

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2024

Public Authority: Lincolnshire County Council
Address: County Offices
Newland
Lincoln
LN1 1YS

Decision (including any steps ordered)

1. The complainant has requested correspondence relating to a website login. The above public authority ("the public authority") denied that it held information for the purposes of FOIA.
2. The Commissioner's decision is that the public authority does hold some information within the scope of the request and that it holds this information for the purposes of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, to the request, on the basis that the information it described to the Commissioner in its submission is held for the purposes of FOIA.
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.

Background

5. This request relates to activities at North Thoresby, Grainsby & Waith Parish Council. In January 2024, the clerk and all but one of the parish councillors resigned. Administrator privileges for the parish council's website were removed from the outgoing clerk and granted to the remaining parish councillor.
6. The parish council's website is hosted by the public authority.

Request and response

7. On a date prior to 11 April 2024 the complainant requested information of the following description:

"Please provide the following information, all of which relate to the official website of North Thoresby, Grainsby & Waithe Parish Council and East Lindsey district council. Lincolnshire County Council host this website and appoint which individual has control of items posted, deleted etc. Please provide copies of emails sent and received (including any attached documents) between the dates of 27th January 2024 and 29th March 2024 on the following matters

- [1] All correspondence concerning the removal of Simon Baxter (clerk to the parish council) from control of this parish council website and the appointment of Lynne Gale to control of this parish council website
- [2] The official approval of this change of control and who authorised it
- [3] The management of change procedure document related to this (if there is one)

"Senders/recipients will include (but not be limited to) the following people and/or organisations (some will be unknown but will become evident in any boolean search of emails and documents): Internal email addresses within the LCC related to this request and the departments involved

- Lynne Gale
- [redacted]
- [redacted]
- [redacted]
- East Lyndsey [sic] District Council

- North Thoresby, Grainsby & Waith Parish Council (NTGWPC)“
8. On 11 April 2024, the public authority responded. It denied holding the requested information for the purposes of FOIA – a stance it upheld following an internal review.

Reasons for decision

9. Section 1 of FOIA gives everyone the right to ask a public authority for recorded information. The public authority must inform the requester whether it holds the information that has been requested and provide a copy – unless an exemption applies.
10. Section 3 of FOIA extends the right of access to any information that a public authority holds on its own behalf and any information held by a third party on the public authority's behalf. However, the right does not extend to information that the public authority only holds on someone else's behalf.
11. Where a public authority claims that it only holds information on someone else's behalf, it must demonstrate that it has no interest in the information and that the information is irrelevant to its activities as a public authority. Establishing whether this is or is not the case will depend on the degree of access the public authority has to the information, its involvement in the information's creation, whether it can edit or delete the information and what happens when the owner of the information no longer has use for it.
12. At the outset of the investigation, the Commissioner wrote to the public authority setting out his provisional view that it seemed likely that the public authority held information, within the scope of the request, for the purposes of FOIA.
13. The public authority identified to the Commissioner some emails which were present on its servers. These included both internal and external correspondence. However it maintained that it did not hold this information on its own behalf.
14. The public authority explained that it was only responsible for adding or removing administrator privileges to each parish council's website (it said it hosted websites for 320 parish councils). Although it had created the basic template, it was not responsible for the content each parish council posted and it did not interfere with any individual website.
15. Furthermore, the public authority explained, whilst it was responsible for granting or removing administrator privileges, in practice it had limited

control over who was actually accessing each site. If an administrator chose to share their login details with another person, that person would also be able to administrate the site unless the administrator subsequently changed their details or had their privileges revoked by the public authority. This, the public authority noted, emphasised its lack of interest in and control over, the information.

