

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2014

Public Authority: Hormead Parish Council
Address: Cedar Beth-El
17 Park Lane
Puckeridge
SG11 1RL

Decision (including any steps ordered)

1. The complainant has requested the minutes of Annual Parish Meetings and a copy of a Chairman's report. Hormead Parish Council provided copies of some of the requested meeting minutes and confirmed that the requested report was not held.
2. The Commissioner's decision is that Hormead Parish Council has correctly confirmed that it does not hold a copy of the requested Chairman's Report and that it complied with section 1 of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 30 June 2014, the complainant wrote to Hormead Parish Council (the "council") and requested information in the following terms:

"Please can you either send me the Annual Parish Meeting minutes, including the full and complete chairman's report, for the years of 2012, 2013 and 2014, or explain why you cannot do so"
5. The council responded on 28 July 2014. It provided copies of the meeting minutes for 2012 and 2013 and stated that the 2014 minutes were currently being drafted and would be shortly published on the council website. The council confirmed that it did not hold a copy of the Chairman's report.

6. The complainant requested an internal review on 29 July 2014.

Scope of the case

7. On 28 July 2014 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 his investigation would consider whether the council had correctly confirmed that it did not hold a copy of the requested Chairman's report.

Reasons for decision

9. Section 1 of FOIA requires authorities to confirm or deny whether requested information is held and, where it is, to provide it to a requester.
10. In this instance the council has stated that it does not hold a copy of the Chairman's report. The complainant disputes this.
11. 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 ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In determining where the balance lies in this case, the Commissioner has referred to the complainant's and the council's submissions.
13. The complainant has alleged that the Chairman's Report, as orally delivered to the Annual Parish Meeting, contained derogatory statements. Obtaining a copy of the information will assist them in investigating the comments made and holding the Chairman to account for their actions.
14. The complainant clarified that they had previously submitted a request for the information in May 2013 and, at that time, the council had also confirmed that the information was not held. The complainant has provided the Commissioner with a copy of an email between the Clerk and the Chairman (sent prior to the response to the May 2013) in which, it is alleged, the Chairman directs the Clerk not to provide the information. Having read this and sought the council's views on this issue, the Commissioner is satisfied that the email simply asks the Clerk to delay responding to the request until the matter has been discussed.

The Commissioner finds no evidence here of intent to block access to or conceal information.

15. The council has explained that the Annual Parish Meeting at which the requested report was orally presented took place on 7 May 2013 and that it was convened by Councillor Rob Denham, Chairman of the council at that time. The minutes for the meeting were taken by the Clerk and Agenda item 6 of the meeting was set aside "...to receive a review of the year 2012-13 from Councillor Rob Denham, Chairman of the Parish Council".
16. The Clerk has confirmed to the Commissioner that he was not given an advance copy of the Chairman's Report (the "Report") but that he anticipated he would subsequently be given a transcript of the report. He has explicitly confirmed that he was not, at any stage subsequent to the meeting, provided with a hard copy or electronic copy of the Report. As the Clerk, the officer responsible for the council's compliance with the FOIA, he has confirmed that the Report is not held, nor has it ever been held by the council.
17. The council has emphasised that the report in question was preceded by a "clear and unequivocal" statement that it was the personal opinion of the Chairman and did not necessarily reflect the views or opinions of the council. The council has stated to the Commissioner that the council gave no mandate or delegated powers to the Chairman for him to address the meeting on its behalf.
18. In support of its explanation, the council provided the Commissioner with a copy of the minutes of the previous Annual Parish Meeting (dated 17 May 2012). Preceding the minuted record of the Chairman's Report is the following statement "*The Chairman said that the following report represented his own personal views, and were not necessarily those of the Parish Council.*" The council's argument, therefore, is based on its assertion that the Report does not represent official council business and that there is no reason for it to form part of the council record.
19. The council has further stated that the Annual Parish Meeting has a different status to council meetings. It explained that under section 9, Schedule 12, paragraph 14 of the Local Government Act 1972, every English parish, irrespective of whether there is a parish council, must have an Annual Parish Meeting between 1 March and 1 June. The council has stated that parish councillors, including the Chairman, are under no obligation to attend but, if they do, it is in their capacity as *parishioners*, not as councillors.
20. In considering the available evidence the Commissioner is alive to the complainant's concerns, firstly about the alleged substance of the Report

and secondly about the council's confirmation that it is not held. In relation to the former, this strictly falls outside the Commissioner's remit and there are other appropriate remedies for concerns about the conduct of councillors to be pursued. Whilst the existence of a record of the Report would, clearly, facilitate any such actions, the Commissioner can only reach a decision based on relevant factors.

21. It seems clear to the Commissioner that, based on the statutory status of the Annual Parish Meeting and the fact that it falls outside the purview of official council business, the standing of council members as parishioners rather than as representatives of the council at such meetings and the clear disclaimers given before previous Reports presented by the Chairman, that there is no obligation on the council to maintain a record of the requested Report.
22. When these factors are considered alongside the explicit confirmation that the Report has never been held in any form by the council, the Commissioner is of the view that, in this instance, the balance of probabilities weighs in favour of the council's position.
23. In light of the above the Commissioner has concluded that the council has correctly confirmed that the requested Report is not held and that it has complied with its obligations under section 1 of the FOIA.

Other matters

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

Internal Review

25. The code of practice issued under section 45 of the FOIA (the "code") recommends that public authorities should provide a procedure for handling complaints about the handling of requests for information. These procedures are commonly referred to as "internal reviews".

26. Paragraph 39 of the code states:

*"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue. Complaints procedures should be as clear and simple as possible. They should encourage a prompt determination of the complaint."*¹

27. The Commissioner agrees with the recommendations of the code and has interpreted "...prompt determination" to mean that most reviews should be completed within 20 working days of the receipt of a complaint.

28. In this case the complainant contacted the council on 29 July 2014 and asked it to review its handling of the request but the council failed to complete a review within the Commissioner's recommended timeframe. During the course of the Commissioner's investigation the council was also directed several times to conduct a review but it failed to do so.

29. In future the Commissioner expects that the council will conduct internal reviews in accordance with the code and with regard to the Commissioner's recommendations.

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

Right of appeal

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@hmcts.gsi.gov.uk

Website: 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

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