

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

### **Decision notice**

**Date:** 3 March 2020

**Public Authority:** Middlewich Town Council  
**Address:** The Town Hall  
Victoria Buildings  
Lewin Street  
Middlewich  
Cheshire  
CW10 9AS

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

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1. The complainant has requested information relating to the creation of the post of Community Mayor by the council, and further information on how this post was filled.
2. The Commissioner's decision is that the council was correct to state that no information is held for the purposes of section 1(1). She has also decided that the council did not comply with the requirements of section 17(7)(b) in that the council did not provide the complainant details of his right to make a complaint to the Commissioner under section 50 of the Act.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 14 June 2019 Middlewich Town Council took the step of introducing the post of a Community Mayor. A local newspaper named the individual who had accepted the post and posted a story regarding his first engagement in the post.
5. The post of Community Mayor was created by the council and, it was suggested, was the only post of its kind in the country. Primarily this is because a member of the local community was nominated and accepted in the post rather than a member of the council taking up the role as Mayor, as would be the norm.
6. The Commissioner understands from the council's website that the post of Community Mayor has subsequently been withdrawn after advice was received by the council suggesting it had no power to create this post. This occurred subsequent to the complainant's request being received by the council however, and so cannot be taken into account in this decision notice.
7. The complainant requested information on the council's process and choice of Community Mayor. On 27 June 2019 he wrote to the council and requested information in the following terms:

*"Under the Freedom of Information Act and with reference to the "Special Town Council meeting" of 13 June 2019. I would like to request the following information please:*

- 1. Where and when was this special meeting advertised to the public?*
- 2. Details of the process followed to create a Community Mayor including how many members of the public were contacted to apply for this post, and their names, when were they contacted and the criteria used to choose the candidates.*
- 3. Full details of the format vote undertaken to appoint the Community Mayor – proposer, seconder, list names for and against (if a named vote was taken) and all emails, correspondence and minutes of the meeting.*
- 4. Which ruling/government legislation is the Council relying upon for the creation of a Community Mayor.*
- 5. The legislation or authorisation relating to the Community Mayor being able to use the title of Mayor and wear the civic chain of office,*
- 6. A copylink to the Community Mayor's Code of Conduct, Handbook and Protocol.*
- 7. A copylink to the recently CEC Standing Orders.*

8. The council responded on 25 July 2019 with the following:
  1. It provided information describing the adverts it had used to advertise that the special meeting was to take place.
  2. The council said that it had not chosen the person for Community Mayor, and that therefore no information was held. However, it considered that, even if information were held, section 40(2) would apply to withhold the information.
  3. Some information was provided, minutes of meeting, calls to meeting etc, however the council said that no names of the proposer and seconder are held, but it confirmed that there was a proposer and seconder.
  4. It said that there is no precedent for the creation of the post of Community Mayor, and therefore no information is held.
  5. It said that no information is held but it did respond to the question directly.
  6. It provided a link to the information requested.
  7. It provided a link to the information requested.
8. On 29 July 2019 the complainant wrote back requesting that the council carry out an internal review of its decision. He specified that he wished the council to reconsider its decision as regards parts 2 and 3 of the request. He said that he considered that the public interest in knowing how the position of Mayor was filled would outweigh the individuals' data protection rights.
9. He asked the council to confirm that there was no proposer or seconder at the special meeting, and that the council does not have any list of names, emails or correspondence relating to the appointment.
10. Following an internal review, the council wrote to the complainant on 30 August 2019.
  1. It maintained its position. It said that it had explained the process undertaken by the council and confirmed its position that if there was information held it would be exempt under section 40(2).
  2. It said that no further information is held by the council in respect of question 3.
  3. It provided a copy of the council's complaint's procedure.
  4. It outlined the rights of the complainant to make a complaint to the council's internal committee, but it did not provide the complainant with any details as to how to appeal its decision to the Information Commissioner's Office.

## Scope of the case

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11. The complainant contacted the Commissioner on 28 August 2019 to complain about the way his request for information had been handled.
12. He argued that the council should disclose the information withheld under section 40(2) of the FOI Act, and that further information should be held in respect of parts 3 of his request for information. He also made a complaint regarding the time that the council took to respond to his request for review. He also questioned whether the council had provided him with all the information as regards his right to appeal when refusing the request for information.
13. During the Commissioner's investigation the council clarified that its position as regards part 2 of the request was that, in fact, no information is held by the council as regards the process undertaken to choose a Community Mayor. Further information on this is provided later within this decision notice.
14. The following analysis therefore focuses on whether the council was correct to say that it holds no further information falling within the scope of the request. It also considers whether the council complied with the requirements of section 17(7) in providing details of the complainant's rights as regards its initial refusal of his request for information.

## Reasons for decision

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### Section 1(1) - is further information held

15. Section 1(1) of the Act 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."*

16. The council argues that it does not hold any further information in respect of parts 2 and 3 of the request for information. The complainant's disputes that that is the case.

17. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that 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. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
19. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
20. The Commissioner therefore asked the Council to describe the searches it carried out for information falling within the scope of the request. She also asked the council to explain how it had established that no further information is held falling within the scope of the request.
21. The council described the searches it had carried out in order to determine whether it holds information falling within the scope of the complainant's request. It also explained why no information was held in respect of part 2 of the complainant's request.
22. It clarified that as regards part 2 of the request, no information is held by the council on the process of deciding upon the individual to take up the post of Community Mayor as this was not carried out by the council itself. It explained that the choice of Community Mayor was made by a group of private individuals, acting in their private capacities, before they were elected onto the council as councillors in May 2019. Once they were elected, they took the steps necessary to confirm the role and the individual they had selected as Community Mayor. This occurred in a special council meeting dated 13 June 2019<sup>1</sup>. The council therefore argued that it holds no information on how the selection of this person occurred, as the selection process occurred outside of the council, prior to the councillors being elected onto the council. It argued that it cannot therefore be said that the council undertook the process of choosing who should be the Mayor. It did however provide a copy of the minutes of

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<sup>1</sup> <https://www.middlewich.org.uk/wp-content/uploads/2019/07/130619-TC-Mins.pdf>

the special council meeting of 13 June 2019 where the candidate for Community Mayor was proposed.

