

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

### Decision notice

**Date:** 5 July 2016

**Public Authority:** Bulmer Parish Council  
**Address:** 5 Crocklands  
Greenstead Green  
Halstead  
Essex  
CO9 1QY

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to a decision to suspend the letting of allotment plots. The Commissioner's decision is that, on the balance of probabilities, Bulmer Parish Council does not hold the requested information. He does not require any steps to be taken to ensure compliance with the legislation.

#### Request and response

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2. On 2 November 2015, the complainant wrote to Bulmer Parish Council ('the council') and requested information in the following terms:  
  
"A decision was made outside of a full council meeting to suspend the letting of allotment plots indefinitely.  
  
Please supply the following information in accordance with The Openness of Local Government Bodies Regulations 2014, section 7:  
1) The date of the decision.  
2) The name of the officer who made the decision.  
3) The rationale behind the decision.  
4) The written record of the decision."
3. The council responded on 11 November 2015. It said that after careful searching through files, it appears that it does not hold the requested information and therefore it is unable to comply with the request. It also

informed the complainant that the item will be discussed at the next Parish Council meeting scheduled to be held on Monday 16 November and that the item appears under item number 15/31 Item 2 on its agenda.

4. The complainant requested an internal review on 2 February 2016. He said that it is unsatisfactory to claim the requested information isn't held as to do so implies that a decision was made that had detrimental financial consequences but that the council does not know who made it or when. He also said that if the council is claiming that there is no written record, that is a violation of the Openness of Local Government Bodies Regulations 2014, section 7.
5. On 3 February 2016 the council responded. It said that at the time the council had two changes of Clerks, one very inexperienced, and that perhaps procedures were not correctly implemented. It confirmed that it has now employed a fully qualified CiLCA Clerk and all procedures are and will be adhered to in the future. It said that it will not be revisiting past issues as to do so would be vexatious and cause unnecessary cost.
6. The complainant asked for confirmation that the council will not be supplying the information requested and will not conduct an internal review for the reason that it is vexatious on 4 February 2016.
7. On 5 February 2016 the council said that it has nothing further to add regarding this issue.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 11 February 2016 to complain about the way his request for information had been handled. He said that he strongly believes that he and his wife are the subjects of discrimination and/or victimisation and that the decision to freeze the renting of spare allotment plots was the result of them applying for one. He also said that the Openness of Local Government Bodies Regulations 2014, section 7 is quite clear on what decisions can be made outside of full council meetings and what documentation must be produced if such a decision is made.
9. The Commissioner informed the complainant that it is not within his remit to investigate compliance with the Openness of Local Government Bodies Regulations 2014. However, he informed the complainant that he asked the council to consider this when answering his enquiries in this case.

10. The Commissioner asked the council to confirm which provision of the FOIA it is relying on: that it does not hold the requested information; that the request is vexatious under section 14 of the FOIA; or that compliance with the request would exceed the appropriate limit in accordance with section 12 of the FOIA.
11. The council confirmed that its position is that the information is not held.
12. Therefore, the Commissioner has considered whether, on the balance of probabilities, the council holds information within the scope of the request.

### **Reasons for decision**

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13. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
15. The complainant alleges that he and his wife are the subjects of discrimination and/or victimisation and that the decision to freeze the renting of spare allotment plots was the result of them applying for one. He said that the timing of the decision to change the agreement and not to let any further allotments is fundamental to a case he is putting together. He said that there was no suggestion of a new rental agreement or the intention to freeze new lets at the council meeting on 27 July 2015 and that the minutes show that there was a drive to increase allotment rentals as follows:

"There are currently 3 vacant plots, a few enquiries have been received but no take ups as yet. Advertising is to continue, the Clerk to add to the noticeboards and Cllr. Buchanan to put a sign up on Church Road."

He explained that as a result of this information he decided to apply for a plot and on 5 August 2015 it was agreed by the clerk that a plot should be marked out which would be measured later. On 17 August 2015 the complainant received an email stating that there was to be a new agreement and that no plots were to be let until it was agreed. The complainant said that at this time the council website was still encouraging new lets as follows:

"We currently have 3 allotment plots available for a very reasonable rent, we will accept 1/2 or 1/4 size plots if a whole plot is too large. Please contact Cllr. Stella Buchanan on [phone number] for more information."

The complainant has expressed that it is inconceivable that the councillors did not exchange emails discussing this rather sudden development.

16. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. He asked the council to bear in mind that the complainant has stated that having no written record of a decision that had detrimental financial consequences is a violation of the Openness of Local Government Bodies Regulations 2014, section 7.
17. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information.
18. The council did not answer the specific questions that the Commissioner posed. Instead, it initially explained that the council changed Clerks and that the new Clerk searched through lots of emails but the information is not held and it cannot provide what it does not hold. The Commissioner then contacted the council and asked it to revisit the questions in his letter regarding section 1 of the FOIA. The council then provided a further response stating that because no decision was made by the council, there is no record of it. It explained that the suspension of allotment lettings was an informal and temporary arrangement while a dispute between tenants and other users of the land was resolved. It also explained that due to the changeover of Clerks this item was not in the minutes until 16 November 2015 under item 15/31 item 2<sup>1</sup>. The

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<sup>1</sup> <http://www.essexinfo.net/bulmer/assets/documents/nov2016minutes-approved>

council also said that because it's electronic and paper records are small it is not difficult to see if records are held.

19. The Commissioner has considered whether the council had any reason or motive to conceal the requested information. He appreciates the complainant's view that the decision to freeze the renting of spare allotment plots was the result of him and his wife applying for one but he has not seen any evidence of this. The Commissioner has not identified any reason or motive to conceal the requested information.
20. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any information relevant to this request. The Commissioner appreciates the complainant's view that information relating to a decision that had detrimental financial consequences should be held but acknowledges that there is often a difference between what a complainant believes should be held with what is actually held by a public authority. The Commissioner has viewed the minutes of the council's meeting on 21 September 2016<sup>2</sup>, which took place between the complainant being informed that a plot should be marked out and the meeting of 16 November 2015, where the decision not to let any further allotments until issues relating to fencing and dogs has been resolved was recorded, and notes that those minutes do not mention a decision to suspend allotment lettings. He notes the council's explanation that the suspension of allotment lettings was an informal and temporary arrangement and considers it feasible that this decision could have been made verbally without recording any information.
21. For the reasons stated in the above paragraph, the Commissioner is satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

## **Other matters**

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22. The Commissioner found it necessary to seek a further response from the council during this investigation. The further response did not answer the specific questions posed by the Commissioner. The council should ensure that its responses to the Commissioner's enquiries are as thorough as possible.
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<sup>2</sup> <http://www.essexinfo.net/bulmer/assets/documents/minutes-21-september-2015>

## Right of appeal

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23. 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)

24. 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.
25. 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** .....

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