

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 July 2021

Public Authority: Barham and Woolley Parish Council

Address: clerk@barhamwoolley.org.uk

Decision (including any steps ordered)

1. The complainant requested information held by Barham and Woolley Parish Council (the parish council) about a particular sub-committee meeting.
2. The Commissioner's decision is that, on the balance of probabilities, the parish council does not hold the information which the complainant has requested.
3. However, as the parish council failed to provide its internal review response to the complainant within the prescribed forty day time period, the Commissioner has found a breach of regulation 11(4) of the EIR.
4. The Commissioner does not require the parish council to take any steps as a result of this decision notice.

Request and response

5. On 29 November 2019, the complainant wrote to the parish council and requested information in the following terms:

'This is a request under the Environmental Information Regulations:

Please supply paper copies of the following.

1. *The Minutes of The Parish Council's Sub-committee meeting. (Which met at the former clerk, Mrs Massey's house on 29 April at 7.30pm 2010).*
2. *The Agenda for that meeting.*

3. *All hand written notes that were made.*
4. *All maps and documents used in the meeting.*
5. *Please supply un-edited copies.*

*Enc are Parish Council Minutes:
372/375/376/378/379/380/383/384/385/386*

In order to assist you with my request I have highlighted the relevant parts in Green. I particularly draw your attention to 379 6th April 2010 Item 4. where you along with Councillor Mrs Thompson and Councillor Mrs Grove-Price agree to be on the Committee. Also 385 15th Dec. 2010 Item 1, where you as Chairman shorten the meeting so Mrs Massey can report on Item 4.'

6. The parish council provided its response to the complainant on 7 January 2020, advising of the following:

'The sub-committee met, and it was agreed the public should be invited to discuss the village plan.

No interest was shown, therefore no more meetings were held. There are no minutes as the subject was dropped.'
7. The complainant requested an internal review on 21 January 2020, and the Chairman of the parish council provided a response on 28 April 2020.
8. The Chairman once again advised the complainant that, *'as far as he could recall'*, a sub-committee had an informal meeting but as there was no interest, the issue did not proceed. He went on to say that the parish council had already confirmed in letters sent to the complainant dated 16 November 2015, 22 May 2017, and 12 September 2018, that there are no records held of any sub-committee meetings.
9. The Chairman also confirmed to the complainant that the parish council does not hold records that predate January 2014, but that these are accessible at the County Record Office.
10. With regards to the records held for the period January 2014 to February 2018, the Chairman confirmed to the complainant that the parish council had previously provided hard copies of all this information to him (on 2 October 2018). He also confirmed that since 2018, all of the parish council's records are published on its website, and he provided the complainant with a link to this information.

Scope of the case

11. The complainant contacted the Commissioner on 9 March 2020, to complain about the way his request for information had been handled.
12. He has advised the Commissioner that he believes that the parish council have been mendacious and misleading in its correspondence to him, and that it has concealed information about the existence of a sub-committee, and the records held relating to the meeting that took place on 29 April 2010.
13. The following analysis covers whether the council was correct when it advised that it did not hold information that was relevant to the complainant's request, and also certain procedural matters as requested by the complainant.

Reasons for decision

Regulation 5(1) - Duty to make environmental information available on request

14. Regulation 5(1) of the EIR states that '*a public authority that holds environmental information shall make it available on request.*' This is subject to any exceptions that may apply.
15. Regulation 12(4) of the EIR states that '*a public authority may refuse to disclose information to the extent that—*

(a) it does not hold that information when an applicant's request is received.'
16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to establish what information within the scope of the request it held, and any other reasons offered to explain why further information is not held. She will also consider any reason why it is inherently likely, or unlikely, that further information is not held.
17. 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.

The complainant's representations

18. The complainant has provided the Commissioner with a recording of a telephone call which took place on 17 October 2013, between himself and a member of the parish council. He has advised that he believes that this recording, together with certain additional information, indicates that there may be other '*proper books*' held by the parish council, in addition to the '*minutes book*' which is made available to the public. The complainant states that he had received conflicting statements about this matter, and that this has led him to believe that there has been a deliberate intent to withhold the information included within the '*proper books*' from the public. It is the Commissioner's assumption that the complainant believes that the information he has requested may be held, or was previously held, within these '*proper books*'.
19. The complainant has also provided the Commissioner with copies of the minutes of a number of parish council meetings, which he claims evidence that a sub-committee meeting did take place on 29 April 2010. He indicates that if this was the case, in line with standard protocol, minutes would also have been recorded.
20. The complainant directly refers to the minutes of a meeting held on 6 April 2010, which state that a sub-committee would be formed to discuss the Village Plan, and that an initial meeting had been arranged for 29 April 2010, at 7:30pm.
21. The complainant has also provided a copy of the minutes of a parish council meeting held on 15 December 2010, where it is recorded that:

'Clerk states that a sub-committee had met to discuss the Village Plan, but it was agreed that more of the community should be invited to be involved in the discussions as it will affect both villages, a meeting is to be planned later in the year.'
22. The complainant has also referred to the minutes of a meeting of 13 July 2010, where it is stated that there had been '*much discussion*' about the Village Plan when the sub-committee had met.
23. The complainant argues that the parish council has provided him with various conflicting statements about the sub-committee meeting and records held relating to this, and has only conceded that a meeting did take place because he provided evidence of this (by way of the minutes of the subsequent parish council meetings outlined above).

The council's representations

24. The council has advised the Commissioner that it believes that it has no additional information to provide to the complainant about this particular matter; it states that it has now made four attempts to respond to him and explain that the information that he requires is not held.
25. It would appear that a number of current parish councillors, including the Chairman, were members of the parish council in 2010. The parish council has stated to the Commissioner that there is a belief that an informal village meeting about the Village Plan may have taken place in 2010, but that this was not a sub-committee of the parish council, nor was it a formally organised meeting of the parish council.
26. One parish council member has advised that as far as they can recall, whilst the parish council had considered developing a Village Plan, it did not come to anything; this was because it was found that a village of less than 30 residences (Barham and Woolley is one such village) is classed by the planners as open countryside, and so no Village Plan is required. They also believe that given this, the sub-committee was never set up.
27. With regards to the minutes of meetings which the complainant claims evidence that a sub-committee meeting took place, the parish council has advised that it believes that such references are merely a reflection that some individuals may have met to discuss the possibility of a Village Plan.
28. The parish council also confirmed to the Commissioner that the minutes as published are the only records that would be held, and that no other records in any format, either physical or digital, exist.

The Commissioner's view

29. The Commissioner has considered all the correspondence which the parish council has provided to the complainant about this matter.
30. In the parish council's correspondence to the complainant of 16 November 2015, 22 May 2017, and 12 September 2018, it advised that there were no sub-committees, and that therefore no sub-committee minutes are held. The parish council did acknowledge in one response that certain minutes had referred to a sub-committee in relation to the Village Plan, but advised that nothing had ever come of this.
31. However, the parish council's responses to the complainant of 7 January 2020 and 9 March 2020 (in response to the request under consideration) then confirmed that a sub-committee had met.

