

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

### **Decision notice**

**Date:** 15 July 2019

**Public Authority:** Old Somerby Parish Council  
**Address:** Rimini  
School Lane  
Old Somerby  
Grantham  
Lincolnshire  
NG33 4AG

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

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1. The complainant has asked Old Somerby Parish Council for a copy of records which relate to his concerns about the accuracy of the Council's minutes of meetings. The records which the complainant seeks are for the period 8 November 2017 and 27 November 2017. The complainant has also asked the Council for a copy of an audio recording made by the Clerk of the Council at its meeting of 8 November 2017.
2. The Commissioner's decision is that Old Somerby Council breached section 1 of the FOIA by failing to provide the complainant with a copy of the recording it held at the time it received his request, or to issue an appropriate refusal notice under section 17 of the FOIA. She has also decided that the council breached section 1 of the FOIA by failing to provide the complainant with a copy of the emails which passed between councillors and its former Clerk which were generated from the date of the complainant's request to the meeting of the Council on 13 September 2017.
3. The Commissioner has decided the Council has now complied with the complainant's request. She is satisfied that, on the balance of probability, the Council has latterly located and provided the complainant with copies of all of the information it holds in respect of his request. However, in doing so the Council has breached section 10 of the FOIA.
4. The Commissioner requires the public authority to take no further action in this matter.

## Request and response

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5. On 27 November 2017, the complainant wrote to the Council and submitted the following request for recorded information:

"The accuracy of the minutes of Parish Council meetings is of fundamental interest to the Community.

Please supply a copy of records relating to this matter including emails between / among Parish Councillors and yourself, which have been generated since the PC meeting of 13 September. Please also supply a copy of the audio recording which you have made of the Parish Council meeting of 8 November which is of interest in this connection."

6. The Council sent its response to the complainant on 28 November 2017, informing him that, "I have sent you all emails between Council members and myself regarding minutes since the 13 September. I am under no obligation to provide you with a transcript of the meeting other than the minutes".

7. Attached to two successive emails on the same date, the Council provided Mr Welsh with the following information:

- Minutes of the Council's meeting of 13 September 2017
- A copy of the written points / questions which the complainant read out at the 13 September meeting
- The agenda for the Council's meeting of 8 November 2017

8. On 2 December 2017, the complainant wrote to the Council to complain about its response to his request. He made clear to the Council that he required it to treat his email as a request for an internal review.

9. The complainant asserted that the Council had not sent him any emails. He argued that the documents the Council had sent him "will have been attached to emails" and therefore he asked the Council to confirm that there were no emails falling within the scope of his request. The complainant pointed out that he had asked for the recording of the meeting of 13 September and not a transcript of that meeting.

10. The Council wrote to the complainant on 4 December 2017. It explained that, "The emails which were sent only included the attached minutes. There was no additional notes attached." In respect of his request for the recording of the meeting, the Council advised the complainant that, "...this is not available to the public and is destroyed after minutes have been approved". The Council added, "The recording of the minutes is to

measure accuracy which has been maintained by myself and members of the Council”.

11. The complainant responded to the Council on 7 December 2017. He pointed out that he had not asked for ‘additional notes’ that may have been attached to emails, and again he made clear that he seeks the emails themselves. He put to the Council that, “he takes it there exist emails with content to which documents were attached, which the Council is withholding”. Additionally, the complainant asked the Council to provide the LALC and ICO references which the Council relied on to claim that the Council may withhold the audio recordings of its meetings.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 24 April 2018 to complain about the way his request for information had been handled.
13. The Commissioner advised the complainant that the focus of her investigation would be to determine whether Old Somerby Parish Council holds the information he asked for in his request of 27 November 2017 and whether its response to his request complies with the requirements of section 1 of the FOIA – the general right of access to information held by public authorities.

### **Reasons for decision**

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#### **Section 1 of the FOIA**

14. Section 1 of the FOIA states that

“(1) 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.

15. The Commissioner has sought to determine whether the Council holds the information which the complainant has asked for in his request of 27 November 2017. To make this determination the Commissioner applies the civil test which requires her to consider the question in terms of ‘the balance of probabilities’. This is the test applied by the Information

Rights Tribunal when it has considered whether information is held in past cases.

16. The Commissioner has investigated whether the Council holds recorded information relevant to the complainant's request by asking the Council questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.
17. The Council has advised the Commissioner that it has now carried out searches of all of its existing paper sources and relevant electronic records in order to locate the information specified by the complainant in his request.
18. The Council's searches of its paper-based records yielded a number of emails which relate to the Council's meeting of 13 September 2017. The Council also located internal correspondence, and correspondence between itself and the complainant, which concerns a previous request for information.
19. Copies of all of the emails, associated minutes and correspondence were provided to the complainant on 24 June 2019, subsequent to the Commissioner's intervention.
20. No other records relevant to the complainant's request were located and the Council has assured the Commissioner that any relevant information would have been kept in the sources it has searched.
21. The Council's searches of its paper-based sources included folders containing Parish Council paperwork for the period 13 September 2017 to 27 November 2017.
22. Searches of the Council's electronic records involved searching relevant folders associated with the Council's email address, including emails sent and received by the Council. The Council's email address is where all of the Council's business is transacted unless it is paper-based. The Council does not own or use a laptop computer for council business.
23. Current Parish Councillors were informed of the Clerk's searches. Those councillors were elected after the dates referred to in the complainant's request and they have confirmed to the Clerk that they hold no other relevant documents or emails.
24. The Clerk searched all emails between the 13 September and 27 November 2017.

