

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **13 December 2021**

Public Authority: **Tydd St Mary Parish Council**
Address: **tyddstmarypc@gmail.com**

Decision (including any steps ordered)

1. The complainant requested emails and other information relating to the council's actions regarding football facilities. The majority of the information was provided; however, the complainant considers that more information is held. The council disputes that that is the case, however during the course of the Commissioner's investigation further information was located by the council's solicitors. This was disclosed to the complainant outside of her rights under the FOI Act.
2. The Commissioner's decision is that, on a balance of probabilities, the council has now complied with section 1 of the Act as it does not hold any further information. He has however decided that it did not comply with the complainant's rights under section 10 of the Act in that it did not provide the complainant with all of the information which she requested within 20 working days.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 12 November 2020 the complainant wrote to the council and requested information in the following terms:
- *Copies of all Agreements between Tydd St Mary Parish Council and Tydd St Mary F.C and Tydd F.C. from 2014 to the present day.*
 - *Copies of all correspondence to include letters and emails from the Tydd St Mary Parish council and its elected members to Tydd St Mary Football Club and Tydd F.C. from 2015 to the present day.*
 - *Copies of all correspondence to include letters and emails form all elected members of the Parish Council to [name redacted], Secretary Tydd F.C. and [name redacted], Tydd F.C. in relation to the sue of the Tydd St Mary Glebe and its facilities from March 2020 to the present day.*
 - *Copies of all emails circulated by all Councillors to and from Members of the Parish Council and Tydd F.C. in round robin communications relating to the use of the Glebe by Tydd F.C. from January 2020 to the present day.*
 - *Copies of all letters and emails sent to [name redacted], secretary, Tydd F.C. and [name redacted] Tydd F.C. by [name redacted] from December 2019 to the present day.*
 - *Copies of all letters and emails sent to [name redacted] and [name redacted] Tydd F.C. by [name redacted] by [name redacted] from July 2020 to present day.*
 - *Copies of the Tydd St Mary Parish Council minutes of a properly constituted meeting and all letters and emails from 24 September 2020 to the present day recording the Parish Council resolution to rescind the decision of the Council to suspend the use of the Glebe pitches by Tydd F.C. and to authorise the use of the pitch and Community Building by Tydd F.C. on Saturday 26 September 2020.*
 - *Copies of all Covid-19 Risk Assessments, protocols, Track and Trace evidence, hire forms, receipts and payments and cleaning Records relating to the Glebe and Community Building from Tydd St Mary Playing Field Committee and Tydd F.C.*

- *Photographic evidence by means of copies of the file data relating to the composition of all Covid-19 related documents compiled and received by Tydd St Mary Parish Council from Tydd St Mary Playing Field Committee and Tydd F.C. to prove the date of composition.*
 - *Copies of all correspondence to include letter and emails relating to the submission of the Covid-19 documents to the Playing Field Committee by Tydd F.C.*
 - *Copies of all correspondence to include letters and emails relating to the submission of the Covid-19 documents to the Parish Council from Tydd FC and Tydd St Mary Playing Field Committee.*
 - *Copies of all constituted minutes of the Tydd St Mary Playing Field Committee relating to all matters regarding the use of the facilities by Tydd FC from December 2019 to the present day.*
 - *Copies of all correspondence including letters and emails relating to enquiries from the Health and Safety Executive and the Parish Council responses to those enquiries and by whom.*
 - *Copy of the Tydd St Mary Playing Field Committee Constitution 1982 as registered with the Charity Commission.*
 - *Copy of the Lease or Land Ownership of the Tydd St Mary Playing Field Committee as listed on the Charity Commission Website.*
 - *Copy of the Lease between the Lincolnshire Diocese and Tydd St Mary Parish Council.*
5. The council responded on 22 January 2021. It applied section 12 of the Act on the basis that responding would exceed the appropriate limit.
 6. Following a request for internal review the council initially wrote to the complainant on 8 March 2021 inviting her to a meeting to discuss her FOI request.
 7. The complainant wrote back stating she did not want a meeting; she wanted an appropriate response to her request.
 8. Following its internal review, the council wrote to the complainant on 7 April 2021. It provided some information but said that other information is not held.

