

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

### **Decision notice**

**Date:** 30 May 2024

**Public Authority:** Bodmin Town Council  
**Address:** Shire Hall  
Mount Folly Square  
Bodmin  
Cornwall  
PL31 2DQ

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

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1. The complainant has requested various information regarding an incident relating to money donated at a charity event. Bodmin Town Council ("the council") responded to the first request by seeking to answer the questions asked. It initially applied section 14 to a second request, however during the course of the Commissioner's investigation, it amended this and applied section 12 (appropriate limit). The complainant argues that the council should have disclosed the requested information.
2. The Commissioner's decision is that the council does not hold any further information falling within the scope of the first request for information. He has also decided that it was correct to apply section 12 to refuse the second request for information, however it did not provide advice and assistance to the complainant as required by section 16 of FOIA.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with appropriate advice and assistance to help them submit a request that falls within the appropriate limit.

4. The public authority must take these steps within 30 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 the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 13 October 2023, the complainant wrote to the council and the requested the information outlined in the annex to this decision notice.
6. The council responded on 9 November 2023 and provided a response to the questions asked.
7. On 17 November 2023, the complainant requested that the council carry out an internal review. With that request, he included a number of other requests for information, which are again outlined in the annex to this decision notice.
8. Following an internal review, the council wrote to the complainant on 12 December 2023. The council provided further information in respect of the first request, however it applied section 14 to refuse the second part of the request.
9. The council responded to the complainant's further request for review on 2 February 2024. It provided further information in response to the first request for information. However, it upheld its position that section 14 applied to the second request for information.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 7 January 2024 to complain about the way their request for information had been handled.
11. During the course of the Commissioner's investigation, the Commissioner provided advice to the council that FOIA only applies to information which is held by it in recorded form. As a result, the council amended its response as regards the first part of the request, and said that it does not hold further information falling within the scope of the request.
12. As regards the second request, it amended its position to apply section 12 of FOIA to refuse to respond to the request further.

13. The following decision notice therefore analyses whether any further information is held by the council in regard to the request of 13 October 2023.
14. It also analyses whether the council was correct to apply section 12 of FOIA to refuse to respond to the request of 17 November 2023.

## **Reasons for decision**

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### **Section 1(1) – is further information held by the council**

15. As regards the request of 13 October 2023, the council clarified that no further information is held by it falling within the scope of the request.
16. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
17. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
18. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.
19. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason it is inherently likely or unlikely that information is not held.

### The complainant's position

The issue in question relates to an incident at a charity bingo event following which the Mayor of Bodmin was found to have breached the councillor's code of conduct. The complainant argues that the council has not disclosed information in response to their requests about this incident.

### The council's position

20. The council clarified that no further information is held by it. It said that due to the event in question being an out of hours private booking, no council officers were present to record any information in either an official, or an unofficial, capacity. The council also clarified that the mayor did not provide the council with any information concerning the issue as they dealt directly with the monitoring officer at Cornwall Council. The Monitoring Officer subsequently published a report regarding this issue.
21. The council also clarified that the other questions asked by the complainant relate to issues which the monitoring officer of Cornwall Council had not asked the council about. No information was therefore created by the council regarding it.
22. It clarified that councillors do not have access to the council's electronic or paper filing systems. Therefore, in order for any relevant information to be held by it, it would have to have been sent or given to the council in the first instance, but no council officers had received such information.
23. The council outlined the searches which it had undertaken to locate any relevant information. It said that it primarily works in as paperless a way as is possible, and so it said that any relevant paper records it has received would have been immediately apparent, and would have been entered into its post log. This was reviewed and no relevant information was located.
24. It outlined the searches which it had undertaken as regards its electronic files, including describing the key words which it used to search for relevant information. It explained why the searches it described were appropriate to locate any information it might have held. No information was located.
25. It confirmed that no information has been deleted. It said that its records management policy would have been applicable if any information had been held by it, but as none is held, this is not relevant in this case.