25. The Council has assured the Commissioner that any information held by the Council which meets the terms of the complainant's request would either have been stored in paper form or on-line within the Council's email address. This is a continuation of the practice of the Council's previous clerk.
26. The Council advised the Commissioner that it is not aware of any information relevant to the scope of the complainant's request having been deleted from its paper-based records or from its email folders.
27. The Council has no record of the deletion or destruction of any relevant records: It has no formal records management policy and says that it "expects the practice of previous clerks to be adopted..." This practice involves the keeping of files relating to the activity of the Council, such as correspondence, invoices, bank statements, complaints, asset management, and minutes of meetings and agenda of meetings. The Council expects that all such information is retained.
28. The Commissioner recognises that the Council's current Clerk is not the person who received and dealt with the complainant's original request. Neither are the current councillors the same as those in position at that same time.
29. This has presented the Clerk with some difficulty in responding to the Commissioner's enquiries. The Commissioner accepts that it has been necessary for the current clerk to make his own searches for the information requested by the complainant. It cannot be said with certainty whether these searches were the same as those carried out by Council's former clerk made when he responded to the complainant's request.
30. It has not been possible for the Council's Clerk to assure the Commissioner whether his predecessor or former councillors hold or held information falling within the scope of the complainant's request. That said, the Clerk has informed the Commissioner that he understands the practice was to delete council information once they have left office.
31. The Commissioner has noted that the Council's response to her enquiry does not specifically mention the audio recording made at its meeting on 8 November 2017. It was therefore necessary for the Commissioner to make a further enquiry about how the Council had determined that it does not hold the recording which the complainant has asked for.
32. In response, the Clerk assured the Commissioner that any recording made by the former Clerk has been destroyed and there is no reason to believe otherwise. The Clerk advised the Commissioner that no recordings were found in the files which had recently been searched and, given that the Council does not use a laptop, the recording which

the complainant seeks would likely have been made on the former Clerk's personal recording device.

33. The Commissioner has considered the representations made by the Council in this matter. She accepts that the Council has carried out appropriate and reasonable searches for the information which the complainant has asked for and that it has now located all the information it holds which is relevant to the complainant's request.
34. On the balance of probability, the Commissioner has decided the Council does not hold a recording of its meeting of 8 November 2017.
35. That recording was likely to have been held at the time the Council received the complainant's request. This is indicated by the then Clerk's refusal to provide a copy to the complainant and its alternative provision of a transcript.
36. The Commissioner must conclude that the Council breached section 1 of the FOIA by failing to provide the complainant with a copy of the recording it held at the time it received his request or to issue an appropriate refusal notice under section 17 of the FOIA.
37. Likewise, the Council also breached section 1 of the FOIA by failing to provide the complainant with a copy of the emails which passed between councillors and the then Clerk, which were generated from the date of his request and the meeting of the Council on 13 September 2017.
38. The Commissioner accepts that the Council has now complied with section 1 of the FOIA following the Commissioner's intervention, She is satisfied that, on the balance of probability, the Council has located and provided the complainant with copies of all of the information it holds in respect of his request.
39. In making its recent disclosure of information, the Council has breached section 10 of the FOIA. This is because the disclosure should have been made within twenty working days of the Council's receipt of the complainant's request.
40. The Commissioner cannot ascertain when the Council deleted or destroyed the recording of its meeting of 8 November 2017. This action appears to have occurred before the relevant minutes were signed off at the Council's subsequent meeting but after the former Clerk had transcribed the recording. This may have been the former Clerk's normal practice although it does not accord with the Clerk's statement of 24 April 2018, which informed the complainant that, "the audio recording is no longer available as once the minutes have been signed off this is erased."

41. The Commissioner is unable to determine whether the Council committed an offence under section 77 of the FOIA. This is because there is no evidence that the Council deleted its recording with the intention of preventing its disclosure to the complainant where the complainant would be entitled to that disclosure.
42. The offence under section 77 is triable only in the magistrate's court. Section 127(1) of the Magistrates Court Act 1980, requires proceedings under section 77 of the FOIA to be brought within 6 months of the offence occurring.

### **Other matters**

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43. The complainant has provided the Commissioner with an extract from the Department for Communities and Local Government Guidance on 'Open and Accountable Local Government', specifically relating to the attendance and reporting of local government by the press and public.
44. The matters raised by the complainant which are relevant to this guidance do not fall within the ambit of the Commissioner's role or responsibility.
45. The attendance at, or exclusion from, a council meeting is a matter to be determined by the public authority itself in accordance with the rules relating to that meeting.
46. The Commissioner's role under section 50 of the FOIA is to determine whether a public authority has complied with the provisions of the Act. In this case, the Commissioner is only required to consider the information the Council held at the time it received the complainant's request.
47. The Commissioner makes clear that it is not her duty to consider the level of detail included in the Council's minutes or the accuracy of those minutes.
48. The Commissioner understands that minutes of meetings need to record clearly, what decisions were made and who is going to carry out those decisions. It is important that the minutes are an accurate record of a council's decisions and that is why the minutes are normally confirmed and signed by the chairman at the start of the next meeting.
49. There is no requirement for the minutes of meetings to be verbatim records of what is said. Minutes do not need to be long or complicated, written in a particular style or in perfect grammar.

50. The Freedom of Information Act (2000) (the Act) does not afford members of the public a right to force items onto the council agenda nor to insist on how matters are recorded in the minutes.



- 51. Right of appeal
- 52. 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@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

- 53. 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.
- 54. 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**