

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

### **Decision notice**

**Date:** 18 April 2023

**Public Authority:** Wolston Parish Council  
**Address:** wolstonpc@wolstonpc.co.uk

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

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1. The complainant has requested a copy of a report. Wolston Parish Council (the council) stated that it did not create the report and therefore it is not held by it.
2. The Commissioner's decision is that the requested information is held by the council as per section 3(2) of the FOIA – Information held on behalf of.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant's request either providing the requested information or issuing a valid refusal notice under the FOIA.
4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 14 September 2022 the complainant made the following information request to the council:

“...please provide me with a copy of the report provided into the Fake Facebook Profile which was set up, and believe to have been setup by a previous employee of the parish council.”
6. The council responded on 12 October 2022, initially stating that the report was carried out outside of the capacity of the council, the complainant disputed this and the council responded further, refusing the request under section 40 of the FOIA as it determined it was personal data.
7. The complainant contacted the Commissioner on 14 October 2022 to complain about the council’s refusal. The Commissioner advised the complainant that they first needed to request that the council undertook an internal review before any complaint could be considered.
8. The complainant requested an internal review on 17 November 2022 and the council provided it on the 15 December 2022. It amended its position stating that the report is not owned by the council and so it is unable to release it.

## **Scope of the case**

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9. The complainant contacted the Commissioner further to complain that the council has not provided the requested information.
10. The scope of the case is for the Commissioner to determine whether the council holds the requested information for the purposes of the FOIA.

## **Reasons for decision**

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### **Section 3(2) of the FOIA – Information held by a public authority**

11. Section 1 of the FOIA provides a general right of access to recorded information that is held by public authorities. When a request for information is made, a public authority must confirm whether it holds information of the specified nature in the request and if it does, it must provide it to the requestor unless a valid exemption exists under the FOIA for not doing so.

12. Section 3(2) of the FOIA sets out that for the purposes of the FOIA, information is held by a public authority if-
  - a) It is held by the authority, otherwise on behalf of another person, or
  - b) It is held by another person on behalf of the authority.
13. As explained in the Commissioner's published guidance<sup>1</sup>, each case needs to be reviewed individually to determine whether a public authority holds information for its own purposes. There are various factors that will assist in determining whether the public authority holds the information for the purposes of the FOIA. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.
14. Factors that would indicate the information is not held by a public authority include:
  - the authority has no access to, use for, or interest in the information;
  - access to the information is controlled by the other person
  - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
  - the authority is merely providing storage facilities, whether physical or electronically.

#### The complainant's position

15. The complainant has told the Commissioner that he is aware that the day after his information request was refused, the report was shared by the council with another resident.
16. The complainant says that the resident has not shared the report with them, but states the report was signed by the author in their capacity as chair of the council. The complainant provided a screenshot to the Commissioner. It does not show the report, but shows "Updated by [name redacted], Chair of Wolston Parish Council 29.11.2022".

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/#whatdoesholding>

17. The complainant has also provided email correspondence between himself and the council and on 14 September 2022 he was told by the council:

“On legal advice, the report is strictly confidential to the parish councillors at this stage.”

#### The council's position

18. In this case, the council has told the Commissioner that an initial enquiry into the fake Facebook account was carried out by previous members of the council who came to the conclusion that there was not enough evidence and no action was taken.
19. An election followed and most of the original Councillors were replaced.
20. The council has explained that one of its current Councillors carried out a second investigation in response to a request from a resident of Wolston who produced a draft report of their findings.
21. The council assert that this report, although produced by a Councillor who is also chair of the council, was done of their own accord, and not on behalf of the council. The council has told the Commissioner that it does not have possession of the requested report, and there is no electronic copy.
22. It has explained that a hard copy was presented to the council on two occasions and the council refused to accept it and at a council meeting on 15 December 2022 the author of the report withdrew the document from the table.

#### The Commissioner's position

23. The Commissioner must now determine whether the report was created for the council or independent of the council.
24. Even though the council does not physically hold a copy of the report, it may be that it is held on behalf of the council.
25. The Commissioner's understanding is that the requested report was produced by the Chair of the council and it is with regards to the actions of a previous employee of the council in relation to a council Facebook account.
26. The Commissioner is satisfied that the report clearly relates to council business and an ex-employee of the council.

27. The Commissioner is also of the view that the resident who asked for this report to be done, would most likely have done so in the consideration that the person they asked to do it is the Chair and a Councillor for the council.
28. The council may not have directed the Chair to create this report, but having considered the nature of what the report is about and the position of the person within the council who created it, the Commissioner is satisfied that it was created in their capacity as Chair of the council.
29. On this basis, the Commissioner is satisfied that the report would have been written on behalf of the council and therefore finds that the requested information is held by the council for the purposes of the FOIA as per section 3(2) of the FOIA.

## Right of appeal

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30. 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)

31. 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.
32. 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 .....**

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**