### The Commissioner's conclusion

26. The Commissioner has considered the council's position, in conjunction with the request.
27. The Commissioner recognises that the complainant has concerns about the amount of information provided in response to their request. The Commissioner notes that the majority of the requests were phrased as questions rather than as requests for recorded information. FOIA provides a right to request *recorded* information from an authority. It does not extend to the right to have an authority provide an explanation, or to create information in order to respond to a request.
28. However, an authority must consider any *recorded* information which it holds which can respond to the question asked.
29. For its part, the council has described how adequate and appropriate searches have been carried out, and provided an explanation as to why it does not hold any further information falling within the scope of the complainant's request for information.
30. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
31. On this basis, the Commissioner is satisfied that the council does not hold any further information falling within the scope of the complainant's request for information for the purposes of section 1 of FOIA.

### **Section 12 – appropriate limit**

32. This analysis considers whether the council is entitled to rely on section 12(2) of FOIA to refuse to provide the additional information requested by the complainant in their internal review request dated 17 November 2023.
33. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
34. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively imposing a total fee of £450 or a time limit of 18 hours for the council to carry out the tasks specified.

35. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
- determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
36. Section 12(2) only requires a public authority to estimate the cost of responding to the request rather than to formulate an exact calculation. However, the estimate must be reasonable and based upon the most appropriate means of providing the response. In accordance with the First-Tier Tribunal in the case of "Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004<sup>1</sup>", the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".
37. The council explained that it had been difficult to separate out questions from requests for recorded information, however having done so it considered that there were approximately 57 requests for information. It therefore carried out a sampling exercise with the first 10 requests it identified.
38. It said each of these first 10 requests had taken between 3 – 9 minutes to read and explore if information is held, and to consider where such information might be located within its records in order to carry out appropriate searches.
39. It said that 3 council officers carried out this initial task, and took an average time of 6 minutes per question. It calculated, therefore, that each would require 5.7 hours in total to go through all of the identified requests, totalling up at approximately 17 hours.
40. It clarified that after carrying out its review, officers then spent another hour on one question, searching through one electronic file of numerous room-booking records to locate relevant information.

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<sup>1</sup> <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

41. It said that administrative staff then spent another 3 hours using searches through fifty electronic agenda packs and minute files concerning two questions about the Monitoring Officer and the censure of the mayor.
42. It therefore argued that the estimate for all questions, and the actual time spent on just three of the questions, had already exceeded the appropriate limit. It considered therefore that responding to all 57 questions would exceed the appropriate limit by some degree. Therefore, it concluded that section 12 was applicable to refuse the request for information.
43. As stated, the council only needs to establish an estimate that the time to complete the tasks specified in order to respond to the request would exceed the appropriate limit, based upon the most appropriate way of providing the response, and supported by cogent evidence of its decision.
44. Based on the information provided, the Commissioner accepts that a sample test was carried out to determine whether the council could provide the requested information within the appropriate limit. He also accepts that the council's methodology appears to be appropriate, and that its estimate appears to be sensible, realistic, and supported by cogent evidence.

The Commissioner's conclusions on the application of section 12

45. Having considered the detailed estimate provided by the council, the Commissioner finds that it is realistic and reasonable. He accepts that the council has based its estimate upon cogent evidence given the sampling exercise which it undertook. The Commissioner has therefore decided that the council was correct to apply section 12(1) in this case.
46. Additionally, the Commissioner notes that the council could have aggregated its overall response to encompass the work it carried out in responding to the request dated 13 October 2023 in its total should it have chosen to do so. This is because the request of 13 October 2023 falls within a period of 40 days back from the date of the request of 17 November 2023.<sup>2</sup>

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<sup>2</sup> As per the Commissioner's guidance on section 12, and in particular, the section "Time at which to apply section 12 for aggregated requests": [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

## **Section 16 – duty to provide advice and assistance**

47. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request, so far as it would be reasonable to expect it to do so.
48. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
49. As the council initially applied section 14 to refuse the second request for information it did not provide the complainant with advice and assistance by suggesting ways in which the requests might be narrowed so as to fall within the appropriate limit.
50. In light of its decision to apply section 12 of FOIA in place of section 14, the Commissioner finds that the council has not complied with its obligations under section 16(1) of FOIA in its handling of the request.
51. He therefore requires the council to provide reasonable advice and assistance to the complainant to help them refine their request.

