

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 27 July 2011**

**Public Authority:** East Tuddenham Parish Council  
**Address:** Brackenwood Cottage  
Common Road  
East Tuddenham  
NR20 3NF

### **Summary**

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The complainant requested, under the Freedom of Information Act 2000 ('the Act') photocopies of around thirty years' of East Tuddenham Parish Council ('the Council') minutes.

The Council said that it was unable to provide copies of the minutes because it was unable to photocopy them. It asked the complainant whether he was prepared to inspect them instead. The complainant was not.

The Commissioner has come to a mixed verdict in this case. For the minutes that were contained in the minute books, he has found that it was not reasonably practicable to provide photocopies of them and has found in favour of the Council.

However, there were some loose minutes and for them he has found that they should have been provided to the complainant in copy form. He finds a breach of section 1(1)(b) and 10(1) in not providing this information in twenty working days. The Commissioner also noted breaches of section 11(1) and 11(3). The Commissioner requires no remedial steps to be taken.

### **The Commissioner's Role**

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## Background

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2. There was correspondence that led to the complainant's solicitors submitting an information request on the complainant's behalf.
3. On 30 March 2010 the complainant had a meeting with members of the Council to view the minutes. There are contradictory accounts about what happened then.

## The Request

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4. On 14 April 2010 the solicitors of the complainant made the following request for information on his behalf:

*'Our client asked for access to minutes of meetings from 1980 to date [14 April 2010] which were produced but our client was allowed insufficient time to peruse the records properly. He requested copies and offered the use of his own copying machine, but this was refused...*

*It is apparent that our client is entitled to the information requested and the Parish Council has not complied with their obligations to provide the same under the Act. We therefore repeat the request on behalf of Mr Taylor that he be provided with copy minutes of all Parish Council meetings from January 1980 to date. It seems to us that as you attended the meeting of 30<sup>th</sup> March armed with those records, they are readily available and simply require copying.'*

5. On 29 April 2010 the Council wrote to the complainant directly. It explained that it was prepared to arrange another meeting to view the minute books. It stated two dates from which the complainant could make a choice. It also asked for a contribution to be made to a charity to compensate it for its volunteers' time. The complainant denies receiving this response.
6. On 26 May 2010 the complainant's solicitors wrote to the Council to explain that they understood a member of the Council had visited the complainant, to ask if he wanted to attend on the Council to view the minutes on the dates specified in the response dated 29 April 2010. It explained that the complainant denies receiving the response dated 29 April 2010 and that it wanted the copies of the minutes to be provided immediately. It explained 'in fact, given our client has now requested copies of all minutes of parish council minutes from January 1980 to

date, we see no need for any further inspection of document or meeting'.

7. On 28 May 2010 the Council replied. It explained that the reason for the meeting was that it was unable to copy the minutes itself with the equipment it had. It said that the complainant had told it that he could bring his own equipment, and a meeting was necessary for him to do that. It offered two different dates for a meeting to take place.
8. On 4 June 2010 the complainant's solicitors wrote to the Council to again request the copies. It reiterated *'our client does not therefore wish to attend any further meeting for inspection purposes, merely requires copies of the documents/information requested to be provided'*. They explained that the District Council should be able to assist it in copying the minutes.
9. On 14 June 2010 the complainant's solicitors issued a reminder. On 22 June 2010 the Council had a meeting. On 7 July 2010 the Council wrote to the complainant offering another chance for a meeting to inspect the minute book. The Council also explained that neither the District Council nor the County Council could help it by making copies from the minute books.
10. On 9 July 2010 the complainant's solicitors wrote to say that the meeting may not be long enough and that it would seek instructions. It explained that it would not attend a meeting where a named member of the Council was present. On 15 July 2010 the Council wrote to the complainant's solicitor to explain that the meeting was prepared, but the complainant failed to attend it and that they considered the matter at an end. It explained that it had also been advised to place the historic minutes in the Norfolk Records Office and it had now done so. It had kept hold of the current minutes.
11. On 3 August 2010 the complainant's solicitors replied. It explained that the complainant had not attended the meeting because the named member of the Council was present. It noted that the historic minutes had been passed to the Norfolk Records Office, but that the current minutes were still in its possession and relevant to the request. It asked for their dates. On 5 August 2010, it provided those dates.

## The Investigation

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### Scope of the case

12. On 24 August 2010 the complainant's solicitor contacted the Commissioner to complain about the way his request for information had

been handled. The complainant's solicitor specifically asked the Commissioner to consider the following points:

- the complainant's initial offer to copy the minute was declined;
  - the Commissioner should consider the Council's compliance with the request dated 14 April 2010; and
  - the Council have failed to provide the said minutes.
13. On 13 April 2011 the Commissioner confirmed that the scope of the case was limited to consideration of the following three points:
- (1) The lack of the provision of the minutes that were held – so those dated between 1980 and 14 April 2010;
  - (2) The failure to provide the information in the timescales allowed by the Act – so twenty working days; and
  - (3) The failure to provide the information in the format requested – not providing photocopies and insisting that the complainant inspects the information (then offering insufficient time) and whether this complies with section 11(1) of the Act (means by which the communication is made).
14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular the Commissioner cannot consider the complainant's dispute with a member of the Council.

## **Chronology**

15. On 25 October 2010 the Commissioner wrote to the complainant's solicitors to ask for the documents he required for the complaint to be eligible. On 29 October 2010 the information was provided.
16. On 30 March 2011 the Commissioner telephoned the Parish Council to understand what its current position was. He also wrote to the complainant's solicitor to establish the scope of his investigation.
17. On 8 April 2011 the complainant's solicitor responded explaining what needed to be considered. The Commissioner replied on 13 April 2011 to confirm the revised scope.
18. On 19 April 2011 the Commissioner contacted the Norfolk Records Office to ensure that the minute book was there and was told that the information was held by the Records Office on behalf of the Parish Council. Further correspondence ensued.

19. On 21 April 2011 the Commissioner wrote an opening set of enquiries to the Parish Council. He received a response on 12 May 2011. On 23 May 2011 and 24 May 2011 he made further enquiries.
20. These led to the Council confirming that it had placed the current minutes on its website on 28 June 2011 and providing a copy of the letter that told the complainant that this had been done.
21. On 28 June 2011 the Commissioner also wrote to the complainant's solicitor to explain, in his preliminary view, that the complainant had now received what he was entitled. He asked whether the complainant wanted this case to proceed to Decision Notice.
22. On 12 July 2011 he received a letter saying that a Decision Notice was required and the Commissioner indicated on the following day that one would now be drafted.

## Analysis

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### Substantive Procedural Matters

#### *How is the information held?*

23. The Commissioner believes that it is useful to outline how the recorded information that is relevant to this request was held firstly at the date of the request, secondly at the date of the complaint and finally at the date of this Notice.
24. At the date of the request:
  - the minutes dated 1980 to 20 November 2007. These are held in leather minutes books which the Council held. More detail about this book will be included in the analysis section below. These will be known as the **category one** minutes for the rest of this Decision Notice.
  - the minutes dated 21 November 2007 to 12 April 2010. These were held in a loose leaf folder by the Parish Council. These will be known as the **category two** minutes for the rest of this Decision Notice.
25. By the date of the complaint, the **category one** minutes were sent to the Norfolk Records Office, which is a joint service for the County and District Councils of Norfolk. The Records Office has confirmed that it holds the information on the Parish Council's behalf. It has also confirmed to the Commissioner that it will allow the complainant to

inspect the minutes without charge. The complainant's solicitor has confirmed that he has now inspected them.

26. By the date of this Notice, copies of the **category two** minutes had been placed online so that the public can read them at their leisure. The Council has told the complainant where he can find these minutes, and the Commissioner has confirmed they are now online.
27. The Commissioner will consider the issues that each category of minutes raises in turn.

*Category one minutes – should copies have been provided at the date of the request?*

28. The complainant specifically requested that the information should be provided through photocopies, and has complained that the Council failed to make copies of the minutes available. Instead the Council insisted on inspection and, in the complainant's view, this was not sufficient.
29. It is useful to explain the statutory framework before considering the substantive issue.
30. Section 1(1)(b) requires a public authority to communicate information that has been requested unless there is a valid exemption or exclusion that applies to it.
31. Section 11 discusses what happens when the means by which the information should be communicated is specified by the request. It states:

*"Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely –*

*(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,*

*(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and*

*(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,*

*the public authority shall so far as is reasonably practicable give effect to that preference."*

32. It follows that the Commissioner must consider whether, in all the circumstances of this case, it was reasonably practicable for the Council to provide photocopies of the category one minutes.
33. The Commissioner asked the Parish Council why it considered that it was not reasonably practicable to provide the complainant with the category one minutes in photocopied form.
34. The Commissioner also asked the Norfolk Records Office about how to copy the category one minutes to ensure that its expertise in handling records was taken into account.
35. The Council argued that it was not reasonably practicable to provide copies of the category one minutes for the following reasons:
  1. the minute books are of an irregular size and weight [c. 11 inches by 13 inches in size and 2 inches thick]. They do not lie flat when opened. Standard scanners would not be able to photocopy all the information contained within the minute books;
  2. the minutes books are both historical and legal records and must be kept. They are vulnerable to damage if not treated without the utmost care and the content of the books may be damaged through use of a standard photocopier;
  3. the minute books contain mostly handwritten entries. This both increases their vulnerability and the complexity of copying the books intelligibly;
  4. the Parish Council has limited resources and does not have the facilities itself to enable it to photocopy the minute book;
  5. the Parish Council has explained its limited resources to the complainant and offered him the opportunity to use his own technology to overcome this problem. This offer was not accepted;
  6. the Parish Council has also discussed the situation with the District Council. The District Council have also confirmed to both the Parish Council and the Commissioner that the minute book cannot be photocopied without risking its integrity;
  7. the Norfolk Records Office has agreed to allow the complainant to inspect the minutes for free, providing it is open. Copies can be taken using special equipment on a costs recovery basis. Alternatively, it has agreed that the complainant can take digital photographs of the minutes, and;