23. As regards any other information which might be held, the council clarified that it had carried out searches within the former clerk's emails, computer and the shared drives used for the storage of data of the type requested, it said that it had used the following key words:

Community Mayor

Mayor

Application

[The name of the Community Mayor]

24. It said that it has also asked the administration assistant who worked with the former clerk, and with the former deputy town clerk, (who no longer works at the Council), if any information was held in respect of the community mayor project.

25. It said that it had carried out a search for the handwritten minutes of the former town clerk, which would have contained information of the type requested in item 3 of the original request. It was unable to find these but noted that this is likely to be because the council's standing orders provide at 13(e) that:

*"Upon a resolution which confirms the accuracy of the minutes of a meeting, the draft minutes or recordings of the meeting for which approved minutes exist shall be destroyed"*

26. The new clerk to the council indicated that as the minutes of the special town council meeting from 13th June 2019 were approved at the council meeting of 15th July 2019, she expected that the notes would have been destroyed soon after this date. The council clarified that copies of the council's standing orders and minutes from the two relevant meetings are available on the Town Council website – [www.middlewich.org.uk](http://www.middlewich.org.uk).

#### The complainant's position

27. The complainant argues that the council's response to part 3 of his request must be incorrect. He pointed out that page 176 of the council's Standing Orders (Rules for debate at meetings) states that *"A motion (including an amendment) shall not be progressed unless it has been moved and seconded"*.

28. He therefore argues that the council either did not follow the standing orders or that it deliberately withheld information from disclosure to him.
29. The council argues that the motion did have a proposer and that the motion was seconded. It argues however no record was kept of who carried out those functions.
30. The Commissioner notes that more recent minutes of meetings held by the council also do not record the proposer or seconder of council motions on other matters.

#### The Commissioner's conclusions

31. The Commissioner has carefully reviewed the submissions of both parties and the arguments put forward.
32. In the absence of any evidence or suggested areas to the contrary being submitted by the complainant, she must consider whether the descriptions and explanations provided by the council lead to a conclusion that its searches were adequate and appropriate. If she decides that the searches were adequate and appropriate, her conclusion will be that, on a balance of probabilities, no further information is held by the council.
33. The Commissioner has considered the argument that no further information is held relevant to part 2 of the request. The new councillors' selection process was carried out prior to them becoming councillors, and so it was not undertaken whilst they were formally working on behalf of the council. Their decision was made as private individuals, and the council has neither obtained, nor had access to, that information at any point. The council has described the situation as, essentially, that the proposal was introduced as a *fait accompli* by the new councillors once they were elected onto the council.
34. Whilst information on the decision making process may still be held by the councillors on their own private computers, the Commissioner accepts that under the circumstances described, that information was created and is still held by the individuals in their own capacity as private individuals, not as information held on behalf of the council. Their subsequent election onto the council does not change the status of the information into being information held by, or on behalf of the council.
35. This is an unusual situation, and the Commissioner notes that it would not be the case for any information generated by them on the subject *after* they had been elected onto the council. The information would then have been generated and held as part of council business, and it

would then need to be considered for disclosure in response to the request, even if the information was retained on the private computers of its councillors rather than within normal council records.

36. As regards part 3 of the request, the Commissioner notes the complainant's argument that the standing orders require both a proposer and a seconder, and that if no information is held then the council must be in breach of its own standing orders. The Commissioner does not know whether this is a correct assumption by the complainant but does not discount that that is the case. The question for the Commissioner to consider is not whether information 'should' be held, but whether relevant information 'is' held, however. As noted above, she has also noted that other minutes of meetings generally do not record the proposer or seconder of unrelated matters in council minutes.
37. In the absence of evidence to the contrary and given the substantive searches described by the council as having been carried out, the Commissioner considers that there is no evidence demonstrating that further information is held falling within the scope of the complainant's request for information.
38. The Commissioner's decision is therefore that, on a balance of probabilities, no further information is held by the council falling within the scope of the request for information.

### **Section 17**

39. Section 17(7) provides that –

*"A notice under section (1), (3) or (5) must –*

*(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*

*(b) contain particulars of the right conferred by section 50."*

5. The complainant said that he had not been provided with any details as to his rights under section 50 of the Act as required by section 17(7)(b).
6. Having considered the council's response to the complainant's request, the Commissioner has decided that the council did not comply with section 17(7)(b).



## **Other matters**

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- a) There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the section 45 code of practice sets out, in general terms, the procedure that should be followed.
- b) The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
- c) The complainant requested an internal review on 29 July 2019 however the council did not provide its internal review response until 30 August 2019. This is a period of 24 working days from the date that the complainant's request for an internal review was received.
- d) If the council finds that the internal review process for a request is particularly complex, it should inform the complainant and provide a reasonable target date by which they will be able to respond to the internal review. It is best practice for this to be no more than an additional 20 working days, although there will sometimes be legitimate reasons why a longer extension is needed.
- e) Based on the response it gave to the internal review, the Commissioner does not consider that this would be a complex issue and the council should have provided its internal review response sooner than it did.

## Right of appeal

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40. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

41. 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.
42. 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**