

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 August 2021

Public Authority: Bicester Town Council
Address: The Garth
Launton Road
OX26 6PS

Decision (including any steps ordered)

1. The complainant requested from Bicester Town Council (“the Council”) a list of the delegated powers held by the Chief Officer, along with the basis of those powers. The Council denied that the requested information was held.
2. The Commissioner’s decision is that the Council does not hold the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 17 June 2020, the complainant wrote to the Council and requested information in the following terms:

“I refer to the agenda of the aborted council meeting of 23rd March 2020 and in particular Appendix 1 of the report written on 17th March 2020 listing existing delegations of the Chief Officer. The report was on the website for some time before being deleted, and thus placed in the public domain.

Section 1.1 lists several sources from which these delegations are drawn, but not individually referenced to each delegation.

Without doubt, in compiling this list, the Council would have carefully checked each delegation against the individual sources mentioned in s1.1 and have each delegation referenced and have kept a record.

I will be grateful for the list of delegations individually referenced to the exact source, including date and reference to Council resolutions or where the delegation refers to statute, the Act and section."

5. The Council responded on 8 July 2020. It stated that the information was not held.
6. Following an internal review, the Council wrote to the complainant on 4 September 2020. It maintained its position that the information was not held. The Council also referred the complainant to other information that they may have been interested in, but advised that such information would fall under the exemption provided by section 21 of the FOIA – on the basis that it was already accessible to them.

Scope of the case

7. The complainant contacted the Commissioner on 16 October 2020 to complain about the way his request for information had been handled.
8. The Commissioner notes that the Council referred to section 21 of the FOIA within its internal review, and that the complainant raised this matter in submitting his complaint to her. However, having considered this aspect, the Commissioner has identified that section 21 was cited in respect of information that had not been sought by the request. As such, section 21 has not been applied to the request, and the Commissioner is not required to make a determination in respect of it.
9. The scope of this case and of the following analysis is whether the Council is likely, on the balance of probabilities, to hold the requested information for the purposes of section 1.

Reasons for decision

Section 1 – General right of access to information

10. Section 1(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.*

11. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

14. The complainant argues that the Council, by stating that the information is not held, is seeking to avoid answering the question posed by his request.

The Council's position

15. The Commissioner has reviewed the request as it is written – in conjunction with the related document that it cites (the agenda for a Council meeting on 23 March 2020, that was subsequently cancelled). Having done so, the Commissioner considers that the only reasonable interpretation of it is that it seeks any document that lists (or otherwise describes) the delegated powers held by the Chief Officer, along with the basis of those powers.
16. The Council has informed the Commissioner that it interprets the request in the same way. The Council has undertaken a search of its network but has not identified any such list. The current Acting Chief Officer has also confirmed that they are not aware of any such list being held.

The Commissioner's conclusion

17. The Commissioner has considered the Council's position, in conjunction with the request.
18. Whilst it is recognised by the Commissioner that the complainant wishes to understand the full extent of the delegated powers held by the Council's Chief Officer, it is evident to the Commissioner that these powers derive from a wide range of sources.
19. The Council has confirmed to the Commissioner that there is no known central list that details these delegated powers in their entirety, or any business reason for the Council to hold such a document.
20. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong.
21. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Other matters

22. The Commissioner notes, for the benefit of the complainant, that the FOIA only relates to information held in recorded form. A public authority is not required to create new information in order to respond to a request.

Right of appeal

23. 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

24. 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.
25. 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

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