

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 23 May 2022

**Public Authority:** Shardlow & Great Wilne Parish Council

**Address:** clerk@shardlowandgreatwilneparishcouncil.org.uk

**Decision (including any steps ordered)**

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1. The complainant requested information about work to a hedge dividing his property from a public right of way by a contractor. Shardlow & Great Wilne Parish Council provided information it held but the complainant was not persuaded that it did not hold more, so far undisclosed, information.
2. The Commissioner's decision is that Shardlow & Great Wilne Parish Council correctly refused to provide information it did not hold and that the EIR exception 12(4)(a) meant that Shardlow & Great Wilne Parish Council did not need to take further action.
3. The Commissioner did not require the Shardlow & Great Wilne Parish Council to take any steps to comply with the legislation.

**Request and response**

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4. The complainant wrote to Shardlow & Great Wilne Parish Council (the Council) on three occasions and made a number of requests for information in the following terms (the Commissioner has numbered the requests for ease of reference):

On 1 April 2021

**FOI 01** "Written explanation(s) of the SGWPC reason(s) and the Formal documented evidence by the applicable authority of the Lawful

Reference: IC-108355-H1R0

Excuse if it exists, under which the SGWPC membership and/or its employee(s) and/or its' individual member(s):

- Wrote to me in the manner of the attached letter on or around May 1st 2020 causing me alarm and prolonged distress”

**FOI 02** “Please provide, within the time frame required by the legislation:

- A written description of how my Yew trees on my boundary with London Road and the vegetation at the foot of it but outside my clearly marked and undisputed boundary were brought to the attention of SGWPC membership, its' employee(s) or its' individual members
- Written explanation(s) of the reason(s) under which the SGWPC membership, in November 2020, reported to SDDC and/or DCC, that my Yew trees on my boundary with London Road and the vegetation at the foot of it as overgrown”

**FOI 03** “Please provide, within the time frame required by the legislation:

- Formal documented evidence of the Lawful Excuse under which the SGWPC membership and/or SGWPC employee(s) and/or [a named contractor (“the contractor”), name redacted], in February 2021, in my absence, without my consent and knowing that you would not be welcome here: Entered my property and deliberately and severely damaged my laurel trees negatively impacting their intended performance and value by indiscriminately pruning them well beyond and significantly inside my clearly marked and undisputed boundary.”

On 20 April 2021 **FOI 04**

- “Records of the decision making process that led SGWPC to engage [the contractor] to deliberately damage my trees. Please include emails, letters, text messages, What’s-App messages, records of telephone conversations, records of meetings and any other such records.
- A list of the names of the people that sanctioned authorising the engagement of [the contractor] to deliberately damage my trees”

On 22 April 2021 **FOI 05**:

1. "A copy of the order(s) placed with [the contractor] engaging them to deliberately damage my trees
  2. A written explanation of the benefit(s) to the local community that came as a result of and justify SGWPC spending public funds to engage [the contractor] to deliberately damage my trees."
5. The Council responded to the complainant on 29 April 2021 and rehearsed the history of the substantive issue which is not a matter for the Commissioner. The Council added that all the information requested was available on its website and that no further time or resource would be allocated to deal with the matter.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 24 May 2021 to complain about the way his request for information had been handled. He said that the contractor had damaged his hedges to allow the passage of vehicles in the track outside his property. He said that his FOI requests regarded documental evidence of their lawful excuse for this action.
7. The Commissioner's sole concern in this matter is with the complainant's information rights; he has no locus to consider the substantive matter of the hedge works and has not done so.
8. The Commissioner, with the acquiescence of the parties, decided the information rights matter under the EIRs. He reviewed the information rights of the complainant with the clerk to the Council and reviewed the information held by it. He considered the reasons why the Council said that some of the requested information is not held.

### **Reasons for decision**

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#### **Regulation 12(4)(a) – information not held**

9. EIR regulation 12(4)(a) says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
10. The complainant requested information about hedging works carried out by the contractor on behalf of the Council. He said he was concerned that the works were carried out without his knowledge or consent and is aggrieved by the actions of the contractor and the Council's response.
11. The complainant said that several years previously he had reached an accommodation about his hedge with the previous clerk to the Council

which he considered had been ignored. He said the Council's 'surprise attack' on his property had come 'out of the blue' without warning. He added that the Council's response to his concerns and complaints and relevant information requests had been 'belligerent' and 'unreasonable'. He had been unable to find much of the information he wanted on the Council's website and wanted the Council to direct him to it. He added that he did not believe that the previous clerk could have destroyed any of the Council's records.

