

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 February 2024

Public Authority: Lyng Parish Council
Address: White House
Pettywell Reepham
NR10 4RN

Decision (including any steps ordered)

1. The complainant has requested correspondence, documents and complaint information regarding a Bowls club from the Lyng Parish Council ('the Council').
2. The Commissioner's decision is that the Council, on the balance of probabilities, does not hold any additional information within the scope of the request.
3. The Commissioner is also satisfied that the Council was entitled to rely on section 21 when refusing to provide some of the requested information.
4. The Commissioner does not require further steps to be taken.

Request and response

5. On 14 February 2023, the complainant wrote to the Council and requested information in the following terms:

 "[1] Please provide all the documents that [name redacted] says he has read.

 [2] Please give the regulation number of GDPR that requires you to anonymise complaints.

 [3] Provide every document, email and the like where an alleged complaint was provided to the Bowls Club at the time the complaint was made.

[4] Provide [every] response from the Bowls Club.

[5] [Provide] all the requests for evidence [from the] Bowls Club used to determine an outcome under the complaints procedure. Provide every written outcome generated under the complaints procedure. Provide the minutes that recorded the outcome.

[6] Please identify the particular complaint that [name redacted] says he witnessed."

6. The Council responded on 21 February 2023. It provided some of the requested information and advised that the remaining information was reasonably accessible to the complainant.
7. Following an internal review, the Council wrote to the complainant on 20 March 2023. It maintained its position and advised that no further information was held.

Scope of the case

8. The complainant contacted the Commissioner on 10 September 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to establish whether, on the balance of probabilities, the Council holds any additional information within the scope of the request.
10. He will also be considering whether information is reasonably accessible to the complainant.

Reasons for decision

Section 8 – request for information.

11. Section 8 of FOIA outlines the requirements of a valid request for information as follows:

"(1) In this Act any reference to a "request for information" is a reference to such a request which—

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested."

12. The Freedom of Information Act gives a general public right of access to recorded information held by public authorities.
13. Section 84 of FOIA defines "information" as "...information recorded in any form". Therefore, in order to constitute a valid request for information under FOIA, not only must the complainant's request satisfy the criteria in section 8 of FOIA, but it must also be a request for recorded information.
14. Having reviewed the request made, the Commissioner is satisfied that the questions at part 2 is not a valid request for recorded information under FOIA. The Council is therefore not obliged to respond to these parts of the request. FOIA does not require public authorities to create new information or provide justifications for a position taken. The Council may choose to respond to the specific questions as part of its business as usual correspondence, but that is completely outside the scope of this notice.

Section 21 – accessible information

15. Information is exempt from disclosure under FOIA if it's accessible to the requestor by other means.
16. Section 21 is an absolute exemption. This means if section 21 applies there is no requirement to carry out a public interest test.
17. Unlike most exemptions, the circumstances of the requestor can be considered, as the information must be reasonably accessible to the particular requestor.
18. The Commissioner considers that its reasonable for a public authority to assume that information is reasonably accessible to the requestor until it becomes aware of any evidence to the contrary.
19. As the complainant in this case is acting on behalf of the Bowls club, the Commissioner has determined that information labelled 3, 4 and 5 would already be held by the Bowls club. For this reason, the Council is not obligated to provide this information, as it is already accessible to them.

Section 1 – general right of access

20. Section 1(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.”

21. When a public authority receives a request for information it has two obligations under section 1(1) of FOIA. Firstly, it must explicitly confirm or deny whether it holds the information in question. Secondly, if it does hold that information, it must either provide a copy to the requester or issue a refusal notice. If it receives a request that contains multiple elements, its response must be clear about which information it holds and which it does not.
22. 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 arguments. He 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. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.
23. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The complainants position

24. The complainant advised that they believed further information was held in relation to question 1, the complainant explained that this information could be held in either a manual or electronic format.
25. The complainant stated that they also believed that either a paper bundle, or large electronic file was provided to a particular Councillor and this also should have been disclosed.

The Council’s position

26. The Council confirmed that, during the Commissioner’s investigation, it had asked the Councillor in question to confirm whether they held any additional information which fell into the scope of the request. The Councillor confirmed that no further information was held.
27. The Council clarified that no electronic file/paper bundle was provided to the Councillor in question upon joining. It confirmed that any information sent to the Councillor or other Councillors has already been disclosed to the complainant.
28. The Council confirmed to checking both electronic and paper files for information within the scope of the request. Relevant minute meetings

were checked for any information within the scope of the request. The Council confirmed it had also conducted searches on the Clerks laptop, which would have any emails and documents sent or received by the Bowls club. The Council confirmed it used the search term 'Bowls Club' when conducting its electronic searches.

29. The Council confirmed that it had no record of information that would fall within the scope of the request, had been deleted or destroyed.

The Commissioner's Decision

30. Having reviewed the Council's response, the Commissioner is satisfied that the Council, on the balance of probabilities, does not hold any additional information within the scope of the request. The Commissioner is satisfied that the Council has conducted targeted and logical searches, using appropriate search terms to locate the requested information.

Right of appeal

31. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

32. 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.
33. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF