner, the Parish Council explained its position with respect to each of the items the complainant considers it holds but has failed to provide.
22. For example, it told the Commissioner:

"The meeting notes are not kept past the point of approval of the official Minutes. This is in line with guidance and Best Practice recommendations from the Society of Local Council Clerks and the National Association of Local Councils".

23. It explained that another item of information that the complainant considers it failed to provide - the original correspondence request from Ashford Borough Council - is freely available in the public domain on the local authority's website.
24. With regard to the allegation of slander, the Parish Council confirmed that no recorded information is held.
25. In its substantive submission, the Parish Council described the nature of the searches it had conducted of its hardcopy documents. It explained that, as no records were held in electronic format, no searches were carried out of electronic data. With respect to the searches it had conducted, it told the Commissioner:

"These searches would have been likely to retrieve any relevant information because these documents constitute all the records that are held by the Parish Council. There are no other records held by third parties".

26. When, as in a case such as this, the Commissioner receives a complaint that a public authority has not provided all of the requested information, it is seldom possible to prove with absolute certainty that there is nothing further to add.
27. Having considered its submissions, and on the basis of the evidence provided to her, the Commissioner is satisfied that on the balance of probabilities the Parish Council has complied with its obligations under section 1(1) of the FOIA.

Other matters

28. Section 8(1)(b) of the FOIA requires the requester to provide a valid address for correspondence. The Commissioner's guidance¹ states:

"This can be any address where the requester may be contacted (including postal or email addresses) and does not have to be their normal residential or business address".

¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

29. It is implicit that this is the address that the public authority should use for correspondence.

30. In this case, the complainant told the Commissioner:

"... The information the Parish council supplied was sent to the property that I requested the information about ... Not to me at the email I provided".

31. The Commissioner accepts that the Parish Council explained to her why it did not respond to the address provided. She also accepts that the complainant received the response. However, good practice would suggest that if a public authority proposes, for whatever reason, to respond to an address other than the address provided, it should first agree this with the requester.

Right of appeal

32. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Jon Manners
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