

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

### **Decision notice**

**Date:** 6 November 2018

**Public Authority:** Bicester Town Council  
**Address:** The Garth  
Launton Road  
OX26 6PS

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

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1. The complainant has requested information associated with an allotment working group. Bicester Town Council withheld the information under the exemption for information intended for future publication – section 22 of the FOIA. During the Commissioner's investigation the public authority disclosed the information to the complainant.
2. The Commissioner's decision is that Bicester Town Council failed to disclose the information within the statutory time limit and breached section 10(1) of the FOIA.
3. The Commissioner does not requires the public authority to take any steps.

## **Request and response**

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4. On 14 February 2018, the complainant wrote to Bicester Town Council (the "council") and requested information in the following terms:

*"....a copy of the minutes/notes of the Allotment Working Party held on 4th October 2017"*

5. The council responded on 14 March 2018. It confirmed that the information was covered by its publication scheme and would be published in due course.
6. Following an internal review the council wrote to the complainant on 6 June 2018. It stated that it was withholding the information under the exemption for information intended for future publication – section 22 of the FOIA.

## **Scope of the case**

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7. On 6 June, following the internal review, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
  8. The Commissioner confirmed with the complainant that her investigation would consider whether the council had correctly withheld the requested information under section 22 of the FOIA.
  9. During the Commissioner's investigation the council disclosed the information to the complainant. The Commissioner invited the complainant to withdraw their complaint but the complainant asked the Commissioner to determine whether the original grounds for withholding the information (under section 22) were correct.
  10. The Commissioner advised the complainant that, where information previously withheld is disclosed during or prior to her investigation the Commissioner does not look at whether the initial use of an exemption was legitimate. She invited the complainant to withdraw their complaint but the complainant asked the Commissioner to issue a decision notice.
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## Reasons for decision

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### Section 10(1) – time for compliance

11. Section 1(1) of the FOIA requires authorities receiving a request for information to confirm whether the information is held and, where it is, to provide it to a requester.
12. Under section 10(1) of the FOIA, authorities must comply with the duty under section 1(1) promptly and within 20 working days of the receipt of the request.
13. In this case the complainant submitted their request on 14 February 2018 and was provided with the information in October 2018.
14. The Commissioner has concluded that the council failed to provide the requested information within the statutory time limit and breached section 10(1) of the FOIA.

## **Other matters**

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15. Although they do not form part of this decision notice the Commissioner would like to record the following matters of concern.

### *Application of Exemptions*

16. Although the Commissioner has not reached a determination regarding the council's application of section 22 in respect of the request she would like to remind public authorities of the threshold which must be met in order to engage this exemption.

17. In order to engage the exemption there are 3 criteria which must be shown to be present:

- the public authority holds the requested information;
- the public authority intends the information to be published at some future date, whether that date is determined or not; and,
- in all the circumstances it is reasonable to withhold the information until its planned publication.

18. Public authorities are reminded that, whilst there may be an intention to publish requested information it is not necessarily always reasonable to withhold information at the time a request is received. One factor which might be relevant in determining reasonableness is the relative proximity of the request date to the intended publication date.

19. The Commissioner has published extensive guidance for public authorities which covers the application of exemptions, procedural matters and recommendations as to best practice. She expects that authorities will refer to this guidance when handling requests for information<sup>1</sup>.

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<sup>1</sup> Guidance is published on the ICO website here: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

## 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: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.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 .....**

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