8. the Norfolk Records Office is not far away from East Tuddenham (c. 15 miles).
36. The Commissioner considers that, in the circumstances of this case, it was not reasonably practicable for the Council to provide photocopies of the category one information for the reasons outlined above.
37. To explain his rationale, the Commissioner acknowledges that the key principle behind the Act is that accountability and transparency must be facilitated wherever this is possible. However, in his view, it is also important that vulnerable documents receive appropriate protection and providing the public has a right to view the said documents, the public interest in transparency and accountability has been fulfilled.
38. The Commissioner is satisfied that this is not a case where the Council made it impossible for the complainant to view the minutes. Instead, the Council offered the complainant a number of opportunities to view the minutes and the Commissioner was not satisfied that those opportunities were rendered unreasonable by a member of the Parish Council being present.
39. It follows that the Commissioner believes that the Council complied with its obligations under section 1(1)(b) by making the category one minutes available for inspection. Section 11(1) did not require the Council to provide copies because it was not a reasonably practicable option.
40. In any event, the circumstances are now that the complainant can now view the category one minutes at his discretion at a location supervised by a third party. In the Commissioner's view this is the correct balance. The complainant's solicitor has confirmed that the complainant has now inspected the minutes.
41. The Commissioner notes however, that section 11(3) explains that a public authority must explain to the applicant the reasons for its determination that it was not reasonably practicable to provide the information in the requested format.
42. The Council failed to provide a proper explanation to the complainant or his solicitor why it felt it was not possible to provide copies of any of the minutes. This was a breach of section 11(3).
43. The Commissioner does not require remedial steps to be taken in relation to this breach because his Decision Notice provides the explanation.



### ***Category two minutes***

44. The Council were going to make the category two minutes available for inspection alongside the category one minutes.
45. However, as noted above, the inspection never occurred and thus the Commissioner must consider whether it was reasonably practicable to provide copies of these minutes.
46. The Commissioner considers that the minutes were held in the usual format and could be photocopied by the Council without difficulty.
47. The Commissioner considers that it was reasonably practicable to provide the category two minutes, and that they should have been provided by the Council before the Commissioner's intervention.
48. The Commissioner therefore finds that the Council breached section 11(1) because it did not provide the information in the format requested.
49. It follows that the Council also breached section 1(1)(b) in not communicating this information to the complainant within the time required for compliance.
50. Section 10(1) requires that a public authority complies with section 1(1)(b) in twenty working days. The Council did not do so and therefore also breached section 10(1).
51. However, the Commissioner does not require any remedial steps because the information was provided to the public during the course of his investigation. It was placed on the Parish Council's website and the complainant's solicitor has confirmed that the complainant can access this information.

### **The Decision**

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52. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - It was correct that it could only offer the category one minutes for inspection and could not provide copies.
53. However, the Commissioner has also decided that the Council breached the Act a number of times, because:

- it should have provided the category two minutes and as it did not do so, it breached section 1(1)(b);
- it failed to provide the category two minutes in twenty working days and breached section 10(1);
- it failed to provide the category two minutes in the format requested was also a breach of section 11(1); and
- it failed to provide an explanation about why it felt it was not reasonably practicable to provide copies of the minutes and breached section 11(3).

### **Steps Required**

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54. The Commissioner requires no steps to be taken. This is because the category two minutes were made available to the public during the course of the investigation.

## Right of Appeal

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55. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

56. 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.
57. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 27<sup>th</sup> day of July 2011**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### Section 1 - General Right of Access

Section 1 of the Act provides that:

- (1) 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.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."
- (3) Where a public authority –
  - (a) reasonably requires further information in order to identify and locate the information requested, and
  - (b) has informed the applicant of that requirement,the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."
- (4) The information –
  - (a) in respect of which the applicant is to be informed under subsection (1)(a), or
  - (b) which is to be communicated under subsection (1)(b),is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."
- (5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b)."
- (6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny"."

## Section 10 - Time for Compliance

Section 10 of the Act provides that:

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

(2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt."

(3) If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given."

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations."

(5) Regulations under subsection (4) may –

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner."

(6) In this section –

"the date of receipt" means –

(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

## **Section 11**

Section 11 of the Act provides that:

(1) “Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference.”

(3) “Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination”