

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2024

Public Authority: Claybrooke Joint Burial Committee

Address: claybrookecemeteryclerk@gmail.com

Decision (including any steps ordered)

1. The complainant submitted a 17 part request for information held by Claybrooke Joint Burial Committee (CJBC) about its organisation, functions and responsibilities.
2. CJBC provided a response to each of the 17 parts of the complainant's request, and advised that no further information was held.
3. The Commissioner considers that section 21 (information accessible to the complainant by other means) of FOIA is applicable to parts of the request where the information is already publicly available. However, as CJBC did not provide appropriate advice and assistance to enable the complainant to reasonably access this information, the Commissioner has determined that CJBC has failed to comply with its obligations under section 16 of FOIA.
4. The Commissioner has also found a breach of section 1(1) (general right of access to information) of FOIA, as he considers that, on the balance of probabilities, CJBC holds additional information relevant to the complainant's request.
5. The Commissioner requires CJBC to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with direct links to the publicly available information which provides a full answer to questions 8, 14 and 16 of the request.

- Issue a fresh response to that part of question 17 of the request where it relates to information held relevant to questions 13 and 15 of the request. CJBC should either provide the complainant with copies of the relevant information held, or set out a refusal notice which complies with FOIA.
6. CJBC 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

7. On 16 November 2023, the complainant wrote to CJBC asking for information in response to 17 separate questions.
8. CJBC responded to advise that it was refusing to comply with the request on the basis that it considered it to be vexatious. On 11 January 2024, the complaint requested an internal review. On 13 February 2024, CJBC revised its position and provided a response to each of the complainant's 17 questions.
9. The complainant's full request of 16 November 2023, together with CJBC's response (set out in bold under each of the complainant's questions) of 13 February 2024, is as follows:

"1. Who is the Clerk?

[name redacted] is acting as interim clerk until a permanent clerk is appointed.

2. How was he/she selected & appointed?

As above, it is an interim post.

3. Has CJBC met?

CJBC meets regularly.

4. How many meetings have been held?

6

5. If so, when?

14/04/23, 21/04/23, 02/05/23, 28/11/23, 16/01/24, 13/02/24

6. Are CJBC meetings open to the public?

No

7. How many people should be on CJBC other than the Clerk?

3

8. Who are these people?

A Parish Councillor is appointed from each of the 3 parish councils, appointments can be found in parish council minutes.

9. How are these people appointed & from where?

See above.

10. How many CJBC members are needed to be quorate?

3

11. Does CJBC have rules for the cemetery, regarding such as plot maintenance by families, general maintenance etc?

Yes, rules have not changed.

12. Does CJBC have standing Orders, Code of Conduct etc?

Yes, not changed.

13. Does CJBC have authority to bury bodies or allow ashes to be put in the ground?

Yes.

14. Where does this authority come from. Eg, who gives this authority?

Local Government Act 1972.

15. Who owns the land?

The Burial Authority.

16. Who, on behalf of the landowner, has given this authority, when & how? **Local Government Act 1972.**

17. FOI request to see documentation regarding 13, 14, 15, 16 above.

Local Government Act 1972 is a public document, no further records held.

Scope of the case

10. The complainant has said that CJBC has not provided them with an appropriate response to questions 8, 11, 12, 13, 14, 15, 16 and 17 of their request.
12. The Commissioner will therefore only consider CJBC's handling of questions 8, 11, 12, 13, 14, 15, 16 and 17 of the complainant's request, and decide:
 - If CJBC has complied with its section 16 responsibilities to provide appropriate advice and assistance in relation to any of these questions.
 - Whether, on the balance of probabilities, further information is held that is relevant to any of these questions.

Reasons for decision

Section 21 – information reasonably accessible to the applicant by other means

Section 16 – advice and assistance

11. Section 21 of FOIA can be applied when part, or all, of the requested information is reasonably accessible to the applicant. It is an absolute exemption and so there is no public interest test.
12. Under section 16 of FOIA, a public authority has a duty to provide advice and assistance to those requesting information, so far as it would be reasonable to expect the authority to do so.
13. CJBC has not said explicitly in its responses to the complainant that it has applied section 21 of FOIA to any part of their request.
14. However, in response to part 8 of the request, CJBC advised that the relevant information could be found within the parish council minutes, which the Commissioner understands are published and available online. CJBC has also referred to the Local Government Act 1972 in its answer to questions 14 and 16 of the request, which is statute that is also published and available online.
15. The Commissioner has therefore taken CJBC's response to questions 8, 14 and 16 of the request to be that the requested information is already publicly accessible, and therefore subject to the exemption at section 21 of FOIA.

16. When relying on section 21 of FOIA to refuse a request on the basis that the information is already publicly available, a public authority should be able to show that:
 - the information in the public domain matches what the applicant asked for;
 - it has given precise directions to the applicant to enable them to find it without difficulty and without a great deal of searching necessary to locate it; and,
 - it has considered the particular circumstances of the applicant, and it is satisfied that they can reasonably access the information.
17. In this case, CJBC failed to provide the complainant with details of any website links, or other directions to, the relevant minutes of its meetings, or the specific parts of the Local Government Act 1972 relevant to the request.
18. As the complainant was not given appropriate advice and assistance in order to reasonably access the information relevant to questions 8, 14 and 16 of their request, the Commissioner has decided that CJBC has failed to comply with its obligations under section 16 of FOIA.

Section 1 – general right of access to information

19. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled –
 - a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and,
 - b) if that is the case, to have that information communicated to them.
20. 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, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
21. Having considered the terms of questions 11, 12, 13 and 16 of the complainant's request, it is the Commissioner's opinion that there is no indication that the complainant required any response other than a "yes" or "no" answer. Furthermore, the complainant has not contested similar short answers provided by CJBC in response to some of the other questions contained within the request.

22. The Commissioner considers that CJBC interpreted questions 11, 12, 13 and 16 of the request objectively, and that it provided reasonable responses to these questions that complied with FOIA.
23. However, question 17 then asks for any information held relevant to CJBC's responses to questions 13, 14, 15 and 16, of the complainant's request. CJBC's response to this question was that the Local Government Act 1972 is a public document, and that no other information is held.
24. Paragraphs 15 - 18 of this decision notice already sets out the Commissioner's decision in relation to CJBC's handling of questions 14 and 16 of the complainant's request.
25. With regard to questions 13 and 15, the Commissioner considers that it is more likely than not that CJBC would have found it necessary to consider recorded information that it holds in order to answer these questions. Given this, the Commissioner considers that, on the balance of probabilities, CJBC does hold additional information relevant to questions 13 and 15 of the request, and that this information should have been considered in response to question 17.
26. The Commissioner therefore considers that CJBC has failed to comply with its obligations under section 1(1) of FOIA, in respect of its response to that part of question 17 of the complainant's request that asks for information held relating to question 13 and 15.

Right of appeal

27. 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

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

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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF