

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2018

Public Authority: Kempsey Parish Council

Address: Parish Office
Community Centre
Main Road
Kempsey
Worcester
WR5 3LQ

Decision (including any steps ordered)

1. The complainant has requested information with regards to recorded votes. Kempsey Parish Council (the council) provided a copy of its confidential notes, redacting the names of the councillors who voted under section 40(2) of the FOIA.
2. During the Commissioner's investigations the council advised the Commissioner that the redacted information was no longer held as they had been deleted.
3. The Commissioner's decision is that although likely to have been held at the time of the request, the names of the councillors who voted are no longer held by the council.
4. The Commissioner does not require the council to take any steps but has highlighted some concerns and recommendations in the 'Other Matters' section at the end of the decision notice.

Request and response

5. On 20 February 2017 the complainant requested the following information from the council with regards to a Parish Council meeting of 23 January 2017:

"The approved minutes of the above meeting confirm that the six recommended actions itemised in the Investigative Panel report on my complaint of 27th March 2015 were voted on but omit any

details of the precise resolutions and the recorded voting on each one.

Kindly therefore, under the Freedom of Information Act, provided [sic] me with the precise detail of each resolution as voted on, the outcome of each vote and the recorded votes for each resolution.

I would draw your attention to the statement by NALC in their Legal Topic Note, LTN 5, November 2016, paragraph 64, that makes quite clear the requirement for all resolutions to be included in the minutes, including any made when the public was excluded."

6. The council provided its response on the 2 March 2017. The complainant requested an internal review on the 4 April 2017 as he did not consider that the council had provided him with what he had requested.
7. The complainant contacted the Commissioner on the 16 June 2017 to complain about the council's response. He stated he requires the 'confidential notes' which recorded the proceedings and the resolutions voted on in relation to his request.
8. Following contact from the Commissioner, the council provided its internal review response on the 19 July 2017 enclosing a copy of the confidential minutes taken from the Extra Ordinary Meeting (EOM) of 23 January 2017. It advised that the names and votes have been redacted under the Data Protection Act 1998.
9. During the Commissioner's initial investigations, the council informed the Commissioner that it no longer holds a record of the named votes of the councillors as they were deleted as part of a clean-up in preparation for the General Data Protection Regulations. It now only holds the redacted version that the complainant has been provided a copy of.
10. The Commissioner advised the complainant of this situation and explained that she is unable to investigate the council's application of section 40(2) of the FOIA if it does not actually hold the information requested.

Scope of the case

11. The complainant contacted the Commissioner to determine whether the information is held or not.
12. The Commissioner considers the scope of the case is to determine whether or not the council holds a record of the names of the councillors' votes in respect of the confidential notes from council the meeting dated 23 January 2017.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

13. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
14. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request.
15. In this particular case, the council has told the Commissioner that the named councillor votes would probably have been held at the time the request for information was made on 20 February 2017, and that they would have been deleted in December 2017.
16. The council has told the Commissioner that the information would have been held both electronically and in hard copy. A search of its paper filing system and office computer was carried out in order to determine if it was still held. It used key word searches 'confidential note', 'confidential session', 'recorded votes' and 'EOM' (Extra Ordinary Meeting).
17. The council has explained to the Commissioner that the information would have been deleted/ destroyed in December 2017 in preparation for the General Data Protection Regulations.
18. The Commissioner has asked what its retention policy states about handling comparable records of a similar age and the council has

informed the Commissioner that under section e. it states – 'no firm guidelines can be laid down'.

19. The council has advised the Commissioner that it is not aware of any copies being made and held in other locations at the council. It also stated that there is no statutory requirement for it to hold the information.
20. In this particular case it is clear that the information was most likely held at the time of the complainant's request but subsequently deleted in December 2017. The council has carried out searches in order to establish whether copies are still held, but to no avail.
21. The Commissioner understands that the complainant would feel frustrated that the information, being most likely held at the time of the request, was subsequently deleted after he had brought his complaint to the Commissioner to investigate.
22. However, as the council has deleted this information prior to the Commissioner being able to consider the exemption that was applied, she can only find that, on the balance of probabilities, although it is most likely the information was held at the time of the request, the information is no longer held by the council.

Other matters

23. The Commissioner, after conducting her enquiries on this case, feels it necessary to highlight some concerns she has about the council's practices in relation to the deletion of the requested information.
24. The Commissioner would point out that she wrote to the council on the 22 November 2017 to advise that this case had been accepted for investigation and stated in this letter:

"the case officer will need to have a copy of the information to judge whether or not any exemptions have been properly applied."

25. This was after the council had applied section 40(2) of the FOIA to withhold the information. Accordingly it is concerning to discover that the council deleted the information a month later, rather than ensuring it was kept in order for the Commissioner to conduct her enquiries into the council's application of the exemption.

26. The fact that the council has stated its retention policy states that 'no firm guidelines can be laid down' when it comes to information of this nature, causes further concern to the Commissioner.
27. Whilst the Commissioner takes the view that this action was borne of naivety rather than unscrupulous intent, the Council have placed themselves in a position where their motives can be legitimately questioned. This was entirely avoidable and the council is advised to consider the Codes of Practice issued under sections 45 and 46 of the Freedom of Information Act (2000) in redressing the obvious shortcomings in policies that this episode has highlighted.
28. The Commissioner would stress to the council that when future requests for information are made and it withholds information, the council should ensure that any withheld information is stored appropriately if a complaint is brought to the Commissioner to investigate.
29. The Commissioner would also strongly suggest to the council that it considers a more appropriate retention policy with regards to requests for information that involve withheld information. The Commissioner does not expect to see a repeat of such errors in the future.

Right of appeal

30. 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

31. 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.
32. 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

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