



Tribunals Service
Information Tribunal

Information Tribunal

Appeal Number: EA/2006/0018
FS 50082264

Freedom of Information Act 2000 (FOIA)

Heard on the papers
20 November 2006

Decision Promulgated
29 December 2006

BEFORE

Mr Humphrey Forrest
Deputy Chairman

Mr David Wilkinson Lay Member

Mr Andrew Whetnall Lay Member

Between

Mr Richard Reed

Appellant

And

The Information Commissioner

Respondent

And

Astley Abbotts Parish Council

Additional Party

Representation:

The Hearing was held in Chambers. Written representations were received from the three parties.

Decision

The Tribunal has decided to substitute the following Decision Notice in place of the Decision Notice dated 3rd March 2006. No action is required following the substituted Decision Notice.

FREEDOM OF INFORMATION ACT 2000 (SECTION 50 and 58(1))

SUBSTITUTED DECISION NOTICE

Dated 14th December 2006

Name of Public Authority: Astley Abbots Parish Council

**Address of Public Authority: Cherry Oaks Farm, Lower Monkhall,
Monkhoppton, Bridgnorth, Shropshire WV16 6XF**

Name of Complainant: Mr Richard Reed

The Decision Notice of the Information Commissioner dated 3rd March 2006 shall stand with the following changes:

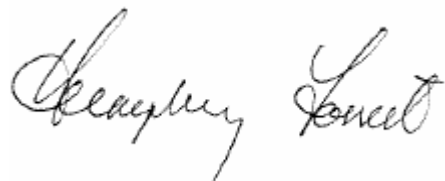
In 2, under the heading "The Commissioners Decision", delete the first two paragraphs and substitute the following:

The Council, in their response of 5 December 2005, stated that they did not hold recorded information in response to questions 2-11 of the above information request. The complainant disputes this. It appears that the meeting about which information was requested, was a Parish Meeting called by the Council; and it appears that a note of the meeting was made at the time by the Clerk to the Parish, and may subsequently have been held as a record by the Parish Council. However, that note was not retained; and, in any event, it appears more likely than not that the contents of the note of the meeting would not have contained the information required to answer the questions posed by the complainant. The Council do not hold any other recorded information which contains the answers to the questions posed. Therefore, in replying to the effect that they did not hold recorded information about the meeting, the Parish Council are not in breach of their obligations under Section 1(1) of the Freedom of Information Act.

In all other respects, the Decision Notice shall stand unaltered.

Dated this 14th day of December 2006

Signed



H Forrest
Deputy Chairman
Information Tribunal

Reasons for Decision

Factual Background to the Appeal

1. Mr Reed and his wife own a pub, The Pheasant Inn, in Linley Brook, Bridgnorth, Shropshire. In September 2004 they applied for planning permission to change the Pheasant Inn to residential use. At a Parish Council Meeting on the 14th September 2004, the Astley Abbots Parish Council resolved to object to this planning application as they considered there was still a need for the village to retain its pub.
2. On 23rd September 2004 a public meeting was held in the Village Hall to discuss the planning application. Mr Reed was upset at what happened at the meeting, and subsequently wrote to the Parish Council to protest. In the course of subsequent correspondence, the Parish Council denied having organised the meeting. Mr Reed requested further information about the meeting, and about a letter dated September 20th 2004 convening the meeting. Mr Reed posed a number of questions to the Parish Council in a letter of December 13th 2004. He was dissatisfied with their answer and, on 6th May 2005 wrote again, posing a similar set of questions, this time formally referring to the Freedom of Information Act, which had become law in the meantime.

The Request for Information

3. The questions, addressed to Mrs J Madeley, the Clerk to the Ashley Abbots Parish Council, were:
 1. *Does the Parish Council have its own Code of Conduct or does the Model Code approved by Parliament apply? In the case of the former, I request a copy. I have a copy of the Model Code.*
 2. *Which person or authority called the September 23rd 2004 meeting? The circular letter received by some parishioners, dated September 20th 2004, states "The Parish Council have organised a Parish Meeting". However you, in your letter to me dated December 17th 2004, state "The Parish Council did not arrange the meeting".*
 3. *Was the meeting referred to intended to be a public meeting open to any interested person or a Parish meeting restricted to Parish residents?*
 4. *If it was a public meeting:*
 - (a) *why were you present in your Parish capacity and advising on Parish procedures and advising on "how to object" (to a planning application)*
 - (b) *why were apologies from Parish Councillors read out?*
 - (c) *why did the September 20th circular say it was a Parish meeting?*
 - (d) *what procedures was used to determine by whom the meeting was chaired?*
 5. *If it was a Parish meeting:*

- (a) *why were any non-Parish residents present?*
 - (b) *why were those people allowed to be present throughout, to speak and to seek to influence proceedings?*
 - (c) *Why was the meeting needed in the light of the decision taken by the Parish Council nine days earlier at one of the regular meetings?*
6. *Were all Parish Councillors consulted about having a meeting and, if so, did they think it was to be Parish or public?*
 7. *How many parishioners were sent letters advising them of the meeting?*
 8. *From what source did funds come to pay the cost of stationery, first class postage and other costs associated with September 20th circular letter?*
 9. *Was the Parish Council involved in the preparation and delivery of paperwork to do with the September 23rd meeting which was received at the homes on non parish residents?*
 10. *From what source did funds come to pay the costs incurred in holding the village hall meeting on September 23rd 2004 and the meeting held on January 6th 2005 which was held by Mr Bacon and at which the Parish Council Chairman acted as Secretary?*
 11. *Which Parish Councillors consider themselves members of Mr Bacon's group which he claimed to have formed?*
4. In reply, Mrs Madeley sent a letter on 13th May 2005, answering the first question: "Further to your letter of 6th May 2005, I can confirm that Parish Council uses the Parish Councils (Model Code of Conduct) Order 2001 as recommended by the Standards Board of England." She went on to refer to the Parish Councils Freedom of Information Act 2000 publication scheme. She concluded by saying: "The Parish Council has no further comment to add to previous letters". In five earlier letters the Parish Council had declined to address the substance of Mr Reed's queries, other than in the parish clerk's letter of 17 December 2004 when she answered a question about her presence and role at the meeting on 23 September. Otherwise the Parish Council adopted a consistent stance of "no comment".

The Complaint to the Information Commissioner

5. On 5th July 2005 Mr Reed wrote to the Information Commissioner. He complained he had not had a response to his questions from the Parish Council. A Complaints Resolution Officer from the Information Commissioner's Office investigated. He pointed out to Mrs Madeley that the Parish Council, as a public authority, was obliged to confirm or deny whether information requested was held within 20 working days of receipt of the request. Prompted by this, Mrs Madeley wrote on 5th December 2005 to Mr Reed stating that she as Clerk had checked all records and could provide the following answers. Her answer to question 1 about the Code of Conduct was

“Yes the Parish Council has approved and uses the standard Code of Conduct used by the majority of Parish Councils.” In answer to questions 2 – 11, she stated: “The Parish Council has no written record regarding this meeting”. That wording varied slightly in relation to some of the questions, but the substance of the answer remained the same.

6. Mr Reed did not accept those answers. He wrote to the Commissioner making it clear that he did not believe that the Parish Council had not organised the meeting of 23rd September 2004, or that they did not have any records of the meeting. He supplied various pieces of evidence in support of his beliefs. Mrs Madeley reiterated the Parish Council’s position in response.

The Decision Notice

7. In his Decision Notice, the Information Commissioner found that the Council had responded to question 1 appropriately and in time, but had given an inappropriate response to questions 2 – 11. The response should have stated that no information was held in connection with those questions. Such a reply was provided by the letter dated 5th December 2005, but this was outside the 20 working days stipulated by the Act. The Commissioner was therefore satisfied that the Council had failed to comply with the requirements of Section 10(1) of the Freedom of Information Act, which states:

“..... a public authority must comply with Section 1(1) promptly and in any event not later than 20th working day following the date of receipt”.

8. He then considered the duty in section 1(1) of the Act :
“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”.
9. In relation to Mr Reed’s complaint that the Parish Council had, in their replies of 5th December 2005, breached that duty by stating that they did not hold recorded information in relation to the questions, the Information Commissioner found:

“2 the Council has stated that the meeting, about which information was requested, was not organised by the Council and consequently they do not hold information relating to this meeting. There is no evidence available to the Commissioner that suggests that it is likely that information has been withheld from response to the information request. The Commissioner is satisfied that the Council have complied with the requirement of Part 1 of the Act in that they have dealt with this information request in according with Section 1(1).”

10. The Commissioner concluded by finding that no action was required by the Council despite their failure to comply with the requirements of Section 10 of the Act, since they had now complied with the request in full.

