

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2022

Public Authority: Cullompton Town Council
Address: The Town Hall
1 High Street
Cullompton
Devon
EX15 1AB

Decision (including any steps ordered)

1. The complainant requested from Cullompton Town Council ("the Council") information relating to the 'topple testing' of grave headstones. The Council disclosed information in response. The complainant maintained that the Council had failed to fulfil his requests for information.
2. The Commissioner's decision is that the Council has disclosed all held information but has breached the requirement of section 10 by disclosing information outside the time for compliance.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 4 June 2021, the complainant wrote to the Council and requested information in the following terms:

With regards to the Annual Topple Testing of headstones etc in the old Cemetery in Tiverton Rd, Cullompton, could you please provide the following:-

- 1. A list for the last 5 years, showing dates and times of all previous tests at the above location.**
 - 2. The list should show by plot number/or other identification located on a map and included details of the defect.**
 - 3. List show what action is taken to make safe.**
 - 4. Were any steps taken to trace living relatives to correct defects.**
 - 5. Cost to council for any work done.**
5. The Council responded on 21 July 2021. It disclosed held information.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled, and specifically his belief that the Council held further information.
7. The scope of this case and of the following analysis is whether the Council holds further information.

Reasons for decision

Section 1 – General right of access to information

8. Section 1(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.

9. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

10. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The Commissioner's investigation

12. The Commissioner asked the Council to specify what searches it had undertaken to retrieve information relevant to the request, and why it considered that it had disclosed all held information.
13. The Council responded that it has taken the following searches:
 - An electronic search was undertaken on the Council's IT systems using the term "Topple Test".
 - The hardcopy filing system was manually searched.
 - The cupboards in the Town Clerk's Office, and shelving and cupboards in the Council's premises were manually searched.
 - Officers, including the Outdoor Team, were asked if they were aware of any relevant documents.
14. In respect of part 1 of the request, the Council elaborated that it has not found any records of testing being carried out besides that in 2016, and that the recommended frequency for memorial testing is every five years.
15. In respect of part 2 of the request, the Council confirmed that it has not found any maps with memorial locations recorded on them.
16. In respect of part 4 of the request, the Council elaborated whilst template documents are held, it was not aware of any completed examples addressed to living relatives to address headstone defects, and that there was no known record of any committee decisions on tracing relatives.
17. In respect of part 5 of the request, the Council elaborated that any work done on grave headstones would be done 'in-house' and recorded as part of the 'cemetery running expenses', and that the exact cost for such work cannot therefore be calculated.

18. The Commissioner considers that the Council has provided a clear explanation of the searches it has undertaken, and why it considers that all held information has been retrieved. Whilst the Commissioner has noted the complainant's view that further information, such as the mapped location of headstones, must be held due to historic actions by the Council, there is no available evidence that suggests to the Commissioner that the Council has failed to comply with section 1 in respect of the request.
19. The Commissioner's conclusion is, therefore, that on the balance of probabilities the Council has identified and disclosed to the complainant all the information it holds that is within scope of the complainant's request.

Section 10 – Time for compliance

20. Section 10 states that information should be made available no later than twenty working days after the date of receipt of the request.
21. In this case the Council responded and disclosed held information outside of twenty working days. On this basis the Commissioner finds a breach of section 10.

Right of appeal

22. 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

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

23. 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.
24. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF