

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 May 2020

Public Authority: Lilleshall Parish Council
Address: The Memorial Hall
Hillside
Lilleshall
Shropshire
TF10 9HG

Decision (including any steps ordered)

1. The complainant has requested information held by Lilleshall Parish Council in respect of land lying to the South East of Barrack Lane, Lilleshall, known as Builder's Yard.
2. The Commissioner has decided that Lilleshall Parish Council has complied with Regulation 5(1) of the EIR but has contravened Regulation5(2).
3. No further action is required in this matter.

Request and response

4. The complainant wrote to the Council on 21 October 2019 to request information under the Freedom of Information Act. The terms of the complainant's request are:

"I would like to receive copies of all the information held by your Parish Council regarding the above [land lying to the South East of Barrack Lane, Lilleshall, also known as Builder's Yard]. I would like all the

recorded information on computers, emails and in printed or handwritten documents as well as images, video and audio recordings to be emailed to me in electronic form.”

5. On 28 October 2019, following a telephone conversation with the Council, the complainant wrote to the Council to clarify her request. The complainant stipulated that the information she seeks should include:

- all minutes of meetings,
- all financial information,
- all legal correspondence,
- all email correspondence,
- all written documents,
- all photographs, videos and audio recordings
- all printed documents,
- all information held on computer,
- all historic information held on record,
- all historic archive information.

6. The Council sent its response to the complainant on 15 November 2019, which informed her that information produced before May 2015 – the date when the Parish Council was established, would be available to her from Donnington and Muxton Parish Council.
7. The Council said, “the only documentation held by this Parish Council regarding this site is that recorded in the minutes of parish meetings and is available on the Parish Council’s website¹”. Additionally, the complainant was advised that information relating to planning applications related to the site can be obtained from Telford and Wrekin Council’s website.² On the grounds that the information is freely available to the complainant, the Council informed the complainant that it was refusing her request in reliance on section 21 of the FOIA.
8. The complainant wrote back to the Council later the same day, referring the Council to the terms of her request and the types of information she seeks. The complainant noted that her request went beyond the agendas of meetings and their minutes and she asserted that, “I have good reason to believe that the non-compliance to release the information I have requested is deliberate and seriously calls into question the conduct of Lilleshall Parish Council”.

¹ <https://www.hogofox.com/community/liieshall-parish-council-7934/home/>

² <https://secure.telford.gov.uk/planning/home.aspx>

9. The Council wrote to the complainant on 20 November 2019. The Council informed the complainant that:

"...I can confirm that the Parish Council did agree to make a donation of £500 in May 2019 to the Barrack Lane Residents Group and this donation was made."

And,

"In October 2018 the Parish Council did agree to cover the costs of any affidavits made by residents relating to the former builder yard on Barrack Lane, however no payments were made."

10. The Council confirmed to the complainant that it does not hold any information relating to Barrack Lane other than the information which appears in the Council's minutes and agendas, and again it informed the complainant that this information is available to view on the Council's website.

Scope of the case

11. The complainant contacted the Commissioner on 15 November 2019 to complain about the way her request for information had been handled.
12. The Commissioner informed the complainant that her investigation would focus on whether the Council holds further recorded information relevant to the terms of her request, other than in its agendas and minutes of meetings. Additionally, the Commissioner informed the complainant that she would determine whether the Council is entitled to rely on section 21 of the FOIA in respect of any information falling within the scope of her request which is already accessible to her.

Information about Lilleshall Parish Council

13. The Council was established in May 2015. It has seven council members and a clerk.
14. The Council hires the Village Memorial Hall for its operating purposes and because of this, the Council says its facilities for storing records is limited.
15. The Council says, that where possible, it posts information on its website and where information relates to planning matters it is retained by

Telford and Wrekin Council and therefore it relies on their website service.

16. The Council meets monthly to discuss issues requiring formal resolution. There is an agenda and set of minutes for each meeting which records the Council's resolutions and agreed actions. The Council retains on file hard copies of its minutes. It also displays its minutes on notice boards around the village and publishes them on its website.
17. Members of the public are given the opportunity to raise issues of their choice during the Public Session of the Council's meetings.
18. The Council describes its scope and functions as being 'extremely limited and relatively minor'.

