

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 January 2022

**Public Authority:** Shrewsbury Town Council  
**Address:** Riggs Hall  
Castle Gates  
Shrewsbury  
SY1 2AS

#### **Decision (including any steps ordered)**

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1. The complainant has requested from Shrewsbury Town Council the draft or final report from Michael Redfern. Initially Shrewsbury Town Council applied Section 22 of the FOIA to withhold the report. However, during the course of the Commissioner's investigation it changed its position claiming the report was not held at the date of the request.
2. 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.
3. 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.
4. The Commissioner does not require the public authority to take and steps.

#### **Request and response**

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5. On 23 and 26 November 2020 the complainant requested the following information from Shrewsbury Town Council (the Council).

On the 23 November 2020 the complainant stated:

*"Can you forward a draft copy of the Redfern Report? And give me a date for publication?"*

The complainant repeated his request on 26 November 2020 when he stated:

*"Can I now request that either the draft report of [sic] the final report of the Redfern investigation is made available. This was promised by Mr Redfern several months ago and before the Council of Appeal hearing.*

*I would like now to request this outcome as a Freedom of Information Request. Mr Redfern has the request on behalf of the community that he publish his report before the Court of Appeal hearing. It would appear that the report is being wilfully delayed."*

6. The Council responded on 29 November 2020. It stated:

*"I am afraid we have not yet received the report from Michael Redfern so we are not in a position to provide a copy. I do not yet have a date for when we will receive this but hope that its arrival is imminent. I can assure you that when the report is received, and as laid out in the terms of reference, the contents will be shared at a public meeting at the earliest opportunity. We are therefore responding to this Freedom of Information request under Section 22 of the FOI Act".*

## **Scope of the case**

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7. The complainant contacted the Commissioner on a number of occasions in 2021 to complain about the way his request for information had been handled. In particular, he was unhappy the Council initially withheld the requested information under Section 22 of the FOIA and then subsequently stated it did not hold it under Section 1.
8. Based on the content of the request of 23 November, the Commissioner has interpreted the complainant's request dated 26 November 2020 when he stated "Can I now request that either the draft report of the final report of the Redfern investigation is made available", as meaning "either the draft **or** the final report" not "the draft report **of** the final report".
9. The scope of the Commissioner's investigation will be to determine whether at the date of the complainant's request on 26 November 2020 Michael Redfern's report actually existed (either in draft or final form) and if so whether it was held by the Council.

## **Reasons for decision**

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

10. 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.
11. 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.
12. On 19 March 2021 the Commissioner contacted the Council in relation to a number of the complainant's related requests and asked for copies of all relevant information held and any further arguments it wished to raise in support of the FOIA exemptions cited in relation to the various requests.
13. The Commissioner contacted the Council again on 6 April 2021 asking it to clarify whether it actually held a draft or final report from Michael Redfern or whether one was held on its behalf by someone else. The Commissioner noted that in an email the council had sent to the complainant dated 1 April 2021 it was suggested that no report either in draft or final form was held.
14. The Commissioner pointed out, by referencing his guidance, that the Council's application of Section 22 of the FOIA would only be appropriate if the requested information was actually held. He therefore asked the Council to clarify this point in emails sent on 6 April and 20 May 2021.
15. The Council responded on 28 May 2021 and stated that 'no one at the Town Council had received a copy of Michael Redfern's report in draft form or otherwise'. It did, however, point out that the subject was discussed at a Full Council meeting on 22 March 2021<sup>1</sup> when Councillor Mosley reported that the report was not yet available to the Town Council.
16. Item '107/20 GREENFIELDS RECREATIOTN GROUND' of the minutes of this meeting states;

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<sup>1</sup> <https://www.shrewsburytowncouncil.gov.uk/wp-content/uploads/21.03.22-Full-Council-Minutes.pdf>

*'Councillor Mosley reported that the Greenfield Independent Investigation report was not yet available to the Town Council. He had contacted Michael Redfern QC who was undertaking the investigation and who had provided the following response:*

*'The first draft of the report is completed based on the law as stated in the recent Court of Appeal case of Day v Shropshire Council and interested parties. The appellant has petitioned the Supreme Court for permission to appeal on a point of law of public importance. If granted, the Court of Appeal decision could be reversed as there is little case law on the law pertaining to the Day case. I cannot perfect the legal analysis in the draft until the permission decision is made'.*

*The report would be made available at a public meeting and on the Town Council's website as soon as it was available'.*

17. The Commissioner replied on 1 June 2021 pointing out that if the Council did not hold a final or draft copy of the report at the date of the request, Section 22 of the FOIA was not applicable. He then asked it to clarify whether the information was environmental as it related to a planning issue. He also requested details of any searches and enquiries it had carried out to identify and locate any information held either by itself or on its behalf, by Michael Redfern.
18. The Council responded on 16 June 2021 with details of the searches and enquiries it had carried out together with an explanation as why no report was held. It said it was a small organisation and the only people who would have received a copy of the report were the Deputy Town Clerk, the Leader of the Town Council and a named Councillor. The Council stated none of these had received the report.
19. The Commissioner replied on 18 June 2021. He said it would appear that when the complainant submitted his request on 26 November 2020 no report existed, not even a draft one. Although the minutes from the Council meeting on 22 March 2021 stated that Michael Redfern had completed the first draft of his report, they did not state exactly when this was. The Commissioner asked the Council to clarify this point and suggested if the 'draft' and only report post dated the complainant's request the matter could be dealt with fairly quickly on the basis of Section 1 of the FOIA. The Commissioner stated he was aware that the complainant may have made subsequent requests for the report after March 2021.
20. The Council responded on 18 June 2021 and said it did not have an exact date when Michael Redfern's first draft report was completed. However, it added 'it was definitely several months after the initial request' in November 2020.

21. On 30 June 2021 the Commissioner wrote to the complainant stating that his enquiries suggested that at the time of the request in November 2020, Michael Redfern's report (either in draft or final form) did not exist.
22. Based on these enquiries as detailed above, the Commissioner is satisfied on a balance of probabilities that the information requested by the complainant did not exist and therefore was not held by the Council at the date of the request on 26 November 2020.
23. As noted at paragraph 16, the meeting of the Full Council on 22 March 2021 evidences Michael Redfern's confirmation that the first draft of the report had been completed. This confirmation was almost 4 months after the complainant submitted his request and the Council has stated to the Commissioner that the report was definitely not held on 26 November 2020.
24. The Council has also provided the Commissioner with details of the searches and enquiries it has carried to locate and extract any information falling within the scope of the request.

### **Section 10(1) of the FOIA – Time for compliance**

25. 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.
26. 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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27. 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)

28. 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.
29. 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**