

Freedom of Information Act 2000

Decision notice

Date: 3 February 2014

Public Authority: Shebbear Parish Council
Address: Ruxhill Cottage
Shebbear
EX21 5QR

Decision (including any steps ordered)

1. The complainant requested correspondence between a named individual and Shebbear Parish Council (the Council). He also requested a copy of the recording of a Council meeting.
2. The Commissioner's decision is that on the balance of probabilities the Council has provided the complainant with all of the requested information that it held at the time of the request. No further steps are required.

Request and response

3. On 19 October 2012, the complainant wrote to the Council and requested information in the following terms:
"Having spoken to members of the public that were at last weeks parish council meeting it appears there was a letter sent in from [Individual A] in connection with the on going matter. I would appreciate if you could please give me a copy of this letter and any other correspondence that you have received from [Individual A] since this matter started in 2007, also your chairman stated that on the night when [Individual A] offered his resignation this meeting was taped and so I would also appreciate a full copy of this tape."
4. The Council responded on 20 October 2012. It stated that the recording of the meeting had been destroyed. It was explained that the Clerk only used the recording to produce draft minutes and as this had been done the recording had been destroyed. Regarding the letter presented in the

meeting, it stated that it was waiting for Individual A's permission to disclose it, which it received a few days later and so provided the letter to the complainant. No mention was made of other communication between Individual A and the Council.

5. It is not apparent from the evidence provided that this request was handled under the Act, and it is notable that there has not been an formal internal review of the request. Nevertheless, the Council has exchanged correspondence with the complainant about this request and has taken the opportunity to confirm its response to the complainant. The Commissioner considers that the complainant has exhausted his options with the Council and is entitled to appeal to the Commissioner under section 50 of the Freedom of Information Act (the Act).

Scope of the case

6. The Commissioner accepted the complainant's appeal on 6 June 2013 to investigate the handling of the request of 19 October 2012.
7. The Commissioner considers the scope of the case to be whether the Council held any further information relevant to the complainant's request of 19 October 2012.

Reasons for decision

8. Under section 1 of the Act any person making a request to a public authority is entitled to be given any relevant information, providing the information is not exempt under the terms of the Act.
9. In scenarios such as this case where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, in accordance with a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities.

Recording of Council meeting

10. The Commissioner is satisfied that the recording of the meeting was destroyed prior to the request being received by the Council. The Council has confirmed this and has explained that the only purpose for recording meetings is to enable the Clerk to prepare draft minutes. Once minutes have been drafted, the Council's standard approach is to destroy recordings. In the absence of evidence indicating the requested recording was retained by the council, the Commissioner's decision is that on the balance of probabilities the information is not held and no further action is required on behalf of the Council.

"Other correspondence" between Individual A and the Council.

11. As the Council has provided the complainant with a copy of the letter specifically mentioned in the request, the Commissioner's investigation has focussed on whether it holds any other correspondence between Individual A the Council.

12. The complainant provided the Commissioner with a number of documents to illustrate that the Council would hold other correspondence relevant to the request. One of these documents was a letter from Individual A to his local MP Geoffrey Cox, dated 5 January 2011, which was copied to both the Clerk and Chairman of the Council.

13. The Commissioner considers that this letter, if held, would come within the scope of the complainant's request, but notes it was not provided to the complainant. In response to the Commissioner's consideration of a separate data protection complaint submitted by the complainant, the Clerk of the Council stated that it had "never been in possession...of said letter". However, the Commissioner was not satisfied that this was the case because the complainant's submissions clearly showed he had acquired a copy of the letter from a neighbour, who had received a copy in response to a request to the Council.

14. When the Commissioner presented this letter to the Council it acknowledged that it must have held the letter at some point, which is evident because the letter has a Council index number, but maintained that it has since disposed of its copy. The Commissioner is satisfied by the council's explanation. Whilst he is mindful that the Council had inaccurately stated it "never" held a copy, the Commissioner's investigation is focussed on whether the letter was held at the time of the request. The letter was originally disclosed to the complainant's neighbour in 3 May 2011, so it is reasonable that in the 17 months between that time and the complainant making his request the Council disposed of its copy of the letter.

15. The Commissioner has enquired about any other correspondence that might be held. There is a long-running dispute between the parties involved in this case and it seemed reasonable to the Commissioner that there would be other correspondence sent by Individual A to the Council about the matter.
16. The Council confirmed that it held no further correspondence within the scope of the complainant's request. It stated that as it was a small organisation its records were relatively few in number so it should be relatively straightforward to locate any further relevant information.
17. The Commissioner also enquired whether there were any letters sent on behalf of Individual A, as it seemed possible that the dispute might have resulted in contact from Individual A's solicitors or another party working for or with Individual A. The Council confirmed that it held no correspondence of this sort relevant to the complainant's request.
18. In the absence of any firm evidence contradicting the Council's explanations, the Commissioner has accepted the Council's position as reasonable and considers that on the balance of probability it is unlikely any further information is held. Whilst the Commissioner notes that the Council stated that it had "never" held a letter which he has subsequently established had in fact been held at some point, the Commissioner does not consider that this is sufficient evidence to show that further relevant information was held by the Council at the date of the request. The Council has explained that it has conducted adequate searches in the areas where information would likely be held, and the Commissioner is satisfied that the Council has met its obligations under the Act. No further action is required.

Right of appeal

19. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

20. 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.
21. 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

Alexander Ganotis
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