Barrack Lane Residents Group

19. The Council has explained that the Barrack Lane Residents Group ("the Group") was established by some of the residents of Barrack Lane. These residents considered that the operations on that site were inappropriate and contrary to planning regulations. According to the Council, this was also the view of Telford And Wrekin Council when it refused a planning application on 16 December 2019.
20. According to the Council, the Group is independent of the Council and its campaign has been managed and operated without the Council's direction.
21. Whilst endeavouring to maintain an even-handed approach to matters concerning Barrack Lane, the Council says that it has been unable to ignore the residents' expectations to be briefed on the site.
22. The Council says it was not able to prevent statements being made about the development at Barrack Lane being made during the Public Session of its meetings. However, since such statements were made outside of the Council's meeting, there are no written records.
23. Likewise, the Council says it holds "no written correspondence between the parties", other than that which is included in the Council's minutes.

Reasons for decision

24. Given that the focus of the complainant's request is information concerning the land lying to the South East of Barrack Lane, known as Builder's Yard, the Commissioner has decided that the correct information access regime is the Environmental Information Regulations

and not the Freedom of Information Act. The Commissioner considers that the information meets the definition of environmental information, which is provided by Regulation 2 of the EIR, and in particular by Regulation 2(1)(c).

Regulation 5 of the EIR

25. Regulation 5(1) of the EIR requires a public authority to 'make available on request' information which is environmental information.
26. Regulation 5(2) of the EIR requires a public authority to make environmental information available to a person who requests that information, no later than 20 working days after its receipt of the request.
27. To determine whether the Council has now complied with Regulation 5(1), the Commissioner applies the civil test. This test requires her to consider the question in terms of 'the balance of probabilities': it is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
28. 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.
29. The Council has responded to the Commissioner's enquiry by stating its position in respect of each type of information which the complainant identified following her telephone conversation with the Council on 28 October 2019.
30. Concerning the complainant's request for copies of all minutes of meetings, the Council told the Commissioner that the complainant was directed towards its web pages which contain the current and historic minutes of its meetings. The Commissioner understands that the Council is therefore holding the position that it does not hold further information of this type and it has therefore complied with section 1 of the FOIA.
31. The Council has provided the Commissioner with a Schedule of Payments Table from within its Payment Records spreadsheet. The Council says it may have been in error in considering it had satisfied its obligations under the FOIA by enabling the complainant to view the minutes which included the contribution towards the costs relating to the residents' objections and the retrospective planning application.

32. Since making its response to the Commissioner's enquiry, the Council has provided the complainant with a copy of the Schedule of Payments referred to above.
33. In respect of the following items listed in the complainant's request, the Council told the Commissioner that does not hold any recorded information.
 - All written documents – the Council says it directed the complainant to its own website where she could find the minutes of the Council's meetings. The complainant was also directed to the Wrekin and Telford Council website where she could access the Council's written comments and statements which relate to planning application TWC/2019/0293.
 - Photographs, videos and audio recordings – the Council says it does not hold any of these.
 - All printed documents – the Council says it does not hold such documents.
 - All historic information kept on record – the Council says that it holds no historic information.
 - All historic archive information – the Council says it holds no archived information.
 - All information kept on computer – here, the Council's position is that this information is the same information which can be found on its own website and that of Wrekin and Telford Council. No information was retained on file by the Council.
34. In responding to the Commissioner's enquiry, the Council was able to locate an email and a letter which it determined was relevant to the complainant's request.
35. The email concerns a fenced off footpath at the Barrack Lane site.
36. The letter contains advice given to the Council by the National Association of Local Councils (NALC) in respect of the Council's ability to engage a solicitor and whether the law permits the Council to contribute to the costs of residents' affidavits and legal funds.
37. The Commissioner understands that both the email and letter have now been disclosed to the complainant, notwithstanding that the Council had the discretion to withhold the NALC letter in reliance on section 42 of the FOIA – legal professional privilege.

38. The Council advised the Commissioner it took the opportunity to revisit its handling of the complainant's request on receiving the Commissioner's enquiry. Up until that point, the Council had not carried out a search to check whether it holds further information on file. In the Council's opinion such a search was not necessary in view of the low level of information it stores and based on its knowledge of its meetings and the contents of minutes. Likewise, the Clerk is the only officer employed by the Council and she has full use of the Council's laptop computer where all information would be stored.
39. On the grounds that the Council has no permanent office facility, information which is initially held as manual records is input into the Council's computer for action or storage and then the manual records are destroyed. This is likely to have occurred in respect of information which may have related to the Barrack Lane site.
40. The Council does not record when it deletes or destroys information which it no longer requires. The Council emphasises that it has no location where deleted information might be stored and it assures the Commissioner that, with the exception of information required for its annual audit purposes, the Council has no business need to store information.
41. In support of her complaint, the complainant made several points which question the extent to which the Council holds recorded information relevant to her request. The Commissioner considered that the complainant's position sought to enquire further of the council, whose responses are given below:
42. Question: Can the Council confirm to the Commissioner that, where the Builder's Yard site is referenced in its minutes and agendas, there are no supporting documents which would fall within the scope of the complainant's request? The Commissioner notes that the complainant's site is referred to at least twenty times in the documents which the complainant has sent her.
43. The Council has confirmed that there are no supporting documents and it has clarified that where references to the site are made in its minutes they generally fall within the Public Session which is not part of the Council Meeting or the Reports section which does not normally result in a resolution.
44. Question: How was the Council able to make a £500 donation to the residents' campaign without there being any associated records of such, and did the Council seek and obtain legal advice about making that donation?

45. The Council referred the Commissioner to item 22 in its Schedule of Payments. This shows the Council's payment records following the agreed resolutions. The Council told the Commissioner that it had requested legal advice from NALC to ensure compliance with Section 137 of the Local Government Act 1972.
46. Question: How was the Council able to offer to pay for the costs of resident's affidavits without there being any associated records?
47. The Council assured the Commissioner that there are no records of payments made to residents for any affidavits. The Council explained that no resident asked for this cost to be supported by the Council and therefore the Council did not make any payments to cover affidavits.
48. Question: Did the Council discuss organising crowd funding? If it did, how is it that there is no recorded information about that discussion?
49. The Council said, "Due to the residents' strong feeling of opposition to what they considered to be unlawful use of the site, the Parish Council discussed and agreed to provide a central point for donations which could offset costs incurred by fellow residents working on the campaign. Investigation into formally organising such a funding circle proved it to be complex and possibly beyond the Parish Councils remit, therefore no action was taken to progress the matter".
50. Question: A document referring to the residents' campaign says that there are videos and photographs of the complainant's husband going about his work and that these were given to the Council. What is the Council's position in respect of this assertion?
51. The Council acknowledge that photographs and videos were produced by the Residents Group. These were circulated to some residents and were displayed in an open forum organised by the Residents Group. Whilst it is likely that members of the Council are aware of, or have seen, such photos or videos, the Council has assured the Commissioner that it does not hold such information on record.
52. Question: Did the Council participate in the production of leaflets and with the media in respect of this site? If yes, are there any record of the Council's participation in these?
53. The Council has assured the Commissioner that it did not participate in production of leaflets or media.
54. Question: Did the Council organise, or help organise, meetings for residents opposed to the complainant's plans? If yes, are there any records of the Council's involvement?

55. The Council has assured the Commissioner that it did not organise or help to organise meetings for residents opposed to the complainant's plans.

The Commissioner's decision

56. The Council's recent disclosure to the complainant of its Schedule of Payments, the email concerning the fenced off footpath and the NALC letter, the Commissioner is satisfied that the Council has now complied with Regulation 5(1) of the EIR and that, on the balance of probabilities, the Council holds no further recorded information relevant to the complainant's request.
57. The Council's recent disclosure of relevant information was well in excess of the twenty working day compliance period required by Regulation 5(2) of the EIR and therefore the Commissioner must decide that the Council has contravened this regulation.
58. The Commissioner is satisfied that the majority of the Council's information relevant to the complainant's request is contained in its agenda and minutes which are published on its website.
59. The fact that information relevant to the complainant's request was subsequently found, indicates the Council's need to read a request objectively and identify all the potential sources of information which is relevant to the complainant's request before making its response.
60. The Commissioner will use intelligence gathered from cases such as this to inform her office's insight and compliance function. This will align with the goal in the Commissioner's draft [Openness by design strategy](#) to improve standards of accountability, openness and transparency in a digital age. The Commissioner's aim is to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our [Regulatory Action Policy](#).

Other matters

61. The Council has informed the Commissioner that its information is not currently available under a publication scheme.
62. Whilst acknowledging that the Council only holds limited recorded information and much of that is published on its website, the Commissioner is required to direct the Council's attention to section 19 of the FOIA, which makes clear the duty of every public authority to adopt and maintain a publication scheme which is approved by the Commissioner.

63. The Commissioner has published an approved model publication scheme for public authorities on her website which she would commend it to the Council for adoption. The model publication scheme can be found at:

<https://ico.org.uk/media/for-organisations/documents/1153/model-publication-scheme.pdf>

Right of appeal

64. 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

65. 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.
66. 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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