

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 January 2015

Public Authority: Platt Parish Council

Address: chair@plattcc.kentparishes.gov.uk

Decision (including any steps ordered)

1. The complainant requested details of complaints made about a resident. Platt Parish Council (the 'Council') responded and advised that it did not hold any paper copies of the complaints. The Commissioner has considered whether, on the balance of probabilities, the Council holds the requested information.
2. The Commissioner's decision is that the Council does not hold the requested information. He does not require the Council to take any remedial steps to ensure compliance with the legislation.

Request and response

3. On 25 June 2014 the complainant wrote to the Council and requested information in the following terms:

*"With regard to the 6th May 2014 Platt Parish Council Minutes on page 419 on the subject of bonfires the last line reads:

'The Parish Council has received two complaints recently regarding this resident.'

Would you please supply me with copies of the complaints from the complainant/s."*
4. On 2 July 2014 the Council responded. It refused to provide the requested information. It cited the exemption in section 40 (personal information) as its basis for doing so.

5. The complainant wrote again to the Council on 17 August 2014 asking for the same information. The Council responded on 8 October 2014 and confirmed it has no paper copies of complaints made against a local resident regarding bonfires and maintained that section 40 applied. The Council said it would not enter into any further correspondence on this matter and advised the complainant to contact the Commissioner.

Scope of the case

6. The complainant contacted the Commissioner on 15 October 2014 to complain about the way his request for information had been handled. He highlighted that the Council's initial response had stated that section 40 applied, but that its subsequent response also confirmed that there were no paper complaints.
7. Although the Council said it did not hold the requested information, the wording of the request caused the Commissioner to initially consider whether it should have instead issued a 'neither confirm nor deny' response under section 40(5) of the FOIA because the request concerned someone's personal data. However, as the Council had published in its minutes that two complaints had been received about a resident, the Commissioner has instead determined whether, on the balance of probabilities, the Council holds the requested information.

Reasons for decision

8. Section 1 of FOIA states that:

"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. The task for the Commissioner here is to determine whether, on the balance of probabilities, the Council holds any information relevant to the request which it has not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the Tribunal when it has considered the issue of whether information is held in past cases.
10. In this case, the Council had advised the complainant that no paper copies of the two complaints were held. The Commissioner asked the

Council to explain the search it had undertaken in order to respond to the request.

11. The Council told the Commissioner that the complaints had been made over the telephone and were not recorded in any way. It confirmed that *"No recorded information has ever been held either manually or electronically or subsequently destroyed."*
12. Although both the Council's responses relied on section 40 of FOIA, during the Commissioner's investigation the Council reconsidered its position and stated that, as no recorded information is held, it was not appropriate to rely on any exemption to withhold the information.

Conclusion

13. The Commissioner has concluded, on the balance of probabilities, that the Council does not hold the requested information in a recorded form. As no recorded information is held, the Commissioner finds that it is not appropriate to apply any exemption.

Other matters

14. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
15. In this case, the Council told the Commissioner that all requests under FOIA and the EIR are considered collectively during parish council meetings, but that it does not have an internal review procedure in place. Whilst acknowledging that parish councils are of limited size, the Commissioner is concerned that, particularly where a request has been submitted under the EIR where the right to a reconsideration of the original decision is a statutory one, the Council does not have a review process in place. The Commissioner therefore expects that the Council will consider introducing a review process for FOIA requests, and that it must put in place a process for reconsidering requests made under the EIR.
16. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

Further information about internal reviews can be found on the ICO website at the following links:

FOIA page 52: [https://ico.org.uk/media/for-organisations/documents/1642/guide to freedom of information.pdf](https://ico.org.uk/media/for-organisations/documents/1642/guide-to-freedom-of-information.pdf)

EIR: [https://ico.org.uk/media/for-organisations/documents/1613/internal reviews under the eir.pdf](https://ico.org.uk/media/for-organisations/documents/1613/internal-reviews-under-the-eir.pdf)

17. Section 17 of FOIA requires a public authority to issue a refusal notice where it intends to withhold some or all of the requested information. Although the Council now accepts that, as it does not hold the information requested in this case and therefore can no longer rely on section 40(2) of FOIA, its original refusal notice was poor because it did not explain which limb of section 40 the Council was relying on, nor why it considered that the exemption applied. The Commissioner would remind the Council of the need to issue a proper refusal notice when dealing with future requests. Details about refusal notices can be found on his website at:

[https://ico.org.uk/media/for-organisations/documents/1211/refusing a request writing a refusal notice foi.pdf](https://ico.org.uk/media/for-organisations/documents/1211/refusing-a-request-writing-a-refusal-notice-foi.pdf)

18. The Commissioner has logged the poor quality of the refusal notice issued in this case for potential monitoring purposes should there not be an improvement.
19. The Council has confirmed in writing that it intends to review all the available guidance and amend its handling of requests accordingly.

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF