

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2022

Public Authority: Lewannick Parish Council
Address: clerk@lewannickpc.org.uk

Decision (including any steps ordered)

1. The complainant requested copies of emails from Lewannick Parish Council in Cornwall ("the Parish Council"). After initially failing to address clearly whether the information was held, the Parish Council stated that it did not hold the emails.
2. The Commissioner's decision is that the Parish Council's response did not comply with the requirements of section 1(1)(a) FOIA. However he is satisfied, on the balance of probabilities, that the information was not held by the Parish Council.
3. The Commissioner does not require the Parish Council to take any steps but would refer it to the Other Matters section of this notice.

Request and response

4. On 8 April 2021, the complainant wrote to the Parish Council and made the following request for information:

"PKF Littlejohn recently raised, with Lewannick Parish Council, several accounting issues, to which the Council responded. Please could you forward copies of all emails received and sent to/from PKF Littlejohn for the period from 18 January 2021 to 20 March 2021."
5. On 7 May 2021, the Parish Council responded, saying:

"PKF Littlejohn did not raise several accounting issues with Lewannick Parish Council. The only items relating to the accounts were a request

for the Cashbook for 2019/20 and the matter of the schedules of cheques to be approved at the meeting in March 2021 retrospectively. You have already had a (redacted) copy of the cashbook. The points raised by PKF Littlejohn have been addressed in the final reports now published on the Parish Council website and to which I now refer you [link provided]"

6. The complainant requested an internal review on 11 May 2021. The Parish Council sent her the outcome of its internal review on 18 June 2021. It commented on her conduct. With regard to the request, it stated:

"Your FOI request of 8th April has been answered, the information can be found in the External Audit Report published on the Parish Council website: www.lewannickpc.org.uk. It is deemed that any further response to this persistent request for copies of emails can serve no purpose and it is not in the public interest to expend further resource on this matter."

Scope of the case

7. The complainant contacted the Commissioner on 17 June 2021 to complain about the way her request for information had been handled.
8. The Commissioner wrote to the Parish Council on 12 April 2022, asking it to clarify whether:
 - it did not hold any emails falling within the description in the request; or
 - it considered that the emails had already been published; or
 - it held the emails but considered that they were exempt from disclosure; or
 - whether it considered that the request was vexatious.
9. The Parish Council advised the Commissioner that the emails were not held.
10. This notice covers whether the Parish Council complied with section 1(1)(a) of FOIA (the duty to confirm or deny whether information is held) and whether, on the balance of probabilities, the information is held by the Parish Council.

Reasons for decision

Section 1 FOIA: right of access to information held by public authorities

11. Section 1(1) 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.

Confirmation or denial

12. In this case, the Commissioner has determined that the Parish Council failed to comply with section 1(1)(a) FOIA since it did not address, in its response, whether the requested emails were held. This is therefore a breach of the Parish Council's statutory obligations.
13. The Parish Council's position – that the emails were not held – was subsequently clarified, during the scope of the investigation.
14. The Commissioner does not require any steps to be taken, in respect of the breach of section 1(1)(a). He has gone on to consider whether the Parish Council's subsequent assertion, that the emails are not held, is correct.

Was the information held?

15. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held, in cases which it has considered in the past. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether further information is held, and any other reasons offered by the public authority to explain why the information is not held.
16. He will also consider any reason why it is inherently likely or unlikely that information is held.

The complainant's view

17. The complainant (in June 2022) provided the Commissioner with a copy of an email sent to her directly from the accountants in this case, PKF Littlejohn.

18. The email (dated 6 May 2021) states that:

"[the Parish Council clerk] and I exchanged several emails during February and March [2021] as well as at least one phone conversation".

19. The complainant therefore considered that, at the date of her request on 8 April 2021, the Parish Council would have copies of relevant emails.

The Parish Council's position

20. The Parish Council has informed the Commissioner that the emails were not held at the date of the request. On being asked by the Commissioner how it had ascertained this, the Parish Council replied that it had made searches of "the Parish Council email address, both inbox and sent emails". It also stated:

"The searches were made following the ICO request in April 2022 and previously in 2021 when [the complainant] first asked under the FOIA.

All emails of this nature are deleted once dealt with but quarterly as a rule.

Discussions with [redacted] at PKF Littlejohn were mainly conducted by telephone, for which there is no recording."

The Commissioner's decision

21. The Commissioner notes that the Parish Council's initial response to the complainant on 7 May 2021 stated that "the only items relating to the accounts **were** a request for the Cashbook for 2019/20 and the matter of the schedules of cheques..." (emphasis added).

22. This comment may be said to imply, in the context of the request, that some written communication had been received. However there is no indication that the Parish Council had retained such communication(s).

23. The Commissioner is satisfied, on the balance of probabilities, that the requested emails were not held, at the date of the request.

Other matters

24. From the investigation, the Commissioner considers it likely that emails were exchanged between the Parish Council and PKF Littlejohn during the relevant period covered by the scope of the request, and therefore would have existed on the Parish Council's servers at some point.

25. During this investigation, a concern was raised about the date at which these emails may have been deleted. Had they been deleted after the date of the request, this would have raised the possibility of an offence having been committed by an individual under section 77 FOIA.
26. The Commissioner has carried out an investigation into a possible section 77 offence, but has found no evidence that relevant emails were deleted after being requested on 8 April 2021.
27. The Commissioner expects the Parish Council to comply with its requirements under FOIA when it receives future requests, and, in particular, to address clearly in its responses whether the requested information is held.

Right of appeal

28. 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

29. 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.
30. 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

Sophie Turner
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