

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 December 2019

Public Authority: Swards End Parish Council
Address: tracy@coston.me.uk

Decision (including any steps ordered)

1. The complainant requested information relating to changes to the categorisation of the Clerk's expenses. Swards End Parish Council (the Parish Council) denied holding the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Parish Council did not hold information within the scope of the request. She therefore considers that the Parish Council complied with its obligations under section 1(1) (general right of access to information) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. Following earlier correspondence, on 8 May 2019 the complainant wrote to the Parish Council and requested information in the following terms:

"I requested an understanding of the recategorization to make sense of the clerks expenses. If you look at the documents 'Working Details for Annual Meeting' and the 'account Statement' both for 2018 changes were made to the way the clerks expenses were accounted for in the Account statement following the intervention of the auditor.

... I assume that as this categorization will be an ongoing requirement it beggars belief that there is no knowledge of the new requirements. Alternatively why could not the auditor be approached for an explanation?

Therefore as you seem reluctant to provide this information I wish to make a request under the FOI act for you to supply this information”.

5. The Parish Council responded on 3 June 2019. It denied holding the requested information about the re-categorisation of the Clerk's expenses. It invited the complainant to attend a Parish Council meeting to discuss the outstanding issues.
6. The complainant expressed dissatisfaction with that response.
7. The Parish Council wrote to the complainant on 16 July 2019. It stated that it had reached the point where dealing with his correspondence was no longer an efficient use of the Parish Council's time and resource.

Scope of the case

8. The complainant contacted the Commissioner on 8 August 2019 to complain about the way his request for information had been handled.
9. He told the Commissioner that the background to his request was with respect to what the Parish Clerk could claim under expenses. He explained that the auditor had asked for a re-categorisation of the expenses and that the request in this case was made in order to obtain an explanation of the changes.
10. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 general right of access

11. Section 1 of the 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."

12. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that 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.
13. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
14. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Parish Council held the requested information.
15. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
16. In correspondence with the complainant, the Parish Council told him:

"With regards to your FOI request we have reviewed the question and all the information that is held and Swards End PC does not hold any of the additional information that you have requested about the re-categorisation of the Clerk's expenses on the audit form. The Clerk has been in contact with the Internal Auditor and he has confirmed that he doesn't hold any information following the audit regarding the expense claim details".
17. During the course of her investigation, the Commissioner asked the Parish Council questions, as is her usual practice, relating to how it established whether or not it held information within the scope of the request.
18. In its submission to the Commissioner, the Parish Council confirmed:

"...that the adjustment was made following a conversation between the Clerk and the internal auditor...No written record of the changes were kept by either the Clerk or the internal auditor, but the

adjustments were made as requested and the audit form was initialled by the Clerk”.

The Commissioner’s view

19. While appreciating the complainant’s frustration that the Parish Council did not hold information within the scope of his request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ (EA2006/0085)*¹ which explained that the FOIA:

“... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold”.

20. Having considered the Parish Council’s response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the civil standard of the balance of probabilities, the Parish Council did not hold information within the scope of the request.

21. The Commissioner therefore considers that the Parish Council complied with its obligations under section 1(1) of the FOIA.

Other matters

22. The Commissioner’s website includes a section entitled ‘*Information request dos and don’ts*’. She recommends that quick reference tool² to requesters who are considering making a request for information.

¹ <http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

² <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

23. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Carolyn Howes
Senior Case Officer
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