Scope of the case

9. The complainant contacted the Commissioner on 16 December 2020 to complain about the way her request for information had been handled. Her initial complaint was that the council had failed to respond to her request for information.
10. Once the council had provided its internal review response, on 14 April 2021, the complainant outlined her remaining areas of her complaint to the Commissioner.
11. She considers that the council has not provided all of the requested information. She believes that she has evidence that it does hold the following information.
 - minutes of a council meeting on 9 July 2020
 - council emails held on councillors' own private computer equipment.
12. The complainant also had a number of concerns about the council potentially breaching its own procedures, conflicts of interest and other matters in relation to litigation she is involved in. The Commissioner has no powers to consider these matters.
13. During the course of the Commissioner's investigation, the council's solicitors provided her with information under the Civil Procedures Rules, as part of its disclosure of documents. This information included some emails falling within the scope of the complainant's request for information. The council stressed that it had not been aware that its solicitors held copies of these emails, but noted that they had now been disclosed to the complainant.
14. The Commissioner's analysis therefore considers whether the council is correct to state that no further information is held falling within the scope of the request.
15. He will also consider whether the time which the council took to provide the information to the complainant met with the requirements of section 10 of the Act.

Reasons for decision

Section 1 – General right of access to information

16. 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.*

17. Section 1(1) therefore 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.
18. 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.
19. 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

20. The complainant provided the following reason for pursuing her request further with the Commissioner:

"In their response (attached) they have stated that they cannot provide the emails prior to the end of October 2020 as requested due to their having no access to the Council email account.

However, my request was for emails to and from Councillors and from Councillors to the Tydd FC management and outside bodies.

The emails that Councillors hold and send/receive from their accounts regarding Council business are public documents and I specifically request the emails sent between them and not copied in to the Council Clerk.

Councillors will obviously have them in their own email accounts unless they have been deleted.

Are they claiming that none of the Councillors hold any of these emails anymore and all have been deleted ? If they have all been deleted could they confirm why ?”

21. The complainant also considered that the minutes of the council meeting dated July 2020 should be held by the council. The complainant stated that she has evidence demonstrating that these minutes were available from previous access she had to the council’s laptop. She said, however, that the minutes of the council meeting in October 2020 state that they were not held.

The Council’s position

Councillor’s emails

22. The council said that the complainant previously had access to the information she has asked for as she previously had access to the council’s laptop. It said that the council’s documents, laptop, and emails were in her possession until 11 November 2020 when she provided these back to the council following a number of requests for her to do so.
23. The formal council email was also linked to her own private email account. It said that when she handed the laptop back to the council, she had deleted all of the emails on the council’s laptop, as well as blocked access to the email account itself, so the council now has no records of any email correspondence.
24. However, during the Commissioner's investigation, the council said that it discovered that its solicitors were in possession of a number of emails that the council clerk did not hold. Copies of these were sent to the complainant on 14th October 2020 as part of the civil procedure rules on the disclosure of information relevant to proceedings. The complainant subsequently confirmed that this was correct to the Commissioner, however she remained concerned that the delay in disclosing the letters could affect litigation which she is involved in.
25. The Commissioner has no powers to take into consideration how the late disclosure of information may have affected her litigation, however she notes the late disclosure in her section 10 analysis below.
26. The council noted that the complainant's disclosure documents included in the bundle many council emails, which were not in its possession since the laptop had been wiped of them. It therefore felt that, if the complainant has access to these, she would in all probability have had access to those she had requested.

27. The complainant argues that the council's inability to access its former email account does not provide it with a reason for not disclosing councillors' emails, which would be held on their own personal IT equipment, to her. Her request was aimed at copies of emails which had *not* been copied to the clerk.
28. The council, however said that these emails had been deleted by the councillors in October 2020, prior to it receiving the complainant's request for information. It explained that this occurred after councillors attended a training course on good records management, which clarified that council emails should not be retained on personal equipment. A new council email address had therefore been set up and councillors deleted the emails which they held on their own personal equipment.

Minutes of the council meeting in July 2020

29. As regards the minutes, the council said that the July 2020 minutes were published on the council website on 8 February 2021. It did not therefore consider that it needed to provide the complainant with a copy of these as they are freely accessible.
30. The Commissioner confirmed that minutes for a July meeting of the council are now available on the council's website¹. However, these minutes relate to the meeting of the council on 30 July 2020, whilst the minutes referred to by the complainant relate to a meeting of the council dated 9 July 2020.
31. The Commissioner notes, however, evidence made available to him that the clerk does not hold any minutes for that meeting.
32. The council described the searches it had carried out to determine whether further information is held by it. It said that:

"Following weeks of sifting through the boxes of hard copy files returned to Council by the former clerk in an attempt to compile a filing system for the Council, it was then possible, following the internal review, to extract any relevant hard copy emails and forward to the complainant."

33. When it was discovered that the council no longer had access to any emails, the previous chairman (who left the council on 24 September 2021) was asked to provide any emails he may still hold relating to

¹ <https://tyddstmary-pc.org.uk/documents/minutes-july-2020/>

council business. The council said, however, that the former chairman confirmed that he had deleted all council files and no longer had access to the laptop.

