

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2024

Public Authority: Chigwell Parish Council

Address: admin@chigwellparishcouncil.gov.uk

Decision (including any steps ordered)

1. The complainant requested from Chigwell Parish Council (“the council”) the names of councillors serving in specified years at the council. He also requested a copy of the Acceptance of Office certificates for parish councillors who were elected to the council on 6 May 2021. The council applied section 21(1) of FOIA to part 1 of the request information (information easily accessible to the applicant by other means). It said that it does not hold any information falling within part 2 of the request.
2. The Commissioner’s decision is that the council was correct to apply section 21 to withhold the information falling within part 1 of the request from disclosure. He has also decided that, on a balance of probabilities, the council does not hold a copy of the councillors’ Acceptance of Office Certificates as regards part 2 of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 14 November 2023, the complainant wrote to the council and requested information in the following terms:

“Please be advised this is a Freedom of Information Request: which requires Chigwell Parish Council, makes available to [name of complainant redacted by the ICO] and his legal representatives...

...the following information which should normally be readily available to the public, on request.

- A list of serving Parish Councillors, for these municipal years: 2018/19, 2019/20, 2020/21, 2021/22, 2022/23.
 - The ‘Acceptance of Office’ Certificates for the Parish Councillors that were duly elected following the Local Government election held on 6th May 2021.”
5. The council responded on 19 February 2024. It said that information in relation to part 1 of the request is available from the council’s website and that it is a matter of public record. It said that no information is held as regards part 2 of the request.
6. Following an internal review request, the council wrote to the complainant on 9 April 2024, however its response purely related to an associated data protection request.

Scope of the case

7. The complainant contacted the Commissioner on 26 January 2024 to complain about the way their request for information had been handled. The initial complaint related to the council’s failure to respond to the request. Subsequently, the complainant argued that the requested information falling within part 1 of his request is not publicly available, and that the council does hold the information falling within part 2 of the request.
8. The scope of this case and of the following analysis is therefore whether the council is likely, on the balance of probabilities, to hold the requested information falling within part 2 of the request. The Commissioner will also consider whether the information falling within part 1 of the request is publicly available and easily accessible to the complainant.

Reasons for decision

Section 21(1) - Information Accessible by other Means

9. Section 21 of FOIA provides that "Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."
10. The council said that it did not apply section 21(1) to the information, but it also argued that it did not disclose the information to the requestor as it is already publicly available via the council's website. The Commissioner notes, therefore, that the council was essentially relying upon section 21(1) to withhold the information from disclosure as it was arguing that the requested information was easily accessible to the requestor by other means.
11. The Commissioner asked the council to specify exact web addresses, (URL's), which would provide the information requested. The council provided these links to information dating back until 2018 - 2019¹.
12. Having considered the links provided by the council, the Commissioner is satisfied that these do name the councillors who attended the relevant meeting and those who were not available for it. Therefore, for each year requested, the minutes of meetings for the relevant period would demonstrate the councillors at that time.
13. The Commissioner is therefore satisfied that the council has met the first part of the complainant's request for information as the information is easily accessible to the complainant and to the public generally.

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

14. 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.
15. 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.

¹ [2018/19](#), [2019/20](#), [2020/21](#) & [2021/22](#)

16. 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.
17. 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 why it is inherently likely or unlikely that information is not held.

The complainant's position

18. The complainant argues that the council will hold the information falling within the scope of his request. The complainant argues that the council is withholding the information as it would provide valuable evidence in relation to ongoing litigation it is involved in.
19. The complainant further argues that the relevant information was previously held in the council's safe.

The council's position

20. The council confirmed and accepted that it should hold the relevant information. It confirmed that it has both a statutory, and a business reason for retaining the information. It considers, however, that it must have been destroyed previously.
21. It said that the information should have been held in the council's filing cabinet in manual form, however its searches have not managed to locate it.
22. It said that its staff and serving Councillors carried out an extensive search of the offices and filing cabinets as well as storage areas in the basement.
23. It said that the complainant used to work for the council and was previously in charge of its records and record retention. It suggested, therefore, that the complainant might know whether the information had been deleted or lost previously, but it clarified that it does not hold any record of this.
24. It said that the search term "Acceptance of Office" was used to search the documents held locally on the council's work laptop, (which the complainant had previously used). No relevant information was located.

25. The Commissioner notes that the complainant did not argue that a copy would be held in his previous work emails. For its part, the council clarified that a search of the complainant's emails was not carried out as its search was for the original signed documents. It said that these had to be signed in the presence of, and countersigned by, the clerk, and that copies would not be emailed to a third party.
26. The complainant specifically identified that the relevant certificates were previously stored in the council's safe. The Commissioner therefore asked the council to confirm that it had carried out a search of this.
27. The council confirmed that it had carried out a number of searches of the safe and that no relevant information was located.

The Commissioner's conclusions

28. The Commissioner has considered the evidence provided by both parties.
29. The Commissioner recognises that the complainant believes that the council will hold the relevant information, and that the council has confirmed that it should hold the requested information.
30. The Commissioner has also considered the complainant's arguments for where the information was held previously, and considered this in conjunction with the searches described by the council.
31. The council has confirmed to the Commissioner that after carrying out adequate and appropriate searches, it has been unable to locate copies of the certificates. These searches included a search of the council's safe.
32. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
33. On this basis the Commissioner has concluded that, on the balance of probabilities, the council does not hold the requested 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.

Ian Walley
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