

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 April 2019

**Public Authority:** Atherstone Town Council  
**Address:** Atherstone  
Warwickshire  
CV9 1YN

#### **Decision (including any steps ordered)**

---

1. The complainants have requested a report from Atherstone Town Council ("the Council") regarding the ownership of their late parent's grave. The Council refused the request, stating that it did not hold the report since it was in the possession of an individual councillor.
2. The Commissioner's decision is that the Council does hold the requested information and as such, has failed to comply with section 1 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant, which does not rely on the report not being held.
4. The Council 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 1 July 2018, the complainants wrote to the Council, following a previous request, to request information in the following terms:

*"With reference to the minutes of Atherstone Town Council meeting 18 April 2018, point 24 E47, please can we request a copy of report which was written by [named councillor] and read out at the meeting."*

6. The Council responded on 26 July 2018 and advised that it did not hold the requested information ("the report").
7. Following an internal review, the Council wrote to the complainants on 20 August 2018. It again stated that it did not hold the report.

### **Scope of the case**

---

8. The complainants contacted the Commissioner on 9 September 2018 to complain about the way their request for information had been handled.
9. The following analysis covers whether the Council is correct to state that it does not hold "the report".

### **Reasons for decision**

---

#### **Section 1: information held by public authorities**

10. Section 1 of FOIA states that:

*"(1) 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."*

11. The complainants have explained that they expected the Council to hold a copy of the report, as it was read out at a public meeting.
12. The Council has explained that the councillor who read out the report, has not provided a copy of it to the clerk to the council, and therefore, the Council's position is that it does not hold it.
13. During the course of the investigation, the Commissioner was contacted by the individual councillor, who confirmed that he had retained the

report. He argued that he had simply drafted some personal notes as an aide-memoire to use while speaking at the meeting.

14. The Commissioner has viewed the notes (that is, the report) and is satisfied that they concern Council business, which relates to the matter of the grave, and are not relevant to any matters which may be personal to the councillor.
15. She is also satisfied that the report was drafted for the purposes of sharing the contents with other Council members at a Council meeting, as indeed took place on 18 April 2018.
16. The Commissioner has determined, in short, that the report is a Council document.
17. The Commissioner therefore considers that the councillor holds the report in his capacity as a representative of the council, and not in any other capacity such as in a personal capacity.
18. Accordingly, she is satisfied that the report is held by the Council for the purposes of the FOIA.
19. She has therefore determined that the Council has not complied with its duty under section 1(1) of the FOIA and requires the Council to make a fresh response regarding whether the report may be disclosed to the complainants.

## Right of appeal

---

20. 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)

21. 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.
22. 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**