

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

### **Decision notice**

**Date:** 6 March 2020

**Public Authority:** Northaw and Cuffley Parish Council  
**Address:** 7 Maynard Place  
Cuffley  
Hertfordshire  
EN6 4JA

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

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1. The complainant requested from Northaw and Cuffley Parish Council (the Council) information in relation to correspondence sent from or to parish councillors during a specific period of time. The Council provided the information it considered to be held within the scope of the request. The complainant believed that further information should be held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council did not hold information further to what was disclosed.
3. The Commissioner requires no further action in this matter.

## Request and response

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4. On 21 August 2019 the complainant wrote to the Council requesting information of the following description:

*"Under Freedom of Information Act 2000 I request all documentation including reports, records of meetings, emails and letters relating to the following issues:*

- *Any item that refer either directly or indirectly to the Meeting of the Parish scheduled for 19<sup>th</sup> September 2019 that were sent either to or from Parish Councillors from Tuesday 15<sup>th</sup> August 2019 until 21<sup>st</sup> August 2018*
  - *Any items that refer to SCANGB or myself, either directly or by inference from 1<sup>st</sup> May 2019 until 21<sup>st</sup> August 2019."*<sup>1</sup>
5. The Council wrote to the complainant on 22 August 2019 to seek clarification in relation to the dates referred to in the first part of the request. On the same day, the complainant confirmed that all references should be 2019 instead of 2018.
6. On 18 September 2019 the Council responded. It provided the complainant with information it considered to fall within the scope of the first part of the information request. In relation to the second part of the request the Council stated that it included *"any items that refer to SCANGB"* and it explained that information containing personal data of the complainant was exempt as per section 40(1) of the FOIA. The Council dealt with that part of the request separately as a subject access request, in compliance with the relevant provisions of the Data Protection Act 2018.
7. Remaining dissatisfied with the response received, on 20 September 2019 the complainant wrote to the Council and requested an internal review. He stated: *"Thanks for sending through the completed FOI request. However there seems to be some missing correspondence..."* The complainant made it clear that he was not satisfied with the amount of the information received and described what information he considered to be outstanding. This communication was followed by further email exchanges between the complainant, some parish

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<sup>1</sup> SCANGB is a group of Northaw and Cuffley Parish residents who oppose a planning application to build dwellings on green belt land.

councillors and the Council.

8. For the purpose of the FOIA the Council's response to the complainant, dated 2 October 2019 is considered to be the outcome of the Council's internal review. In this communication the Council stated that she is "*not sure what more anyone else could do*" and advised the complainant to submit a complaint to the Commissioner, should he remain dissatisfied with the outcome of his information request.

### Scope of the case

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9. The complainant contacted the Commissioner 7 October 2019 to complain about the way his request for information had been handled. The complainant did not object to the application of section 40(1) of the FOIA in relation to information containing his personal data. However he expressed his dissatisfaction regarding the amount of information received as he believed that the Council should have been in possession of further information to what was disclosed.

10. The Commissioner notes that in her guidance on information held by a public authority for the purpose of the FOIA<sup>2</sup>, in relation to information held by councillors it is stated that:

*"Local councillors are likely to have a number of different roles. Information will not be held for FOIA purposes if it relates to their function as elected members (for example, corresponding with residents in their ward, discussing council business with fellow members in the context of voting strategy or campaigning on behalf of a political party). However, some information will relate to the functions of the local authority and will be held for FOIA purposes (for example, being a cabinet member and having executive responsibility for a service area, carrying out administrative functions or representing the authority, such as on a regional forum)."*

11. Bearing in mind that the Council did not claim that there was information held by the councillors but not on behalf of the Council, this

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<sup>2</sup> [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)

decision notice does not consider matters related to that category of information.

12. Therefore, the analysis below covers whether the Council conducted necessary searches to identify all the information it held within the scope of the complainant's request, as required by section 1 of the FOIA.

## Reasons for decision

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### Is there further information held?

13. Section 1(1) 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."*

14. Section 3(2) provides that -

*"For the purposes of this Act, 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."*

15. In matters such as this one where the public authority and the complainant dispute 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 proof of the balance of probabilities.
16. The Commissioner is therefore not required to prove categorically whether or not 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, i.e. whether the probability that information is held is more or less than 50%.
17. In deciding where the balance of probabilities lies, the Commissioner considered the complainant's evidence and representations. She also considered what searches had been carried out by the Council and other

representations from the Council which were relevant to her determination.

18. In describing its efforts to identify the information held, the Council asserted that *"All councillors were asked to provide relevant information between 15/8/19-21/8/19. In this period, I was aware as I am the sole administrator, that the information requested would only be found in emails. In this period there were no meetings, reports or letters produced."*
19. The Council stated that the original information request was forwarded to all councillors and they were able to use the search terms "meetings of the parish" and the complainant's name. The Council further explained that all councillors send and receive all email relating to council business on their personal computers. However, there is an internal webmail system that all councillors use for Council related matters.
20. The Council assured the Commissioner that all adequate searches were conducted and all the information identified as within the scope of the request was provided to the complainant.
21. The Council explained that if further information was held it would be held in electronic form.
22. The Council confirmed that no recorded information that would fall within the scope of the request was deleted or destroyed. It explained that two councillors who may have held relevant information have resigned but their webmail correspondence was retained on the server. Their email inboxes were part of the searches conducted but did not produce any further information within the scope of the request.
23. The Council stated that it has a retention policy but it does not cover emails. It also asserted that there is no business purpose or statutory requirement, that it is aware of, for holding further information within the scope of the request.

### ***The Commissioner's view***

24. The Commissioner has examined the submissions of both parties. She has considered the searches performed by the Council, the information it disclosed, the Council's explanations as to why there is no further information held and the complainant's concerns.
25. Having considered the scope of the request, the Commissioner is satisfied that the Council carried out necessary searches to identify the requested information that was held at the time of the request.

26. In the absence of evidence to the contrary, the Commissioner is satisfied that the Council conducted adequate searches that were necessary for identifying all the information it held within the scope of the request.
27. Therefore, the Commissioner is of the view that, on the balance of probabilities, the Council did not hold further information within the scope of the complainant's request.

### **Other matters**

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28. The Commissioner notes that in the course of the correspondence between the parties in this case, the complainant sent to the Council a form titled "Statement of Fact" drafted by him and requested that this form was distributed to all councillors to be signed by them. The form contained a sentence that stated "*I confirm that I have duly complied with the above request and have supplied all relevant e-mails and paper documents without amendment or omission.*"
29. As there is no provision of the FOIA that would have required the Council to take this action, this request from the complainant is not referred to in the analysis above.

## Right of appeal

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30. 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)

31. 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.
32. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**