16. The public authority noted that the websites were hosted separately and therefore a person could be granted administrator privileges to a parish council website without affecting the security of its own systems. Administrators would not have any access to the public authority's servers.
17. In terms of the process for adding and removing privileges, the public authority explained that it did not have a formal process. When a new parish clerk is appointed, they usually email the public authority to request access and to ask that their predecessor's access be removed. The public authority would usually verify this with the Chair or vice-chair of the parish council before proceeding.
18. In his investigation letter, the Commissioner pointed out that the circumstances in which admin rights had been transferred were unusual. In particular, it would not have been obvious who was (and who was not) entitled to act on the parish council's behalf as website administrator and the only remaining councillor who could have "verified" the appointment was the very person for whom access was being requested.
19. The public authority accepted that it did have some correspondence relating to this (and it provided some further detail to the Commissioner about what it did hold), but maintained that it did not hold this correspondence for the purposes of FOIA.

The Commissioner's view

20. In the Commissioner's view this information is held for the purposes of FOIA.
21. Firstly, it is important to draw a distinction between the information **contained** in each website and information relating to the question of **access** to those sites.
22. The Commissioner accepts that, once administrator privileges have been granted to a specific person, that person is able to add to, delete or modify the content of the site themselves. The public authority has no involvement in that editing process nor any interest in the information being published. It simply acts as a disinterested host. It is the digital equivalent of having a parish council noticeboard in its offices that is

only maintained by the parish council. Whilst the noticeboard may be physically present on the public authority's estate, the information it contains is solely the responsibility of the parish council.

23. However, when it comes to access, the position is different. The public authority is no longer a disinterested host, but a gatekeeper. It has the power to grant access and to revoke it.
24. The public authority has accepted that it usually takes steps to verify that it is granting access to the correct person – it does not simply just process the request.
25. In most cases, this process will be a formality – but that was not the case here. The public authority had to make a decision about who (if anyone) it would grant access to. The correspondence it has described to the Commissioner would indicate that the public authority did not regard the matter as straightforward. There was clearly some form of decision-making process that went on, within the public authority. The parish council appears to have been kept at arm's length during that discussion and therefore it is difficult to believe that such information is held on the parish council's behalf.
26. Hosting websites may not be a function designated by law, but under the Localism Act 2011, the public authority (like all councils) has a general power of competence, allowing it to do anything not prohibited by law. The public authority has chosen to act as a website host and therefore information relating to that role is information relating to activities the public authority is carrying out.
27. Taking the public authority's argument to its logical extent would imply that internal correspondence between its staff and external correspondence it had had with third parties, was in fact held on behalf of the parish council. The parish council would, presumably, be entitled to demand that information's "return" and the public authority would not be entitled to delete the information without the parish council's authorisation – regardless of any retention period that it might apply to its information.
28. The Commissioner is satisfied that there is an appropriate connection between the powers, functions and activities of the public authority and this information. It is therefore held for the purposes of FOIA.
29. In its submission to the Commissioner, the public authority argued that, even if it were deemed to hold the information, it would rely on section 40(2) of FOIA to withhold it. Although he is satisfied that some information would be held, the Commissioner has decided not to go on to consider whether that information should be disclosed.

30. Firstly, the Commissioner has not seen the information in question, he merely asked the public authority to summarise what it held. He is therefore not well-placed to judge what exemptions might apply. On the basis of the evidence provided to date he is not persuaded that section 40(2) of FOIA would apply to all the information, but that is a question that requires more detailed consideration. The public authority has also claimed that some of the information does not exist – which again may require further enquiry.
31. Secondly, the public authority has maintained its stance that it does not hold this sort of information on its own behalf and, whilst the Commissioner disagrees, given the implications, the public authority may well wish to appeal the matter.
32. For these reasons, the Commissioner considers that the appropriate course of action is to limit himself to the question of whether the public authority holds information on its own behalf and to order it to issue a fresh response to the request on the basis that it would hold the information it has described to the Commissioner.
33. The public authority may rely on any exemption in its fresh response or it may choose to disclose the information.

Right of appeal

34. 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

35. 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.
36. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF