

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2017

Public Authority: Debden Parish Council

Address: parishcouncil@debden.org

Decision (including any steps ordered)

1. The complainant has requested copies of some Recreation Ground Trust (the RGT) invoices. Debden Parish Council (the council) responded that it does not hold the invoices and that these invoices are held by the RGT only.
2. The Commissioner's decision is that the council does not hold the requested invoices.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 8 February 2017 the complainant made the following request to the council:

“...I'd like to see please a copy of all the invoices submitted to the PC by the RGT since the election of this current PC, I think the relevant FOI date for producing this is 15 March and the documents should include the most recent invoice please. I have asked for this information before but am happy for the clock to start again on this request.”
5. The council responded on the 14 February 2017 stating that as far as the invoices from Mills and Reeve are concerned, these are addressed to the RGT and not subject to the FOIA.
6. The council explained that before each meeting, all councillors receive a list of invoices, for the RGT and the council, for payment, and are included in the minutes of the council.

7. On the 15 February 2017, the complainant asked the council for some clarification to its response. She asked whether it was stating that the council does not hold the invoices or whether it considers it does not need to provide them.
8. On 16 February 2017, the council responded to say that the invoices from Mills and Reeve are kept separately in the files for the RGT and not subject to the FOIA.
9. On the 27 February 2017 the complainant amended her request, asking for:

"...a copy of the invoices in respect of legal advice for the RGT which have been paid for by the PC."
10. Following further correspondence with the council, the complainant complained to the Commissioner on the 6 March 2017 as she was not satisfied with the council's response to her request.
11. Following contact from the Commissioner, the council wrote to the complainant on the 11 April 2017 with its internal review response to confirm it does not hold the requested information.

Scope of the case

12. Following the internal review the complainant contacted the Commissioner to determine whether the council holds the requested information.
 13. The dispute is not whether the invoices exist or not, it is whether the invoices are held by the council.
 14. As the council considers this information is held by the RGT not itself, the Commissioner considers the scope of the case is to determine whether or not the *"invoices in respect of legal advice for the RGT which have been paid for by the PC"* is held by the council not the RGT.
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Reasons for decision

Section 1 of the FOIA – Information held/ not held

15. Section 1 of the FOIA states that any person making a request for information to a public authority is to be entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to him.
16. Where there is some dispute between the amount of information identified 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 decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).
17. The Commissioner also considers it relevant to consider section 3(2) FOIA alongside his considerations of section 1(1) of the FOIA.
18. Section 3(2) of the FOIA sets out the criteria for establishing if information is held for the purposes of the FOIA:

“For the purposes of this Act, information is held by a public authority if-

 - (a) It is held by the authority, otherwise than on behalf of another person, or*
 - (b) It is held by another person on behalf of the authority”*
19. The council has stated that the requested invoices are not held by it, they are held by the RGT only.
20. The Commissioner’s guidance¹ at paragraph 15 explains that public authorities can be trustees of charitable trusts. It gives the example that

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

assets such as playing fields and community halls may be held by a local authority on trust for the benefit of local residents.

21. The guidance goes on to explain that as trustees must act only in the best interests of the charity, and not in their own interests, this means that any information held by an authority only in its capacity as a trustee is not held by it for the purposes of the FOIA.
22. However, there may be circumstances where the public authority may hold information about the charitable trust for its own purposes. For example, the charity may make a report to the authority, or the authority may provide administrative support to the to the charity and hold information with regards to this.
23. The Commissioner has therefore asked the council to provide a detailed explanation as to why it is of the view that it does not hold the RGT's legal advice invoices for the purposes of the FOIA.
24. The council explained to the Commissioner that in 1922 it purchased land from a local benefactor and the conveyance specified in the terms of sale that the purchasers should hold and administer the land in trust in accordance with the Open Spaces Act of 1906, effectively creating a Charitable Trust.
25. The council has advised the Commissioner that although it was aware of the covenant, its implications did not become apparent until 2002. After consultation with its solicitors, the council was advised that it had no alternative but to register the charity with the Charity Commissioner. The RGT was therefore set up in that year and it was established that Parish Councillors, upon election or co-option to the council, should become "de-facto" Trustees.
26. A point to note is that the secretary/ administrator of the RGT is also the clerk of the council. The council states that the invoices in question are stored by her solely in her capacity as the RGT secretary/ administrator. The council has told the Commissioner that the council does not receive copies of these invoices.
27. The two roles were split in 2015 when the council was advised by its solicitor that the two functions should be separate from one another.
28. The council has stated to the Commissioner that a separate bank account is open for the RGT and its accounts have been and are completely separate from the council and they are audited separately at the end of the year. The council pays a grant to the RGT to ensure there are sufficient funds for it to cover invoices and direct debits.

29. The council has told the Commissioner that the RGT does not usually exceed the budget that is set unless there are unforeseen circumstances that require unexpected or emergency funding.
30. It has also told the Commissioner that the council does not have a say in the running of the RGT, it is the Trustees that have the sole responsibility for the administration of the charity, are personally liable for their decisions and must act in the best interests of the charity, not the council.
31. The council has stated to the Commissioner that it is the RGT that has access to the invoices, not the council. It has explained that the Secretary/ Administrator of the RGT holds the invoices and submits them to the Trustees of the RGT at the RGT meetings.
32. The Chairman and another authorised Trustee signs the cheques for payment and then the invoices are made available to the Trustees if required.
33. The Commissioner asked the council to explain why its councillors are given a list of these invoices at the council meetings and recorded in council minutes.
34. The council has responded to the Commissioner advising that the council allocates a grant to the RGT at the beginning of the financial year when budgets are set. Prior to the RGT's solicitor advising that the council and the RGT affairs should be run completely separately, a list of invoice payments was submitted to the council at their meetings. This was because the Trustees were under the impression that, for the sake of transparency, they should account for the expenditure incurred by the RGT to the council, as the grant provider, on a regular basis to show how the money has been spent.
35. This list of payments was provided to the council from the RGT and included in the council's payment schedules and available at parish council meetings. The council has made it clear to the Commissioner that the invoices themselves have not been made available or shown at council meetings.
36. The council has further explained to the Commissioner that more recently, 18 July 2017, the council's External Auditor has advised that it is not necessary to even include the RGT's list of invoice payments in the council's payment schedule and so the practice has now stopped.
37. The Commissioner has considered the council's explanations. She is satisfied that the RGT and the council are run as separate entities.

38. The cause for potential confusion is that the council clerk is also the administrator of the RGT and the council's councillors are the trustees of the RGT.
39. It is understandable therefore why the complainant would consider that the council has been in receipt of and would hold these invoices.
40. The Commissioner sees that the council Clerk and councillors would have access to the requested invoices. But they would only have had access to them in their separate rolls as the RGT administrator and trustees. They would not have access to them in their council capacity. This seems to sit with the Commissioner's guidance discussed at paragraph 21 of this decision notice.
41. The Commissioner therefore sees it reasonable to accept the council's explanation that it was only provided with a list of invoice expenditure from the RGT, not the actual invoices. This list of expenditure being recorded in the council's meeting minutes, which it advised the complainant of in its initial response.
42. In view of the above, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold the requested invoices. The invoices would be held by the RGT as a separate entity to the council.
43. The Commissioner does not require the council to take any steps.

Right of appeal

44. 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@hmcts.gsi.gov.uk

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

45. 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.
46. 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

Andrew White
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