

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 January 2014

**Public Authority:** Kingston Parish Council  
**Address:** Kingston Community Pavilion  
St Pancras Green  
Church Lane  
Kingston  
Lewes  
BN7 3LN

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about Kingston Community Pavilion from Kingston Parish Council (the council). The council provided the information it holds, however the complainant is not satisfied that she has received all of the information within the scope of questions 5 and 6 of the request.
2. The Commissioner's decision is that the council has, on the balance of probabilities, provided all of the information that it holds.
3. The Commissioner has also found that the council has breached section 10(1) of the FOIA, as it did not provide all of the information it held within the required 20 working days from receipt of the request.
4. As the information has now been provided to the complainant the Commissioner does not require the council to take any steps.

#### **Request and response**

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5. On 9 November 2012, the complainant wrote to the council and requested, in the form of 12 questions, information about Kingston Community Pavilion. The request was for a wide range of formal and informal information such as minutes, notes of councillor meetings,

maintenance and safety logs, agendas, finances and expenses, emails, reports, and notes of telephone conversations.

6. The council responded on 27 November 2012 and provided some information within the scope of the request but refused to provide the remainder. It relied on several exemptions and an exception for the refused information.
7. The complainant requested an internal review on 9 January 2013 and on the 11 February 2013 the council provided further information. It did not state whether or not it was still relying on the previously cited exemptions and exception.
8. The complainant contacted the Commissioner on 7 March 2013 to complain that she was not satisfied that the council had provided all the information it held within the scope of her request.
9. The Commissioner contacted the council and it confirmed that it no longer sought to rely on any exemptions or exceptions and further information was then provided to the complainant on the 1 May 2013.
10. The complainant identified to the Commissioner that questions 5, 6 and 7 is where she considered the council had not provided all of the information.
11. During the Commissioner's initial investigations, the council located and provided further information to the complainant on 20 December 2013.
12. The council confirmed that it had now provided all the information it held within the scope of the request.

### **Scope of the case**

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13. The complainant has advised the Commissioner that she is still not satisfied that all the information has been released for question 5 and 6 of the request.
14. The Commissioner considers that the scope of the case is to determine whether the council has provided all the information it holds within the scope of the request, particularly for questions 5 and 6. *See annex 1.*

### **Reasons for decision**

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15. 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.

16. 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, applies the civil standard of the balance of probabilities. The Commissioner must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
17. The complainant has advised where she considers that the council has not provided information with regards to her request. She says in the documents that have been provided there is reference to a meeting to consult with the Sussex Association of Local Councils (SALC) to take advice. The complainant states that there is no record in minutes, agendas or the documents provided of either the outcome of a meeting with SALC or its recommendations, nor of a decision by the council to arrange an audit.
18. The complainant also states that she has been advised that notes at informal meetings are sometimes taken by councillors and that these notes get circulated between councillors.
19. The Commissioner wrote to the council to determine if any other information is outstanding. As part of his enquiries he asked the council to explain the types of searches it has carried out to determine that no further information is held.
20. The council has searched both its electronic and manual records. The searches were carried out on the clerk's council computer where all council records and emails are stored. The clerk does not use a personal computer for work purposes.
21. The council advise that it is its practice for all communications both inwards and out to be channelled through the clerk so that there is a central record of all council business and contacts. This has been the system since the current council took office in May 2011. This is so that records are complete and centrally stored so they can be managed by the clerk.
22. The council advised that the clerk has carried out all of the searches on behalf of the council and councillors as it is the clerk who retains all of the council and councillor correspondence, briefings and reports.
23. The council advised that all electronic and manual records are retained as they form a record of the council's business. It has confirmed that no

information would have been deleted or destroyed during the term of the current council since 2011 up to the date of the request. The council advised that it does not have a deletion policy and that all electronic records are retained in named data files and all manual records are either filed or archived, but they remain accessible.

24. The council has advised that there are over 21,000 emails on the clerk's system and to locate the information within the scope of the request the clerk has used key word searches which included date parameters, specific dates, individual names, groups such as committees, emails, pavilion, council finances, charity commission, Hedleys Solicitors, agendas, meeting minutes, reports briefings, and NALC and SALC.
25. The council has confirmed that no agendas, minutes or notes were taken at the informal meeting. It has also confirmed that although the September 2012 council meeting minute's state advice is to be sought from SALC, it did not receive any advice from it between the September 2012 meeting up to the date of the complainant's request.
26. The Commissioner has considered the complainant's reasons for what further information should be held, and the Commissioner has asked the council specifically about those areas and if this information is held, to which the council has confirmed it does not hold any more information, within the scope of the request, than what it has already provided.
27. From considering the council's response and explanations as to the searches it has conducted and subsequent searches for any further information with regards to questions 5 and 6 of the request. The Commissioner is satisfied that, on the balance of probabilities, the council has provided all of the information it holds within the scope of the complainant's request.

### **Section 10(1) of the FOIA**

28. Section 10(1) of the FOIA states:

*"...a public authority must comply with section 1(1) promptly and in any event not late than the twentieth working day following the date of receipt."*

29. The information request was made on the 9 November 2012, and although the council provided its initial response on the 27 November 2012, it did not provide all of the information it held until 20 December 2013.

30. Therefore the Commissioner finds that the council has breached section 10(1) of the FOIA, as it did not provide all of the information it held until some 13 months after the request was made.

Annex 1 – questions 5 and 6 of the complainant's request:

*"5. A copy of all agendas, minutes, notes of councillor meetings, both formal and informal since May 2011, at which the Pavilion or council finances were discussed expecting those available at this date on the Council's website (There were references to informal meetings at the last meeting, some items appeared rehearsed. There was no financial report)*

*6. Copies of all correspondence including memos and emails between councillors, all briefings, reports and circulated draft reports, to and between councillors relating to the pavilion or council finances, expecting those available at this date on the Council website."*

**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: 0300 1234504

Fax: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Andrew White**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**