

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 June 2023

**Public Authority:** Haxby Town Council  
**Address:** The Memorial Hall  
The Village  
Haxby  
YORK  
YO32 3HT

#### **Decision (including any steps ordered)**

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1. The complainant has requested information in the form of audio recordings, from Haxby Town Council (the Council). The Council provided some information but advised that the remaining information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the remaining requested information.
3. The Commissioner has also decided that the Council breached section 10 (Time for compliance) of FOIA, as it did not respond to the request within 20 working days.
4. The Commissioner does not require the Council to take any further steps.

#### **Request and response**

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5. On 16 November 2022, the complainant wrote to the Council and requested information in the following terms:

"Please supply a copy of our solicitor's advice to the Council regarding the Council becoming the sole trustee of Haxby United Charities

Please supply the audio record of the last two extraordinary meetings".

6. The Council responded on 17 February 2023. It provided some information within the scope of the request, but advised the remaining information was not held.
7. Following an internal review, the Council wrote to the complainant on 26 February 2023. It stated that it was upholding its original decision.

## **Scope of the case**

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8. The complainant contacted the Commissioner on the 6 February 2023 to complain about the way their request for information had been handled.
9. The complainant advised that they were satisfied with the response to the first part of the request, but wanted the Commissioner to investigate the second part of the request.
10. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, the Council holds "any audio records of the last two extraordinary meetings".

## **Reasons for decision**

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### **Section 1 FOIA - general right of access**

11. Section 1(1) of the FOIA states: "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."
12. In cases where there is a dispute as to whether or not information is held by a public authority, the Commissioner will use the civil standard of proof, i.e., the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.
13. The complainant explained that they believed the Council wouldn't hold the requested information on its office equipment, but rather on a staff member's mobile phone. The complainant explained that this member of staff took over the office and advised they would be recording meetings due to the lack of staff in the office.

14. The Council confirmed it had conducted both manual and electronic searches for the requested information however, as the request specifically asked for audio recording, it focused on its electronic records. This included checks of office equipment, which consisted of two laptop computers and monitors. The Council confirmed that, if it held any audio files, this is where they would be located. It further explained that electronic search terms used were 'minutes', 'September' and 'extraordinary'.
15. The Council confirmed that there are no mobile phones in the office and no other equipment in the office which could be used to store such audio files.
16. The Council advised that it had also raised the query with an individual, who the complainant believed had made a recording on their personal mobile phone. The Council confirmed that, for the October meeting only, the individual in question had made a recording on their mobile phone.
17. The Council explained to the Commissioner that this recording had been made for the purpose of accuracy when writing up meeting minutes and that the recording was deleted after the meeting minutes had been written up. The individual in question had confirmed that the requested minutes had been completed and the recording deleted soon after.
18. The Commissioner considers that the Council approached relevant staff and made appropriate searches for the requested information. He is therefore satisfied from the above information that, on the balance of probabilities, the requested information was not held by the Council at the time the request was made.

### **Procedural matters**

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19. The Council breached section 10 of FOIA, by not responding to this request within 20 working days.

## Right of appeal

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20. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**