

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2024

Public Authority: Badsworth Parish Council

Address: badsworthparishcouncil@outlook.com

Decision (including any steps ordered)

1. The complainant requested correspondence between the Badsworth Parish Council ("the council") and specified other parties. The council initially responded stating that it did not hold any information. During the course of the Commissioner's investigation, it located information and disclosed this to the complainant. The complainant, however, considers that further information is held by the council.
2. The Commissioner's decision is that, on the balance of probabilities, the council does not hold any further information falling within the scope of the request. However, the Commissioner has also decided that the council did not comply with the requirements of section 10 of FOIA as it did not provide the information it held to the complainant within 20 working days of receiving the request for information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 27 July 2023, the complainant wrote to the council and requested information in the following terms:

"I reference recent correspondence sent to me by the [name of individual redacted] regarding the Fitzwilliam Trust article in the June OBW newsletter. [The individual] states in that letter that [they] "has asked the Parish Council to bring pressure to bear in resolving this issue".

I would therefore be very pleased if Parish Council could provide me with a copy of all correspondence received by Badsworth Parish Council from [name of individual redacted] and/or any other Diocesan personnel, from 23rd June 2023 to 26th July 2023 inclusive and any subsequently generated correspondence that Parish Council may have either replied with or sent to other parties, so I can have a better understanding of how that pressure to bear would manifest itself."

5. The council responded on 31 July 2023. It said that no information is held by it, and clarified that any relevant correspondence was to the chair of the council in a private capacity as a member of the community.
6. Following an internal review, the council wrote to the complainant on 14 September 2023. It upheld its previous position.

Scope of the case

7. The complainant contacted the Commissioner on 1 September 2023 to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation the council located relevant information and disclosed this to the complainant. The complainant however argues that further information is held by the council.
9. The Commissioner therefore considers that the scope of his investigation is to determine whether the council holds any further information falling within the scope of the complainant's request for information for the purposes of section 1 of FOIA.

Section 1 – General right of access to information

10. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
11. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the Commissioner 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). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.

The complainant's position

13. The complainant argues that the council will hold further information falling within the scope of the request for information. In particular, the complainant argues that the council will hold further emails sent by the council/councillor responding to the correspondence which they had received.

The council's position

14. The council argues that it does not hold any further information falling within the scope of the complainant's request for information.
15. The council argues that the information which was held was sent to the relevant councillor in a private capacity as at the time the chair was the only councillor who had continued from the previously elected Badsworth Parish Council. Nevertheless, it had now disclosed this to the complainant. The Commissioner points out that correspondence received or sent on behalf of the council is subject to requests made under FOIA or other information access legislation. Given the nature of the correspondence and the circumstances in which it took place, the council was not correct to consider the information as private information.
16. The council clarified that if further information were held, it would be held as electronic records. It had received no paper correspondence between 23rd June and 26th July 2023.

17. It clarified that it has carried out full searches of the council email mailbox, including sent, deleted and inboxes, as well as any other relevant folders covering the period.
18. It clarified that councillors had also carried out full searches of their personal mailboxes, searching the same folders for the same relevant period. It identified to the Commissioner the councillors' email addresses which had been searched. These searches included a specific email address which the complainant had highlighted would be likely to hold further relevant information.
19. It confirmed that no relevant information has been deleted, and that there is no statutory requirement for it to retain such information if it were ever held.

The Commissioner's conclusion

20. The Commissioner has considered the arguments of both parties. The Commissioner recognises that the complainant believes that information will be held by the council. However, it has described how it has carried out adequate and appropriate searches of its systems, but has not located any further information falling within the scope of the request. It has concluded that no further information is held by it.
21. There is also no contradictory evidence available to the Commissioner which indicates that the council's position is wrong.
22. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held by the council.

Section 10 – time for compliance

23. Broadly, section 10 of FOIA requires that a public authority complies with the requirements of section 1 within 20 working days of receiving the request.
24. The council received the request for information on 27 July 2023. It did not, however, disclose copies of the information it held until 20 January 2024.
25. This falls outside of the 20-working day time for compliance. The Commissioner has therefore decided that the council did not comply with the requirements of section 10 of FOIA.

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ian Walley
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