

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **27 September 2021**

Public Authority: **Dunchurch Parish Council**
Address: **Dunchurch Community Library**
School Street
Dunchurch
Rugby
CV22 6PA

Decision (including any steps ordered)

1. The complainant has requested information about a staffing committee of the council.
2. The Commissioner's decision is that, on the balance of probabilities, Dunchurch Parish Council is not withholding any information in scope of the request. However she finds that it contravened its obligations under section 10 of the FOIA in failing to respond to part of the request within 20 working days.
3. The Commissioner does not require any steps.

Request and response

4. On 4 October 2020, the complainant requested information from Dunchurch Parish Council ("the council") in the following terms (numbering added by ICO):

[1] *"Please make available the agenda and minutes of the D.P.C. Staffing Committee Meetings.*

[2] *"What is the current membership of the Staffing Committee?"*

5. The council responded on 7 October 2020. In terms of each request question:

[1] The council denied holding the requested information.

[2] The council did not answer the question in terms of information held. Instead it stated that the Staffing Committee was on the agenda for discussion at the next council meeting, because it was considered no longer relevant and would probably be disbanded.

6. The complainant requested an internal review on 9 October 2020.

7. The council wrote to the complainant on 12 October 2020 and stated:

"As per your Facebook posts you are well aware of the remaining member of the staffing committee, so once again please do not send requests to the clerk for information you are already aware of.

Repeated requests such as these are time consuming and unnecessarily tie the clerk down preventing her working for the community as a whole."

8. On 15 July 2021 the council wrote to the complainant with an updated internal review in regard to question [2]. The council provided the requested information, stating:

"In reviewing our response, we have realised we did not specifically answer this question, therefore our response to this is as at 4th October 2020, the current members of the staffing committee consisted of [redacted]."

Scope of the case

9. The complainant contacted the Commissioner on 18 October 2020 to complain that the council was withholding information, and that it had not carried out a compliant internal review.
10. The scope of this case is whether, on the balance of probabilities, the council is likely to hold any information in scope of question [1], and whether the council made any procedural breaches in its handling of the request.

Reasons for decision

Section 1 general right of access

11. Section 1 of the 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."
12. 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.
 13. 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.
 14. 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 council and other information or explanation offered by the council which is relevant to her determination.

The complainant's position

15. The complainant believes that the that council holds information in scope of the request which it has not disclosed.
16. The complainant states that the request was for any information created by the council, and should not be limited to the contents of the laptop of the parish clerk.
17. The complainant is concerned that council officers use personal email accounts to avoid the disclosure of information.
18. The complainant is concerned about the lack of official records for the Staffing Committee.

The council's position

19. The council provided some background information:
 - The Staffing Committee was disbanded in October 2020.
 - One member of the Staffing Committee remains in the council. The other two members had both left by August 2020.
 - The council was without a parish clerk between August 2019 and February 2020.
20. The council advised that the laptop of the parish clerk was searched, and no evidence of agendas or minutes of any Staffing Committee meetings were found. The terms used for the searches were "Staffing Committee", "Staffing", "Committee", "Working Party", "Steering Group" and "staff".
21. The council advised that it had also searched the council's files for any paper records that were in scope of the request.
22. During the period when the council was without a parish clerk, another person covered the role of minute secretary for the council. This person has confirmed that they do not hold any information in scope of [1].
23. The remaining member of the council who was a member of the Staffing Committee, states that they do not recall any meetings being held, and also confirmed, therefore, that they do not hold any information in scope of [1].
24. There were three members of the Staffing Committee but as stated only one councillor remains working in the council. The council is therefore unable to ascertain whether the other two councillors held any information in scope of the request within their own personal email accounts.

25. The council states that, as far as it can ascertain, it has never held any recorded information relevant to the scope of the complainant's request. Therefore no records have been destroyed or deleted.

The Commissioner's Conclusion

26. The Commissioner has considered the council's position, in conjunction with the request and the complainant's position.
27. In response to the complainant's position that there is a lack of official records for the Staffing Committee, the Commissioner advises that the FOIA provides the public with the right of access to information which is held by public authorities. However the legislation does not determine what records public authorities should be keeping.
28. The Commissioner is therefore limited to determining whether the council has disclosed any information, that it holds, which is within the scope of the request.
29. The Commissioner also notes the complainant's concerns about council officers using personal email accounts to avoid the disclosure of information. Whilst this may not be good records management practice, such information is still subject to the FOIA if it relates to the business of the council.
30. The Commissioner is satisfied that the council has undertaken adequate searches to locate any information it holds that is in scope of the request.
31. There is no contradictory evidence available to the Commissioner that indicates that the council's position is wrong.
32. On this basis the Commissioner has concluded that, on the balance of probabilities, the Council has disclosed all the information it held that fell within the scope of the request.

Procedural Matters

Section 10 – Timeliness

33. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
34. The request was made on 4 October 2020, however the final response to question [2] was not given until 15 July 2021. This is nine months after the request was made and therefore well outside of the statutory time limit.

35. The Commissioner therefore finds that the council has breached section 10(1) of the FOIA by failing to respond to the request within 20 working days. However, as the response was issued, no steps are required.

Right of appeal

36. 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

37. 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.
38. 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

Janet Wyles
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF