

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 December 2021

**Public Authority:** Shrewsbury Town Council  
**Address:** Riggs Hall  
Castle Gates  
Shrewsbury  
SY1 2AS  
[amanda.spencer@shrewsburytowncouncil.gov.uk](mailto:amanda.spencer@shrewsburytowncouncil.gov.uk)

#### Decision (including any steps ordered)

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1. The complainant requested all emails and documents exchanged between the Shrewsbury Town Council and Apricus Property Limited.
2. Shrewsbury Town Council responded after more than 20 working days stating it was unable to provide the requested information due to commercial interests. However, following a review it stated that it did not hold the requested information.
3. The Commissioner's decision is that Shrewsbury Town Council does not hold the requested information based on the balance of probabilities and therefore complied with Section 1(1)(a) of the FOIA.
4. However, it breached Section 10(1) of the FOIA as it did not comply with Section 1 promptly and in any event, within 20 working days.
5. The Commissioner does not require Shrewsbury Town Council to take any action to ensure compliance with the legislation.

#### Request and response

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6. On 31 May 2020 the complainant wrote to Shrewsbury Town Council (the Council) and requested information in the following terms:

*'All emails and documents exchanged between the Shrewsbury Town Council and Apricus Property Limited'.*

7. The Council responded on 6 July 2020. It stated it was unable to provide the requested information 'in accordance with Section 43 – Commercial Interests'.
8. Following a review the Council wrote to the complainant on 28 September 2020. It stated that it did not hold any recorded information falling within the scope of the complainant's request.

### **Scope of the case**

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9. The complainant contacted the Commissioner on a number of occasions in 2020 and 2021 to complain about the way his request for information was handled. In particular, he was unhappy with the Council's position that it did not hold any recorded information.
10. The Commissioner's investigation in this case will be to determine whether the Council holds any recorded information falling within the scope of the complainant's request based on a balance of probability test. The Commissioner will also consider the timeliness of the Council's response.

### **Reasons for decision**

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#### **Section 1(1) of the FOIA – Information held / not held**

11. Under Section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection(a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.
12. Where there is a dispute between a public authority and a complainant as to whether any recorded information falling within the scope of a request is held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of a balance of probabilities.
13. The complainant has explained to the Commissioner that he believes that relevant information may come to light in response to other FOIA requests he has made. These were for correspondence between the Council and its solicitors, and the Council's solicitors and the solicitors instructed by the company that purchased Greenfields Recreation Ground from the Council. The complainant said he believes this purchase was financed by Apricus Property Limited, about which he had concerns, and wanted to know if there was any connection with the Council and/or its councillors.

14. The Council has explained to the Commissioner that its investigation process was to make enquiries with the staff involved in the sale of Greenfields Recreation Ground, namely the Town Clerk and the Head of Resources. Both of these individuals provided emails to the Commissioner confirming that the Council "never had any dealings with Apricus Property Limited" and the only time they "were made aware of this company was when it was raised by the complainant".
15. The complainant has not provided any evidence to support his belief that the Council should hold the requested information and the responses to his related requests referred to above in paragraph 13 did not reveal any such information.
16. Having considered the above, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any recorded information falling within the scope of the complainant's request.
17. **Section 10(1) of the FOIA – Time for compliance**
18. Section 10(1) of the FOIA obliges a public authority to comply with Section 1(1)(a) promptly and within 20 working days following the date of receipt of the request.
19. The Council did not confirm or deny that the requested information was held within 20 working days and therefore breached Section 10(1) of the FOIA.

## Right of appeal

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20. 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: 0203 936 8963

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)

21. 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.
22. 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** .....

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**