

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 September 2013

Public Authority: Goring Parish Council
Address: Old Jubilee Fire Station
Red Cross Road
Goring
Reading
RG8 9HG

Decision (including any steps ordered)

1. The complainant has asked Goring Parish Council about information on any training undertaken by the clerk to the Council or any councillor in relation to the Freedom of Information Act (FOIA).
2. The Commissioner's decision is that on the balance of probabilities it is unlikely that Goring Parish Council holds the requested information. However, the Commissioner's decision is that Goring Parish Council breached section 1(1)(a) of the FOIA because it did not clearly inform the complainant that no relevant information was held.
3. The Commissioner requires the public authority to write to the complainant to confirm that it does not hold the requested information.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 11 February 2013 the complainant wrote to Goring Parish Council and requested information in the following terms (numbers added by the Commissioner):

1. *"Details of training of the clerk or any councillor concerning Freedom of Information matters, since 1 January 2012. For each occasion specify:*
 2. *the person being trained,*
 3. *the date(s) of the training,*
 4. *the type of training,*
 5. *the identity of the trainer,*
 6. *the title of the event or course,*
 7. *the aspects of the FOI Act which were to be covered*
 8. *the event or course cost".*
6. Goring Parish Council responded on 18 February 2013 stating:

"There are no records which can be made available under the FOI Act"
7. Following an internal review Goring Parish Council wrote to the complainant on 12 March 2013. It stated that it was satisfied with the initial response.

Scope of the case

8. The complainant contacted the Commissioner on 25 March 2013 to complain about the way his request for information had been handled.
9. Specifically he complained that the response was ambiguous, leading to confusion as to whether the information was not held or whether it was held and not being provided.
10. The scope of the Commissioner's investigation was to determine whether the Council holds the requested information.

Reasons for decision

11. Section 1(1)(a) and 1(1)(b) 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/her.
12. In considering cases such as this, the Commissioner, in accordance with a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities. To reach a decision on this, the Commissioner asked the Council detailed questions as to the nature of the requested information and the searches it has carried

out. He has also considered the context of the case, the nature of the requested information, the authority's responses, the arguments provided by the complainant and any evidence to suggest that the information in question is held.

13. During the course of this investigation Goring Parish Council confirmed to the Commissioner that neither the clerk nor any councillor had received FOIA training between 1 January 2012 and 11 February 2013, the date of the request. Responsibility for arranging any FOIA training would fall within the clerk's remit and the clerk has confirmed that no such training was undertaken and that therefore the council does not hold any records relevant to the request.
14. Goring Parish Council also confirmed that despite the council minutes (5/3/12) highlighting a training need no training was undertaken between 1 January 2012 and 11 February 2013, the date of the request.
15. In its response to the complainant's request Goring Parish Council stated that there were no records which could be made available but did not clarify whether this in fact meant that it did not hold the information or whether it meant that it was withholding the information from disclosure (i.e. under one or more of the FOIA's exemptions). Therefore the Commissioner recognises that there was some ambiguity in the council's response to the request.
16. Based on the submissions provided by both the complainant and the Council, the Commissioner's decision is that on the balance of probabilities it is unlikely that the Council holds any recorded information relevant to the complainant's request. However, he also considers that the response provided to the complainant did not make it clear whether relevant information was held and therefore it did not properly fulfil its obligations under section 1(1)(a).
17. The Commissioner notes that this decision notice outlines his conclusions regarding the request and that, given the council does not hold the requested information, there are take no practical steps it can take in order to comply with the request. In such a case the Commissioner would therefore not ordinarily require a public authority to take any steps. However, in this case the Commissioner notes the complainant's desire for Goring Parish Council to confirm to him in writing that it does not hold the recorded information. Given the entitlement of an applicant to be informed in writing by the public authority whether it holds the requested information, the Commissioner requires Goring Parish Council to write to the complainant advising that it does not hold the requested information.

Right of appeal

18. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. 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.
20. 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
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF