

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2016

Public Authority: Normandy Parish Council

Address: c/o The Bungalow
Guildford Road
Normandy
Guildford
Surrey
GU3 2AW

Decision (including any steps ordered)

1. The complainant has requested submitted a number of requests for information to Normandy Parish Council between 7 October 2015 and 1 November 2015. The complainant's requests relate to audit reports, a transcript of a telephone conversation between the Parish Clerk and a person working for the Council's auditors, a statement to be made by the Chairman of the Council and information which concerns the Council's employment of an assistant clerk.
2. The Commissioner's decision is that Normandy Parish Council does not hold a transcript of the telephone conversation which the complainant seeks. She has also decided that the Council does not hold information falling within the description of the complainant's request for information relating to the Council's employment of an assistant clerk.
3. The Commissioner has considered the complainant's request for the statement which was to be made of the Council's Chairman at its meeting of 28 October 2015. The Commissioner has decided that the Council was entitled to rely on section 22 of the FOIA in respect of this statement. However, the Council has contravened section 17 of the FOIA by failing to issue a refusal notice to the complainant specifying its reliance on section 22.
4. The Commissioner requires the public authority to take no further actions in this matter.

Request and response

5. The complainant has written to Normandy Parish Council on several occasions to ask for recorded information.
6. The complainant made her first request on 7 October 2015. The terms of the first request were:

"I was somewhat disappointed to note that neither the external audit from last year nor the internal audits (15th December 2014 and June 2015) have been uploaded onto the website despite your policy and indeed the provision for it to be so displayed. I also anticipate that your external audit should be arriving about now. Could you please therefore provide both the internal audit reports referred to above and both of the external audit reports in electronic format."

On 13 October the Council advised the requestor that a viewing could be arranged by appointment.

7. The Council's response prompted the complainant write to the Council again on 13 October 2015. The complainant made clear to the Council that her request was made under the Freedom of Information Act 2000. The complainant asserted that the Notice which the Council sent to her had not been completed and the 'requisite information' to which this notice relates has not been provided nor inspection times detailed. The complainant added that, "I have no intention of making any appointment. I have asked for specific information and I seek copies of the same".
8. On 27 October 2015, the complainant wrote to the Council again asking it to comply with her request for information.
9. On 30 October, the Council advised the complainant that it had not refused her request and that she could inspect and make copies of the information. The Council also advised the complainant that the external audit would be available after the Council's 25 November meeting if it is approved by the Council. The Council's email stated that, "a public notice will be displayed when the external audit is available for inspection".
10. The complainant responded to the Council's email on 30 October. Again, the complainant pointed out that her request was for the annual audit for the year ended 4/14, plus the subsequent internal auditors reports and accounts which followed. The complainant stated that she "anticipated that the External audit of the year ending 4/15 would by then be available". The complainant added further elements to her

request, stating that she also required:

"...copies of all correspondence between the Clerk (and any representative Councillor on behalf of the Council) with [named person] of BDO Stoyard in connection with this year's audit."

And:

"I also request a copy of the statement you were intending to read to the October meeting but you failed to ensure was an agenda..."

11. The Council wrote to the complainant on 2 and 12 January 2016 to respond to her first and second request. The Council stated that:

"...the PC do not have a years ending 4/14 or 4/15. I have reviewed the website and audits have never been uploaded. All correspondence the clerk/PC had with BDO were via the phone. And, "The statement was going to be read out prior to the October meeting but a member of the public insisted that it should be on the agenda so I stated that it would be put on the agenda for the November meeting and would not be discussed until then. [...] It will not be in the public domain until after the Nov. meeting therefore is not something that can be requested under FOI"

12. On 1 November 2015, the complainant asked the Council to provide the information which concerns its decision to appoint a finance officer. The information she asked for was:

"Copy of the written report which should have been supplied to councillors when making such a serious decision

any feasibility study

any job description

any further information which the councillors should have properly considered before making such a decision

the minute of the decision"

13. The Council responded to the complainant's third request on 3 November 2015. The Council stated that it is looking into the possibility of employing an assistant, not a Finance Officer.
14. The Council advised the complainant that there is no job description; the cost has not been considered; and no interviews have taken place.

Scope of the case

15. The complainant contacted the Commissioner 1 December 2015 to complain about the way her request for information had been handled.
16. The complainant informed the Commissioner that she accepts the Council has provided information relating to the internal and external audit reports and that she is treating the first part of her first request as complete. The complainant advised the Commissioner that she had received no further correspondence from the Council in respect of the remaining items of her request.
17. The Commissioner wrote to the Council following his receipt of the complainant's complaint.
18. The Council responded to the Commissioner's email, advising her that no correspondence took place between the Clerk and [named person], and that all the relevant discussions were conducted by telephone.
19. The statement which the complainant asked for in her second request was not made at the Council's meeting held 28 October. This was because it had not been placed on the agenda and therefore it was not put into the public domain until 25 November 2015.
20. The complainant asserted that, at the time she made her third request, the finance officer position had been advertised and therefore the recruitment process was underway.
21. The Council clarified for the Commissioner the position regarding this post, advising her that the first occasion when the issue of Assistant Clerk was debated was at an open meeting of the Remuneration Committee on 11 November 2015 - after the date of the complainant's third request. The Council informed the Commissioner that no documents were produced to support this debate and that the agreed minutes of the 11 November meeting record that members resolved to recommend to Council that an Assistant Clerk be employed for 6 hours per week. The Council subsequently resolved to accept the Committee's resolution at its full meeting on 25 November: Again no documents were produced, other than the minutes of the Remuneration Committee. On 16 December 2015, at a meeting of the Full Council, a draft Job Specification was produced and agreed. The Council has assured the Commissioner that the documents post-dated the complainant's request.
22. In consideration of the complainant's assertions, the Commissioner determined that her investigation should determine what recorded information was held by the Council at the time the complainant made each of her requests. This notice sets out the Commissioner's decision.

Reasons for decision

Section 1 – Is the information held?

23. Section 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.”

24. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the information which the complainant seeks.

25. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.

26. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction.

Copies of correspondence between the Council and BDO Stoyard

27. The Council has confirmed to the Commissioner the position previously provided to the complainant: the Council has assured the Commissioner that it does not hold a written record of the telephone conversation between the Parish Clerk and the [named person] of BDO Stoyard. The Council has explained that this was a routine conversation and it was not thought necessary to make a record of it.

28. Ordinarily, the Council will make manuscript records of telephone conversations with outside agencies where they are of such importance to warrant this. In the case of this conversation, the Council determined that the telephone call in question was not significant to require a formal record being made.

29. The Council has advised the Commissioner that it was not necessary to undertake a search of the requested record: It was the Parish Clerk who had the conversation with [named person] at BDO Stoyard and the Clerk has assured the Commissioner that he did not make any record.

30. The Council has further explained that there is no business purpose for it to retain a record of this conversation and that there is no statutory requirement for it to have done so.
31. In the absence of any evidence to the contrary, the Commissioner has decided that, on the balance of probabilities, he should accept the Council's assurance and explanation and find that the Council does not hold a record of the telephone conversation which the complainant seeks.

The statement to be made at the Council's meeting of October 2015

32. The Council has confirmed to the Commissioner that its Chairman held a copy of the requested statement at the time the complainant made her request on 30 October 2015.
33. The statement was not made at the Council's meeting on 28 October. This was due to requests made by members of the public that the matter was placed on the agenda for the Council's meeting to be held on 25 November.
34. From the above, it can be seen that the statement was not in the public domain at that time of the complainant's request. It can likewise be seen that, given the matter was to be discussed at its next meeting, the Council had a fixed intention to place the statement into the public domain at that point.
35. When it responded to the complainant's request for a copy of the statement, the Council failed to apply any of the exemptions to disclosure which are provided by the FOIA.
36. The Council has now advised the Commissioner that it would have relied on section 22 of the FOIA.
37. Section 22 provides that information is exempt from disclosure if –
 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) the information was already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

38. It is clear to the Commissioner that the Council would have been entitled to rely on section 22 to refuse to disclose to the complainant the statement which was clearly intended for future publication. This is attested to by the fact the Council's Chairman read out the statement at the meeting held on 25 November in response to requests that this statement was placed on that agenda.
39. By failing to issue a refusal notice to the complainant citing its reliance on section 22 of the FOIA, the Council has contravened section 17 of the FOIA. Given that the statement is now a matter of public record and the matter is somewhat academic, the Commissioner requires the Council to take no further action in this matter.

Information concerning the Council's employment of an assistant clerk

40. The complainant made her request for information relating to the post of Finance Officer on 1 November 2015 in the understanding that the Council had begun its recruitment process.
41. According to the Council, the complainant's assumption was flawed and gave rise to a false expectation that the Council would hold information relating to the post of assistant clerk. The Council explained to the Commissioner that the issue of recruiting an assistant clerk was first publicly debated at a meeting of its Remuneration Committee which was held on 11 November 2015 – after the date of the complainant's request.
42. Whilst the Council had placed an advert for this position in the September issue of The Village newsletter, this was not an advert for a substantive position. Rather, the purpose of the advert was solely to ascertain whether there would be anyone in the village who would be interested in undertaking such a role and the Council has assured the Commissioner that there had been no formal discussions about the post at the time the complainant made her information request.
43. The Council points out that the advert did not contain any proposed salary and it is the Council's position that the advert was not part of a formal recruitment process.
44. The Council has provided the Commissioner with copies of its relevant minutes.
45. The minutes of the Remuneration Committee dated 11 November 2015 only record a recommendation for the Council to employ an assistant clerk for 6 hours per week. The minute does not record any of the information which the complainant seeks in her request of 1 November.

46. The remuneration committee's recommendation was recorded in a confidential minute dated 25 November 2015. This minute also sets out recommendations for the number of hours to be worked and the hourly rate of pay for the post.
47. The minutes of the Council's meeting of 27 January 2016 at item 47/16 merely records:

"47/16 Employment of Assistant Clerk

See attached Confidential report"
48. The confidential report is the Remuneration Committee's minute which records its recommendation of 25 November.
49. The Council has confirmed to the Commissioner that it holds no further recorded information which concerns the appointment of an assistant clerk.
50. Again, in the absence of any evidence to the contrary the Commissioner has decided that, on the balance of probability the Council did not hold any information which would satisfy the terms of the complainant request of 1 November 2015. The Commissioner is satisfied that the Council only holds information relating to the post of assistant clerk which was created after the complainant made her request.

Right of appeal

51. 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

52. 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.
53. 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
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