The Appeal to the Tribunal

11. It is against that Decision Notice that Mr Reed appeals to the Tribunal under Section 57 of the Freedom of Information Act 2000. Under Section 58(2):

on such an appeal, the tribunal may review any finding of fact on which the notice in question was based.

12. We have reviewed the findings of fact made by the Commissioner in relation to the disputed meeting of September 23rd 2004. Much of the parties' representations for this appeal are concerned with the hotly disputed question of whether the Parish Council called the meeting of September 23rd. However, in considering the evidence relating to that question, we remind ourselves that resolving that question does not in itself resolve the appeal. Our focus is on whether the Parish Council held information (which under Section 84 of the Act means "information recorded in any form") which would answer the questions posed. It is only if the Council holds that information in recorded form that they are required, under section 1(2) of the Act, to communicate that information to Mr Reed. It may be that members or officers of the Parish Council know the answers to the questions posed by Mr Reed. We do not know, and their unrecorded knowledge is irrelevant to the appeal. Under the Freedom of Information Act, they are not obliged to disclose information to Mr Reed, unless the information is in recorded form, and held by the Parish Council.

Findings of Fact

13. Bearing that in mind, we turn to consider the evidence in relation to the meeting of September 23rd. The evidence is in part documentary, and in part contained in written statements from the parties directly involved, Mr Reed and Mrs Madeley. We did not consider it proportional, given the relationship of the disputed evidence to the appeal, as explained in the previous paragraph, to require the parties to attend a hearing to give oral evidence and to be cross examined. None of the parties had requested an oral hearing. Our findings are made for the purposes of this appeal only, and are based on the limited, written evidence and information before us. Having considered the evidence in relation to the meeting, we make the following findings of fact:

- 13.1 On 20th September 2004 a letter was written to a number of Parishioners, including Mr and Mrs Reed. The letter is written from the home address of Mr Chris Yates, the Chairman of the Parish Council.

Re: Parish Council

Dear parishioner

Re: The Pheasant at Linley: application to de-licence

Due to the volume of calls with reference to the above application, the Parish Council have organised a Parish Meeting on Thursday 23rd September 2004 at 7.30 p.m. at Astley Abbots Village Hall. Please arrive earlier if possible.

This meeting is to allow Parishioners to give their opinion and points of view to the Parish Council.

Regards

pp NJ Milner [a handwritten signature]

Chris Yates

- 13.2 The meeting was chaired by Mr Yates, the Chairman of the Parish Council. Mrs Madeley, the Clerk to the Parish Council, sat with him at the front of the meeting and took notes at the meeting. During the meeting, she advised him on procedural questions. Parish Council views and Parish Councillors were referred to during the meeting. However, in response to a question from Mr Reed, Mr Yates stated that “the meeting was a public one and not a Parish one” (see Mr Reed’s letter of December 13th 2004).
- 13.3 Mrs Madeley states that only she, as Clerk, can call Parish meetings on behalf of the Parish Council; that she did not do so on this occasion; and that if she had, she would have done so on Parish Council headed note paper, not using the Council Chairman’s home address. She states that neither she nor Mr Yates know who the NJ Milner is who signed the letter on Mr Yates’ behalf.
- 13.4 The minutes of the Parish Council meetings for the following months contain a number of references to the planning application for the Pheasant Inn, but contain no references to the meeting of September 23rd. Nor do they contain any reference to the fact that a letter had been circulated in the village purporting to be on Parish Council business and on behalf of the Parish Council Chairman, sent by an unknown and unauthorised person.
- 13.5 The Parish Council accounts for the year 2004-2005 show a number of entries relating to the hire of the village hall on occasion, but none of these relate to the 23rd September 2004 or 6 January 2005. On occasion, they show entries for postage. None of these relate to correspondence of 20th September 2004.
- 13.6 In a letter of 28th September 2004 to the planning authority, Bridgnorth District Council, Mrs Madeley, on behalf of the Parish Council, objected to the planning application and stated: “A meeting of residents was held last week. Whilst no vote was taken the overall feeling of the meeting was that the pub should not be permitted to become a house.”
- 13.7 Astley Abbots Parish is a small parish consisting of several small hamlets. There are some 250 residents on the electoral role. Mrs Madeley is a qualified Parish Council Clerk; she is contracted to work for the Parish Council for 3 and a half hours a week. She keeps

the Minutes of the Parish Council meetings and holds the records of the Parish Council. If the Parish Council were to organise a Parish meeting it would do so in accordance with the Local Government Act 1972 Schedule 12 (Astley Abbots Parish Council response to the appeal, point 32.)

13.8 Part III of Schedule 12 of the Local Government Act 1972 contains provisions for the conduct of Parish meetings. Paragraph 15 provides:

- (1) A Parish meeting may be convened by –
 - (a) A chairman of the Parish Council, or

Consideration

14. It seems to us that those findings of fact point clearly to the conclusion that the meeting of September 23rd 2004 was a Parish meeting called by the Parish Council. The Chairman clearly had the power to call such a Parish meeting, and the letter of September 20th states in terms that he is doing so. If the Chairman's statement to Mrs Madeley, that he has no knowledge of the letter or of NJ Milner, is true we find it extraordinary that neither the Chairman nor the Parish Council itself appears to have taken any steps subsequently to ascertain the identity of NJ Milner; or to express any concern that someone is apparently circulating false letters in the name of the Parish Council convening meetings improperly; or to prevent the repetition of such a troubling state of affairs. We note that there is no reference to any concern or enquiry in the subsequent Council minutes. Whether the meeting in question has the status of a Parish meeting seems to us essentially an objective question; its status does not depend on the subjective intention of the parties. If the officers of the Parish Council attend a meeting called in the name of the Parish Council, in response to a letter signed, purportedly, on behalf of the Chair of the Parish Council, and conduct themselves at the meeting as if it were a meeting called by the Parish Council, they cannot subsequently disown the meeting. If their subsequent denials that they organised or convened the meeting are not believed, they have only themselves to blame for not investigating and disowning the letter of 20th September, which they now claim to be a forgery.

15. It follows from that finding that when Mrs Madeley took notes at the meeting, she was there in her capacity as Parish Clerk, and the notes formed part of the Parish Councils records. However, Mrs Madeley did not retain the notes: they have since been destroyed; and the Parish Council therefore no longer holds them.

16. Mrs Madeley, in her last submission for this appeal, states that "as far as I recollect the notes would not have contained the answers to Mr Reed's questions". That seems to the Tribunal, on the balance of probability, more likely than not to be true. Looking at the questions, 2-11, they are about the form and structure of the meeting, about who authorised and called it, rather than about what was said at it. There is no reason to suppose that any notes taken at the meeting would record the answers to the questions posed.

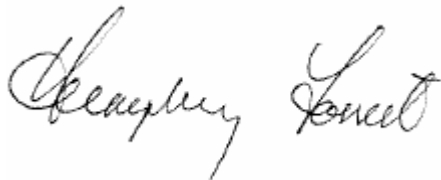
Conclusion of the Appeal

17. It seems therefore that, despite our findings on the status of the meeting, the Parish Council were still correct to reply to Mr Reed's request for information by stating that they held no recorded information. We remind ourselves that we are an Information Tribunal; we are not here to investigate or rule on matters of local government administration.
18. What follows from our review of the findings of fact on which the Information Commissioner's Decision Notice was based? We find that the facts, as set out in Point 2 of the Decision Notice quoted above, are incorrect. The Commissioner appears wrongly to have accepted the Council's statement: "That the meeting, about which information was requested, was not organised by the Council and consequently they do not hold information relating to this meeting." It seems to us, having the benefit of fuller information, that the Commissioner proceeded on an incorrect factual basis and that we should substitute for the offending passage different findings which could and should have been served by the Commissioner. We set out above in the Substitute Decision Notice a substitute paragraph in place of the existing paragraph 2.
19. In all other respects, the Decision Notice can remain as it stands. In particular, we find that no remedial action is required by the Parish Council in relation to our substituted findings, limited as they are to our decision under the Freedom of Information Act, rather than any wider question of Parish Council governance.

Costs

20. Lastly, the Parish Council have indicated that they wish to make a claim for the costs they have incurred in responding to this appeal. It is clear from the views we have expressed in paragraph 14 above that we see no basis under our Rules for making such an award in their favour. The costs of the appeal have largely been incurred by the Council's stubborn refusal to accept any responsibility for the meeting of 23 September 2004.

Signed

A handwritten signature in cursive script, appearing to read 'Humphrey Forrest', written in black ink.

Humphrey Forrest
Deputy Chairman