

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 13 October 2106

Public Authority: Clowne and Barlborough Burial Committee
Address: c/o The Centre
Recreation Road
Clowne
Chesterfield
Derbyshire
S43 4PL

Decision (including any steps ordered)

1. The complainant has requested information regarding an online petition and a response to a previous request for information. The Commissioner's decision is that, on the balance of probabilities, Clowne and Barlborough Burial Committee does not hold the requested information. She does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 21 April 2016, the complainant wrote to Clowne and Barlborough Burial Committee ('CBBC') and requested information in the following terms:

"I am writing to you in your capacity as head of the clowne and barlborough burial committee as I require some answer [sic] to concerns I have following freedom of information requests and other correspondence I have had with [individual's name], clerk to the clowne and barlborough burial committee.

A online petition was set up by [individual's name] regarding the removal of the memorial trees that was signed by over 500 people, he brought it along to the meeting with the cbbc in attendance amongst others was yourself, [individual's name] vice chair, [individual's name]

chairman of the clowne parish council, [individual's name], [individual's name], [individual's name] clerk to the cbbc , [individual's name] attempted to hand his petition in but was declined it was only after you told him the decision had been made to remove the trees that he was asked if he wanted to hand in any paperwork including the petition which he refused, [individual's name] and his family feel this was just to add insult to injury.

a letter to [individual's name] from [individual's name] states that "the online petition that was set up [individual's name] was never handed in to either council or the burial committee. However, with a population of approximately 8000, a petition with only 450 signatures, many of whom are not living within the parish.would not represent the majority of clowne."

I sent a freedom of information request to [individual's name] asking if [individual's name] had attempted to hand in his petition and been refused and that if neither the council or [sic] the burial committee had the petition how on earth could she state that many of whom are not living within the parish.

Her replies to my request were as follows; 1. [Individual's name] was asked by the Committee if he wanted to hand in the paperwork including petition. [Individual's name] refused to do so. The petition has been seen by Committee members as it was part of an online e-petition available to everyone. However, as it was not submitted directly into the Committee, it cannot be considered a valid petition. Yours sincerely, [individual's name] clerk to clowne and barlborough burial committee

I have contacted the company 38 degrees that ran the online petition asking them to clarify that people who sign the petitions personal information is not viewable online, which they have done so over the phone to both myself and [individual's name] as it would be a breach of the data protection act and are troubled and concerned that this has been claimed to be the case by members of the committee as stated by [individual's name] to myself in reply to a freedom of information request and are sending a an email confirming this, they may also wish to contact yourself and [individual's name].

So the answers I want from yourself is which members of the committee have seen the personal details of the public online so that it could be gathered that many of whom are not living within the parish, was [individual's name] acting independently of the parish council and the burial committee and if not who instructed her to tell me this in a freedom of information request, and was [individual's] request to hand in his petition declined at the meeting...

...This is the email sent from the online petition company proving what [individual's name] told myself and [individual's name] wasn't accurate please see attached email sent from the online petition group 38 degrees as proof that there is no way members of the committee could know that signatories were from outside the parish, so can you please explain why I was told this by [individual's name] clerk to the clowne and barlborough burial in a freedom of information request, and why has she put this in a letter to [individual's name] that I have a copy of that [individual's name] sent me for my records."

3. CBBC responded on 19 May 2016 stating that it does not hold the information requested. It also said the following:

"The Clerk's role includes supporting the Committee in carrying out the functions of the Cemetery, administering the Committees paperwork and implement [sic] the decisions of the committee. The Clerk has fulfilled her role as required. As previously explained, [individual's name] was asked if he would like to hand in his petition, at which point he declined."

4. On 20 May 2016, the complainant expressed his dissatisfaction with the response.
5. CBBC wrote to the complainant on 31 May 2016 to inform him that his request for an internal review has been refused. It said that it has answered all of his questions in full.

Scope of the case

6. The complainant contacted the Commissioner on 20 May 2016 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether, on the balance of probabilities, CBBC holds information within the scope of the request.

Reasons for decision

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
9. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and

argument. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

10. The Commissioner informed CBBC that under the FOIA, a question can be a valid request for information if information that answers the question is held in recorded form. She said that if CBBC has recorded information in its records that answers the questions in the request it should provide it but CBBC is not required to answer a question if it does not already have the relevant information in recorded form. She also pointed out to CBBC that even though the FOIA only requires CBBC to provide recorded information, this doesn't prevent it providing answers or explanations as well, as a matter of normal customer service. She informed CBBC that she considers that the request asks the following questions:

- which members of the committee have seen the personal details of the public online so that it could be gathered that many of whom are not living within the parish
- was the CBBC Clerk acting independently of the parish council and the burial committee
- if not who instructed her to tell me this in a freedom of information request
- was [individual's name] request to hand in his petition declined at the meeting
- please see attached email sent from the online petition group 38 degrees as proof that there is no way members of the committee could know that signatories were from outside the parish, so can you please explain why I was told this by [individual's name] clerk to the clowne and barlborough burial in a freedom of information request
- why has she put this in a letter to [individual's name] that I have a copy of that [individual's name] sent me for my records.

11. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by CBBC, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. She also enquired whether there was any legal requirement or business need for CBBC to hold the information.

12. CBBC explained that on no occasion has the information been withheld from the complainant, or any other member of the public. It said that, on review, the statement relating to petitioners not living within the parish should have been worded as follows:

“The online petition that was set up by [individual’s name] was never handed in to either Council or the Burial Committee. However, with a population of approximately 8000, a petition with only 450 signatures, many of whom may not be living within the Parish, would not represent the majority of Clowne.”

13. It said that in respect of any recorded forms, there is none, and never have been any recorded information whether electronic or paper for any request that the complainant has made. It explained that it holds both manual and electronic records for all of its business and on no occasion have any records been destroyed. It said that although there is no specific management policy for the retention of records, CBBC retain all documentation relating to the Burial Ground and have so since the opening of the Cemetery in 1973. It also explained that older records are stored within archives at Derbyshire County Council and more recent files are stored at Clowne Parish Council offices.
14. The Commissioner noted that CBBC did not answer the specific questions posed regarding searches carried out for the information and therefore contacted CBBC for clarification. CBBC explained that no searches were carried out because the Clerk knew that the response which promoted the questions (i.e. the initial statement regarding the online petition) was based on a conversation only and that no recorded information exists either in relation to the initial statement regarding the online petition or the questions posed in the request under consideration in this case.
15. The Commissioner informed CBBC that it may be helpful if it could provide her with answers to the complainant’s questions. CBBC responded as follows:
- No members of the committee have seen the personal details of the public online because the personal details were not online.
 - The CBBC Clerk was not acting independently of the parish council and the burial committee as all of her letters (except routine burial work) are approved by a member of the committee or chairman.
 - As per the above response, a member of the committee or chairman would have instructed the Clerk in how to respond to the complainant’s previous request.

- The question regarding whether the request to hand in the petition was declined at the meeting has already been answered as follows:

‘As previously explained, [individual’s name] was asked if he would like to hand in his petition, at which point he declined.’
 - The response in relating to petitioners not living within the parish was based on experience of online petitions and social media and that fact that anyone from any area can sign an online petition.
 - The response in relating to petitioners not living within the parish was put in a letter to an MP because the MP wrote to the CBBC Clerk on behalf of the complainant and therefore the Clerk was simply replying to the MP’s letter.
16. In relation to the question as to whether the request to hand in the petition was declined at the meeting, the Commissioner considered it possible that the minutes of that meeting may hold recorded information which would answer that question. The Commissioner therefore asked CBBC whether it is the case. However, the Clerk confirmed that the minutes for the relevant meeting have been checked and nothing is recorded. It was explained that this is because the meeting was already closed when the issue of handing in the petition arose.
17. The Commissioner has considered whether CBBC had any reason or motive to conceal the requested information. She has not seen any evidence of wrongdoing surrounding its records management obligations and has not identified any reason or motive to conceal the requested information.
18. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept CBBC’s position that it does not hold any recorded information relevant to the questions posed in this request. She notes that most of the questions were based on CBBC’s statement in relation to petitioners not living within the parish which CBBC has conceded should have been worded differently (as per paragraph 12). Taking into consideration the narrative answers provided to the questions (paragraph 15), the Commissioner considers it entirely feasible that the answers to the questions posed would not be held as recorded information. She is therefore satisfied that on the balance of probabilities, the requested information is not held by CBBC. Accordingly, she does not consider that there was any evidence of a breach of section 1 of the FOIA.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

Deborah Clark
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF