

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

**Decision notice**

**Date:** 21 December 2020

**Public Authority:** Chapel St Leonards Parish Council  
**Address:** The Old Coastguard Station  
Anderby Road  
Chapel St. Leonards  
Skegness  
Lincolnshire  
PE24 5XA

**Decision (including any steps ordered)**

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1. The complainant requested from Chapel St Leonards Parish Council (the Council) information in relation to a lease agreement. The Council stated that it did not hold the requested document but offered an explanation related to this matter.
2. The Commissioner's decision is that the Council did not on the balance of probabilities hold any further information within the scope of the request.
3. Therefore, the Commissioner does not require any steps to be taken as a result of this decision notice.

**Request and response**

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4. On 18 November 2019 the complainant wrote to the Council and made the following request for information under the FOIA:

*"I wish to make a Freedom of Information request for the release of the contract agreed with the previous tenant of the Point Cafe."*

5. The Council wrote to the complainant on 19 November 2019 seeking further clarification regarding the information request.
6. On 20 November 2019 the complainant wrote back to the Council and provided further details in relation to the information sought. The complainant stated:

*"More recently was the answer to a question at a CSL meeting by [name redacted] about the future of the point café. Cllr [name redacted] answer was that the contract agreed with the previous tenant excludes the CSL council using the building for any business other than run by CSL Council (not verbatim) but can be clarified by the public attending.*

*My specific request is that I wish under the FOI to be supplied with the contract agreed between the CSL Parish Council and the last tenant of the point cafe, that states that the Point café cannot be used for any other purpose than the Council.*

*The above statements by Cllr [name redacted] show that the council does hold this information, which had a significant financial cost."*

7. On 21 November 2019 the Council provided the complainant with a response. The Council stated:

*"Any agreement regarding the cessation of the lease of the Chapel Point Café was handled by Lincolnshire County Council (LCC). Although Chapel St Leonards Parish Council is aware of the matter, it does not hold a copy of such and I respectively suggest you contact LCC under the FOIA. They will consider whether or not any information held can be released."*

8. Remaining dissatisfied with the response received, on 22 November 2019 the complainant requested an internal review.
9. On 3 December 2019, the Council wrote to the complainant and stated:

*"The Council can disclose that there are restrictions placed upon the future use of Chapel Point Cafe in that it must operate as a Parish Council concern. This was stipulated as the intention when the former leaseholder left the premises. The Council took legal advice on this matter but cannot disclose that correspondence as it falls within FOIA 42(2), which refers to legal privilege (confidential communications between lawyers and their clients made for the purpose of seeking or giving legal advice). There are no restrictions regarding the type of*

*business, which can be operated within the premises (subject to statutory planning requirements) but it must be operated by the Parish Council."*

## Scope of the case

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10. The complainant contacted the Commissioner on 11 December 2019 to complain about the way her request for information had been handled.
11. As part of her investigation, the Commissioner contacted the Council to confirm its final position in relation to the complainant's request. The Council confirmed that it did not hold the information requested and all the information it held related to this topic was the legal advice that it previously obtained from an external legal adviser.
12. During the course of her investigation, the Commissioner has received and examined the legal advice that the Council mentioned in the outcome of its internal review. However, this decision notice does not cover the application of section 42 of FOIA (Legal Professional Privilege) in relation to this legal advice, because this specific information was not requested by the complainant.
13. Therefore, the following analysis will cover whether the Council was correct when it stated that it did not hold the contract between the Council and the previous tenant of the Point Café.

## Reasons for decision

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### Section 1 – determining whether information requested was held

14. 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."*

15. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Council held the contract between the Council and a previous tenant of a Council property named Point Café. As explained above, the Council initially asserted that it did not hold the requested document because it was not a party to that agreement. At a

later stage of the investigation it was established that the Council had agreed a lease with a third party back in 2010 for the premises known as Point Café. However, the Council still maintained that it did not hold a copy of this lease.

16. 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.
17. 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.
18. During the course of her investigation, the Commissioner asked the Council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how the Council established whether or not it held any information within the scope of the request.
19. The Council explained that following further searches it has established that the original lease in relation to the premises in question was agreed in 2000. It was later transferred to another tenant in 2010 and again in 2012 to the last tenant of this property.
20. However, the Council confirmed that even after further searches the requested document could not be found in the Council's archive. The Council confirmed that it conducted thorough searches of its paper records that are held, as well as the electronic records and back up files.
21. The Council explained that in its efforts to locate the requested document in its electronic records, it searched using terms such as: "tenancy", "contract/s", "Point Café", in combination with the name of the tenants.
22. The Council stated that *"these searches were carried out on both the main computer, and the Parish Laptop. I have also searched the Parish email account in the same way."*
23. The Council explained that none of the current parish councillors were serving the Council at the time the requested lease was agreed.

Therefore, the current councillors would not be in possession of that document.

24. The Commissioner specifically asked whether any recorded information relevant to the scope of the complainant's request was ever held but was subsequently deleted or destroyed. The Council responded that it *"can only assume that the original lease was destroyed some time ago."*

*The Commissioner's Conclusion*

25. The Commissioner has examined the submissions of both parties. She has considered the searches performed by the Council, the information it disclosed and the Council's explanations as to why the information requested could not be located.
26. The Commissioner's role is to make a decision based on whether on the balance of probabilities relevant recorded information was held by the Council.
27. Whilst it is evident that the Council's initial position when it stated that it did not hold the information requested because it was not a party to that agreement was not correct, the Commissioner considers that subsequently the Council took the necessary steps to locate the requested information.
28. The Commissioner considers that, although not in a timely manner, the Council has demonstrated that it carried out the necessary searches to determine whether it held the information requested.
29. Following the lengthy investigation of this matter, the Commissioner does not consider that there is any evidence that would justify refusing to accept the Council's position that it does not hold the requested information.
30. Therefore, the Commissioner concludes that, on the balance of probabilities, the Council does not hold the requested information and it has, therefore, complied with the requirements of section 1 of FOIA in this case.

**Other matters**

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31. Although not forming part of the formal decision notice the Commissioner uses "Others Matters" to address issues that have become apparent as a result of a complaint or her investigation of that complaint and which are causes for concern.

32. The Commissioner considers that it is a serious concern that the Council was not able to locate such an important document that according to its retention policy it is required to keep.
33. The Commissioner invites the Council to review its records management procedures and take necessary actions to improve its practices of records keeping. In this process, Section 46 Code of Practice – records management<sup>1</sup> may serve as useful guidance.
34. Finally, the Commissioner also wishes to express her disappointment in the length of time the Council took to respond to her enquiries during the investigation. From her initial letter to the Council asking it to revisit the request and provide its final position in respect of the request, the Council took more than five months to respond.
35. The Commissioner appreciates that the current circumstances caused by the national health emergency undoubtedly had a negative impact on the Council's ability to cooperate in the course of this investigation. However, she expects better engagement from the Council in the future.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1624142/section-46-code-of-practice-records-management-foia-and-eir.pdf>

## Right of appeal

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36. 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)

37. 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.
38. 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** .....

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**