34. The council said that any further information which it might have held falling within the scope of the request would be held in electronic format.
35. The council clerk said that she does not have access to individual councillors' personal equipment to physically check them and there are no networks which she is able to search on.
36. She clarified that, at the time of the request and the internal review, she knew of no other avenues to obtain other information other than asking the complainant herself to search the former council email address (as she retained control of this), but the complainant had forbidden her from contacting her.
37. The council said that it does not have a record of the deletion of destruction of any emails, as these would only be available to the complainant as the formal council email address for the relevant period is now under her control.
38. The Commissioner notes, however, that the complainant's request would include information held on councillors' own computers, as well as those sent to the council's former clerk or held on the former official email address.

The Commissioner's analysis

39. The Commissioner has considered the council's position. She recognises the unusual circumstances of this case in that, insofar as the council argues, the complainant had access to much of the information prior to her making her request for information, and it argues that she was also responsible for preventing the council from accessing its emails following this.
40. The complainant highlighted two areas of concern in her argument; that the council had not disclosed all of the information she had requested; namely the council minutes as referred to in the council's October Minutes, and emails held on councillors own personal IT equipment. The complainant has accepted that some emails have now been provided via the council's solicitors during her litigation proceedings, but she considers that the delay affected her own preparation for the litigation.

41. The Commissioner accepts that if councillors held council information falling within the scope of her requests, then these would fall to be considered for disclosure under the Act.
42. As to the deletion of emails by councillors, the council provided further information. It said that councillors received a training course, identified for them by Lincolnshire Association of Local Councils. The training covered the basics of good practice for a council and councillors. It said that the use of email addresses for council correspondence is covered in the course, and they were informed that that best practice is not to use a personal address but to open a separate account, used just for council business.
43. The councillors therefore deleted the emails which they had in their own private accounts and a new parish council email account was set up. The council said that when councillors deleted the emails from their own devices the complainant still held the council laptop. The council therefore said that councillors believed that all of the relevant emails would have been copied and held on this device. It said, however, that this did not prove to be the case. It stressed that the deletions were not intended to withhold information from the complainant, and it had not received her request for information at that point.
44. The Commissioner notes that councillors would have been aware whether they had copied the council into their email correspondence, however, and so may have been aware that there were no copies of the emails they were deleting from the own equipment. There may therefore be records management and accountability questions surrounding this deletion of council information. However, as the council argues that the deletion occurred prior to the request being received, and the Commissioner has seen no evidence contradicting this assertion, there is no evidence that the deletion breached the complainant's rights under the Act.
45. Turning now to the minutes of the meeting of 9 July 2020, the council has not been able to find any minutes, and it said that no one can remember attending a meeting on that date. The Commissioner notes that it was evident that the meeting was planned, and he has seen emails referring to the extraordinary meeting. The Commissioner notes that if the meeting went ahead, it is likely that the complainant will have attended.

46. The complainant also argues that she took a scan of the council laptop prior to handing it back to the council, and it shows that the minutes were on the backup scandisk and also the laptop hard drive when it was returned. She said that she also provided a signed hard copy with the handover documents and so the statement in the October minutes is untrue.
47. The Commissioner notes, however, that the evidence provided to the Commissioner in this respect is inconclusive. The document which the complainant suggests is minutes relating to the July meeting has the code T300720, which would appear more likely to refer to the minutes of the meeting of 30 July 2020, which have now been published on the council's website.

Conclusions

48. The council argues that no further information is held.
49. The Commissioner must make a decision based on the information which *is held* rather than information which *should* be held.
50. The council has confirmed to the Commissioner that the emails were deleted from councillors' personal IT equipment in October 2020, prior to the request being received. The Commissioner has seen no substantial evidence which contradicts the council's argument over this point.
51. Other emails were found when it realised that the council's solicitors held them. These were however disclosed to the complainant as part of the litigation process which she is involved in.
52. The Commissioner has seen evidence that the council does not hold the minutes of the intended meeting of 9 July 2020. It has also described carrying out appropriate searches, in the appropriate areas to determine this.
53. The Commissioner considers that the contradictory evidence submitted by the complainant does not demonstrate that the council's position is wrong.
54. On this basis, the Commissioner's decision is that, on a balance of probabilities, no further information is held falling within the scope of the request.

Section 10(1) - Time for Compliance

55. Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

56. The complainant made her request for information to the council 12 November 2020.

57. The further emails which were held by the council's solicitors were disclosed to her under the Civil Procedure Rules on 14 October 2021. The council also relies on this disclosure as its formal response under the Act.

58. This disclosure falls outside of the period of 20 working days required by section 10(1) the Act.

59. The Commissioner therefore considers that the council did not comply with the requirements of section 10(1) of the Act.

Right of appeal

60. 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

61. 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.

62. 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

Ian Walley
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