## **Other matters**

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52. The Commissioner wishes to highlight to the complainant that guidance on making requests under FOIA is available at <https://ico.org.uk/for-the-public/official-information/>.
53. This guidance should aid the complainant in making any future requests for information under FOIA should he wish to do so.



## **Right of appeal**

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54. 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: 0203 936 8963

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)

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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

## **Annex**

### Request of 13 October 2023

Where did the relevant incident on 4 July 2022 take place? I assume in or around the Shire House Suite?

Was this the first occasion the complainant had raised cash for the mayor's fund or the council?

If not for how long had these events been organised?

Was this the first occasion such an event had taken place during Mr P Cooper's mayoralty?

Did the complainant arrange subsequent events for the mayor's charities or the council? ie after 4 July 2022

Was the monitoring officer's decision formally reported to council?

Please supply a minute of this and the council's response.

Did Mr P Cooper comply with the monitoring officer's decision and issue an unqualified apology to the complainant?

If he did not: did the council consider this and did the council censure Mr P Cooper? If this happened please supply a relevant minute.

Has Mr P Cooper formally apologised to the council either for bringing them into disrepute or his conduct on 4 July 2022?

More importantly the monitoring officer queried the council's procedures for the collection of cash for council charities?

Who was the council's responsible financial officer from April 2021? If there was more than one, please also give dates?

In the monitoring officer's report Mr P Cooper appears to refer to correct procedure in various ways. What was procedure in place as of 4 July 2022? Please can I see it?

Given the familial relationships involved what parts of the procedure are designed to protect individuals from criticism or worse?

If there were events before 4 July 2022 did the cash pass through the council or go direct to a charity or organisation? Or did both happen on different occasions?

What steps did the responsible finance officer take to ensure the complainant knew about the procedures?

The monitoring officers says Mr P Cooper took the cash raised on 4 July after it had been signed for and passed to the band. Please correct me if I am wrong but I assume Mr P Cooper passed the money to the council. Did he give it to an officer soon after 4 July or did he put it in a safe to which he has access? Was the cash accompanied by any supporting documentation? If so what?

On 4 July Mr P Cooper appeared to be concerned that correct procedures were not being followed on 4 July. Did he report these to the responsible finance officer? Were procedures formally reviewed or amended either after 4 July or receipt of the monitoring officer's decision? Please can I see a record of any review or changes made?

I would have expected to see at least some of the above in either your council or policy & resources minutes for the second half of 2022."

#### Request of 17 November 2023

"Where did the relevant incident on 4 July 2022 take place? I assume in or around the Shire House Suite?" The code of conduct report does not reveal this. As I have said above, the council should know. The answer would not reveal any personal information. Please supply an answer.

"Was this the first occasion the complainant had raised cash for the mayor's fund or the council?" The answer is very likely to be no. Private events are referred to in the plural. If it were the first event an altercation would have been less likely. This is a purely factual question which the council can answer.

"Was this the first occasion such an event had taken place during Mr P Cooper's mayoralty? Did the complainant arrange subsequent events for the mayor's charities or the council? i.e. after 4 July 2022?" Two more factual questions the council can answer.

"Was the monitoring officer's decision formally reported to council? Please supply a minute of this and the council's response." Any council with good governance would table the code of conduct report at a council meeting. The absence of an answer is baffling. Personal information in a minute can be redacted without concealing the outcome of any discussion.

"Did Mr P Cooper comply with the monitoring officer's decision and issue an unqualified apology to the complainant? If he did not: did the council, consider this and did the council censure Mr P Cooper? If this happened please supply a relevant minute. Has Mr P Cooper formally apologised to the council either for bringing them into disrepute or his conduct on 4 July

2022?" The recommendations of the monitoring officer require the council to know whether the mayor apologised. Otherwise it could not consider a sanction. Otherwise these are straightforward questions which should be easy to answer easy to answer. Once again any truly personal information in a minute can be redacted without concealing outcomes or decisions. Whether or not the mayor apologised or was sanctioned is not personal information.