12. In its submission to the Commissioner the Council explained that, as regards FOI 01, in June, July and August 2019, there had been ongoing discussion in Council meetings regarding overgrown boundaries and that the relevant minutes were available on its website. The Council had decided on a zero tolerance campaign, which had been highlighted on its website as a news item. Some residents had been contacted about overgrown boundaries outside of the curtilage of their properties. The minutes also referred to the relevant right of way now being inaccessible and needing to be restored
13. As regards FOI 02, the Council again referred to its relevant minutes and noted that the hedges at the complainant's property had been identified from its regular inspections for enforcement action.
14. For FOI 03 the Council said that the contractor did not enter the complainant's property. The pruning was done only to the curtilage of the boundary and nothing more. The work was urgent and had been made a priority.
15. For FOI 04 the Council said it had adopted a zero tolerance approach to overgrown boundaries and footpath/ pavement obstructions in August 2019. This had been detailed in its minutes and highlighted on its website as a news item; its instructions to the contractor had largely been verbal due to the urgency of the work required.
16. For FOI 05 the Council said that the works order had been made verbally with the contractor. In terms of benefit to the community, the Council said it had a statutory duty to ensure public areas and access routes were kept clear, including pavements, verges and footpaths. The Council added that much of the requested information was not held.
17. In discussions with the Commissioner, the Council referred, for FOI 01, to the minutes of its discussions in June 2019, minute reference 59/2019-20, July 2019 minute reference 88/2019-20 and August 2019 minute reference 108/2019-20). The Council said that its August 2019 decision to refer to a zero tolerance campaign had been highlighted on its website at the following link:  
<https://www.shardlowandgreatwilneparishcouncil.org.uk/news/2019/09/highways-act-1980>

18. Also for FOI 01 the Council added that its minute reference 35/2020-21 said that a number of residents had been written to in relation to overgrown boundaries outside of the curtilage of their properties; their names/ addresses had not been recorded in the minutes due to the General Data Protection Regulations.
19. For FOI 02 the Council told the Commissioner that its minute reference 178/2021-21 of November 2020 clearly stated that all outstanding issues had been reported to Derbyshire County Council (DCC) as the enforcing authority. The complainant's property had been noted on regular inspections and reported to DCC for enforcement action.
20. For FOI 03, the Council told the Commissioner that the contractor had not entered the complainant's property. The work had been urgent and had been instructed verbally.
21. For FOI 04 and FOI 05, the Council said that its adoption of a zero tolerance approach to overgrown boundaries and footpath/pavement obstructions in August 2019 was detailed at its minute reference 108/2019-20 and was highlighted on its website as a news item in September 2019. Instructions to the contractor were largely verbal due to the urgency of the work. The Council added that it had a statutory duty to ensure that public areas and access routes were kept clear.
22. The Council told the Commissioner that it had been concerned at the volume and tone of the complainant's communications with its clerk and added that she had limited time allocated to her role. It had therefore limited its communications with the complainant.
23. The clerk confirmed to the Commissioner that she had not been given any relevant records of previous correspondence by her predecessor.
24. Following his discussions with the Council and inspection of its relevant records the Commissioner found that:
  - For FOI 01, the relevant references to the minutes of the Council's meetings and decisions were as listed above; the Council held no undisclosed recorded information.
  - For FOI 02, the relevant minutes of its November 2020 meeting were readily accessible to the complainant or had been provided.
  - For FOI 03, FOI 04, FOI 05 the Commissioner found that the Council's instructions and communications with the contractor had been verbal so that no recorded information was held.
25. The Commissioner's remit is to establish, on the balance of probabilities, whether or not information falling within the scope of the request is held. However, based on the findings from his investigation, the Commissioner considered that the Council has made reasonable

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searches of its records and was satisfied that it held no undeclared information.

26. As a result of his findings, the Commissioner decided, on the balance of probabilities, that the Council was correct to say it did not hold the requested information.
27. The Commissioner therefore did not require the Council to take any steps.

## Right of appeal

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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: 0300 1234504  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Dr R Wernham**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**