32. It would therefore appear that there have been some inconsistencies in the council's responses to the complainant, and the Commissioner appreciates that this may have caused some confusion and frustration to the complainant. It would appear that he has now lost trust in the parish council; he states that he has been provided with contradictory and conflicting details about whether a formal meeting did take place on 29 April 2010, and whether a record was ever made at the time of that discussion.
33. Unfortunately, this is a complaint that relates to an issue that arose quite some time ago. Given this, the Commissioner appreciates that the members of the parish council may have had some difficulty recalling the exact circumstances which took place, and that this has led to the confusing responses that it has provided over what has been quite a protracted period of time.
34. However, the Commissioner is not required to assess the accuracy of what certain members of the council have told the complainant from their memory, or recollection, of those events which took place some ten years before the request under consideration was made. The primary focus of her investigation is whether, on the balance of probabilities, there is likely to be recorded information held which would confirm explicitly whether a meeting took place on 29 April 2010, and if so, if there is any other record that is likely to be held about what was discussed.
35. It is clear from the minutes of meetings held by the parish council that a sub-committee was intended to be formed to consider the Village Plan, and that an initial meeting was set to take place on 29 April 2010 to discuss this. It also does not appear to be in dispute that a discussion did occur where the decision was made that it was not necessary to proceed with the Village Plan. How and where this discussion took place is far more ambiguous, and this has led to some confusion and uncertainty about what took place. The Commissioner is mindful that given the time that has passed, it is possible that the matter of where and how the Village Plan was discussed by certain members of the parish council in 2010 will never be determined with any certainty.
36. With regards to the complainant's claim that there may be '*proper books*' that have been concealed by the parish council which may contain the information he requires, it is the Commissioner's view that there is no indication from the information which is available that such books exist. She does not agree with the complainant that the circumstances of this case, and the references to '*proper books*', are evidence that the parish council has recorded additional information for its own purposes which it has not made available to the public.

37. The Commissioner appreciates that this has been a difficult situation for all those parties that are involved. However, in this instance, having considered all the information provided by the complainant and the parish council, the Commissioner has found nothing which would lead her to believe that further information may be held by the parish council about the discussions and decisions made in relation to the Village Plan. She has therefore decided that, on the balance of probabilities, there is no additional information which is (or was) held by the parish council that is relevant to the complainant's request.

Procedural matters

38. The complainant initially raised concerns with the Commissioner about the time taken by the parish council to deal with his request.
39. Regulation 14(2) of the EIR states that a refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request. In this instance, the complainant states that he submitted his request by post on 29 November 2019, and received the parish council's response on 7 January 2020 (it was sent on 6 January 2020). Whilst this amounts to 22 working days (after taking into account weekends and all UK bank holidays over this period), it is the Commissioner's view that it cannot be said with any certainty when the parish council actually received the complainant's request. As a result, the Commissioner is unable to conclude that the parish council has breached regulation 14(2) of the EIR.
40. Regulation 11(4) of the EIR requires a public authority to complete its internal review as soon as possible, and no later than 40 working days after the internal review is requested.
41. The complainant requested an internal review on 21 January 2020 (evidence of next day signed for postage provided by the complainant). As the parish council did not provide a response until 28 April 2020, the Commissioner finds that the parish council breached regulation 11(4) EIR.

Other matters

42. The complainant has also raised concerns about alterations that have been made to the minutes recorded for the AGMs held by the parish council in May 2007, and 2008. The parish council has recorded on both sets of minutes that they have been amended, and that they now replace the previous versions.

43. The complainant has complained that this is an indication of poor records management practices by the parish council and that the original minutes should not have been altered and replaced in this way.
44. The Section 46 Code of Practice contains guidance to public authorities on keeping, managing and destroying records. It should be noted that a failure to comply with the code is not, itself, a breach of the FOIA, or the EIR, but following its recommendations will help an authority to comply with the legislation.
45. The Commissioner does not regard the complainant's concerns to be a matter that requires further investigation. Firstly, it relates to minutes that were recorded over ten years ago. There is also no indication that it is an action which indicates a deliberate attempt to conceal or mislead. Furthermore, the Commissioner notes that the minutes published on the council's website include a statement which confirms that draft minutes may be subject to later amendments; when this occurs, it is confirmed that this will be recorded in the minutes.
46. With regards to the specific minutes in question, it is clearly specified that they are an amended version. The Commissioner has no specific concerns about the parish council's processing in this regard, and does not intend to consider making any recommendations as a result.

Right of appeal

47. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

48. 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.
49. 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
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