"Who was the council's responsible financial officer from April 2021? If there was more than one, please also give dates" I have concluded from what you say there was no RFO from April 2021 or since [name of individual redacted by the ICO] departed in 2020. Please correct me if this is wrong. Also tell me when the council appointed an RFO or RFOs and in whose job description is the role identified?

"In the monitoring officer's report Mr P Cooper appears to refer to correct procedure. What was procedure in place as of 4 July 2022? Please can I see it? Given the familial relationships involved what parts of the procedure are designed to protect individuals from criticism or worse? If there were events before 4 July 2022 did the cash pass through the council or go direct to a charity or organisation? Or did both happen on different occasions? What steps did the responsible finance officer take to ensure the complainant knew about the procedures?" You say there was no involvement of the accounts team in money raised for mayoral charities. Ergo no procedures. Money raised for mayor's charities was given to the charity direct. No especial procedures to cover the individuals from criticism. No RFO. No briefing of the complainant as there were no procedures. Please correct me if I am wrong.

"On 4 July Mr P Cooper appeared to be concerned that correct procedures were not being followed on 4 July. Did he report these to the responsible finance officer? Were procedures formally reviewed or amended either after 4 July or receipt of the monitoring officer's decision? Please can I see a record of any review or changes made?" Did the mayor report his concerns to a senior member of council staff or the RFO? If so who? How was that conversation taken forward if at all? A council with good governance would review and probably revise existing practice upon reading the code of conduct report. I suspect from previous answers, the council did not despite the concerns of the mayor. Please correct me if I am wrong and answer the question. There is no reason not to. Bodmin Town Council would know and this is not a personal question.

"The monitoring officers says Mr P Cooper took the cash raised on 4 July after it had been signed for and passed to the band. Please correct me if I am wrong but I assume Mr P Cooper passed the money to the council. Did he give it to an officer soon after 4 July or did he put it in a safe to which he has access? Was the cash accompanied by any supporting documentation? If so

what?" I asked these questions on the assumption that the mayor gave the money he took away from the bingo to the council. What you say suggests that council didn't accept this money. If the money passed through the council these questions can be answered.

If the council did not receive the money the mayor took from the bingo, how did it get to the charity? I am especially interested to know whether the mayor wanted to give the money to the council. And whether the council refused to accept it?

How much money was raised at the bingo on 4 July 2022? The mayor will know as he took it away from the event as reported by [name of individual redacted by the ICO].

How much money was raised for the mayor's charities in the financial year 2021/2022. How much of this money went through the council's accounts team?

How much money was raised for the mayor's charities in the financial year 2022/23 before 4 July 2022. How much of this money went through the council's accounts team?

How much money was raised for the mayor's charities in the financial year 2022/23 after 4 July 2022. How much of this money went through the council's accounts team?

How much has been raised for the mayor's charities in this financial year? How much of this money went through the council's accounts team?

Was the bingo on 4 July 2022 publicised in the council's newsletter?

How many fund-raising events for the mayor's charities were publicised in the council's newsletters that took place between 1 April 2021 and 3 July 2022?

How many fund-raising events for the mayor's charities were publicised in the council's newsletters that took place after 4 July 2022?

Were any fund-raising events for the mayor's charities on council property cancelled after 4 July 2022? Yes or no. How many of these were for events in 2022?

Money raised for events like the one on 4 July 2022 has not been handled by the council's accounts team. Was this a decision taken by councillors at a meeting. Was it an officers' decision. A decision taken by officer(s) and councillor(s) outside of a formal meeting? Or just something that developed on an ad hoc basis?

Was the hire charge waived for bingo on 4 July and for other events raising money for the mayor's charities?

Has the council formally appointed an RFO at a meeting since [name of individual redacted by the ICO] left? If so when.

Has the council appointed an RFO in any other way? If so how and when? In the light of guidance in the GCG, please describe how this complies with the law.

Is the role of RFO included in the job description of a senior member of staff?"