

Freedom of Information Act 2000 (FOIA)
Decision notice

Date: **1 July 2022**

Public Authority: **Chalvington with Ripe Parish Council**
Address: chalvingtonwithripeclerk@gmail.com

Decision (including any steps ordered)

1. The complainant requested from Chalvington with Ripe Parish Council ('the council') a copy of a recording of the annual parish meeting ('the APM'). The council said that it does not hold the requested information.
2. The Commissioner's decision is that, on a balance of probabilities, 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 4 May 2021 the complainant requested the following information from the council:

“I shall be grateful to receive a copy of the recording of this evening’s APM.”
5. The council did not initially respond to the request due to the clerk leaving their role at the council. Following a number of chaser emails, the council responded on 7 June 2021. It said that the requested information is not held.
6. The complainant requested that the council carry out an internal review on 7 and 9 June 2021. The complainant gave his reasoning for believing that the meeting was recorded.
7. The council sent the outcome of the internal review on 11 June 2021. It upheld its position that the information is not held.

Scope of the case

8. The complainant contacted the Commissioner on 28 June 2021 to complain about the way his request for information had been handled.
9. He argued that the meeting was recorded, and as he requested a copy of the recording very shortly after the meeting had ended, then the information was held by the council at the time that he made his request for information.
10. The council also initially sought to rely on section 14 of the Act (vexatious), but subsequently withdrew this. It is not therefore considered further in this decision notice.
11. The scope of this case and of the following analysis is therefore whether the council is likely, on a balance of probabilities, to hold the requested information.

Reasons for decision

Section 1 – General right of access to information

12. 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.*

13. 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.

14. 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.

15. 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

16. The council meeting was held by Zoom. The complainant argues that the council clearly recorded the meeting as the recording icon was lit on the screen during the course of the meeting.

17. He argues that a number of other residents who also took part in the meeting agree that the recording icon was on during the meeting.

18. As he made his request as soon as the meeting was over, his argument is that the council clearly did hold the information at that time and that it should therefore have provided him with a copy.

The council's position

19. The council argues that it has conducted relevant searches and has not been able to locate the requested information.
20. It said that the APM is not a parish council meeting. It is a meeting of the residents. However, whilst it is the residents meeting, (not the parish council), the APM must be chaired by the incumbent council chair and administered by the council clerk. It said that the former clerk left her role at the council after the meeting had concluded, and confirmed that the new clerk has been unable to locate any copy of the recording.
21. The council clarified the searches which it had carried out in order to locate a copy of the recording. Its searches included asking the former clerk if a copy was held, and searches of the council laptop, back up discs, emails, Google drive, and the Zoom cloud system. Councillors were also asked if they hold a copy.
22. It clarified that only the former clerk and the chair had the relevant permissions to activate a recording of the meeting. The chair was asked but confirmed that he had not recorded the meeting. It confirmed that the current clerk, the former clerk and the council chair do not believe that a copy of the recording was held but was subsequently deleted. They stated that there is no record of any deletion as the information was never held.
23. Finally, the council confirmed that minutes of the meeting were drafted from the clerk's own notes, not any recording of the meeting held by it.

The Commissioner's conclusion

24. The Commissioner has considered the council's position, in conjunction with the request.
25. The Commissioner recognises that the complainant believes that the meeting was recorded, and that the evidence of this is that the recording icon was on during the meeting.
26. The council has confirmed to the Commissioner that after carrying out relevant searches, including asking those who would have been involved in recording the meeting, it has been unable to locate a copy of any recording of the relevant meeting.
27. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong.
28. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Right of appeal

29. 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

30. 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.
31. 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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