

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2024

Public Authority: Fosdyke Parish Council

Address: clerk@fosdyke.com

Decision (including any steps ordered)

1. The complainant requested copies of internal audit reports from Fosdyke Parish Council ("the Parish Council"). The complainant believes the Parish Council holds further information within the scope of the request, beyond that which it has disclosed.
2. During the course of the Commissioner's investigation, the Parish Council identified a further page of information held within the scope of the request. The Parish Council's position is that it has now identified all of the information held that falls within the scope of the request.
3. The Commissioner's decision is that, with the exception of the additional page of information identified by the Parish Council during his investigation, on the balance of probabilities, the Parish Council has provided the complainant with all of the information held within scope of the request.
4. The Commissioner requires the Parish Council to take the following step to ensure compliance with the legislation.
 - Disclose the additional page of information it identified as falling within the scope of the request during the course of the Commissioner's investigation.
5. The Parish Council must take this step 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

6. On 16 January 2024, the complainant wrote to the Parish Council and requested information in the following terms:

“Internal audit reports for the following years, 22/23, 21/22 and 20/21”

7. The Parish Council responded on 19 February 2024. It provided some information within the scope of the request. Whilst information relating to the 2022/2023 report was disclosed, the complainant disputes that this was the full document. In relation to the year 2021/2022, the Parish Council provided one page entitled “Certificate of Exemption – AGAR 2021/22 Form 2”, which states it is page 3 of 6 and a document entitled “Notice of public rights and publication of unaudited annual governance and accountability return”. In relation to the year 2020/2021, the Parish Council provided one page of the report (page 4 of 6) only.
8. On 19 April 2024, the Parish Council wrote to the complainant again and confirmed that its position is that the 2020/2021 and 2021/2022 audit reports are no longer held as they have been lost.

Scope of the case

9. During the course of the Commissioner’s investigation the Parish Council identified a further page of information held within the scope of the request. The Commissioner has ordered disclosure of this information at paragraph four of this notice.
10. The Parish Council has also now acknowledged that the information it holds regarding the 2022/2023 report is not the full report.
11. This notice will consider whether, on the balance of probabilities, the Parish Council holds any further information within the scope of the request beyond the additional page of information identified and the information already disclosed.

Reasons for decision

Section 1 – General right of access to information

12. Section 1(1) of FOIA requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request,

and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

13. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds further 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 is held.
14. The Parish Council has explained that due to the circumstances around the change in clerk at the beginning of 2024, it does not hold the full audit reports requested as these have been lost. The Parish Council issued a public statement in January 2024, explaining that the long serving clerk had resigned due to ill health. The Parish Council has provided further details to the Commissioner regarding the nature and impact of this illness, explaining that the circumstances prevented an effective handover of records. It has said that it may also have affected the effectiveness of record keeping in the years prior to the previous clerk's resignation.
15. The Commissioner acknowledges that normally one would expect a Parish Council to hold internal audit reports from previous years in full. However, he must consider not whether any further information would usually be held, or should be held, but rather what is actually held.
16. The Commissioner considers that the Parish Council has provided reasonable explanations as to why it does not hold any further information relating to the internal audit reports for the period 2020-23.
17. Furthermore, the Commissioner notes that the most recent internal audit report (2023/2024) produced by the Lincolnshire Association of Local Councils dated June 2024, records the fact that no previous internal audit report was available. It also states that while the current clerk has maintained accurate and robust financial records, no comprehensive records were available to view for the part of the 2023/2024 financial year prior to January 2024.
18. The Commissioner is satisfied that the Parish Council has carried out searches to the best of its ability designed to identify information held within the scope of the request. The Parish Council has also confirmed that individual Councillors have been consulted as part of the process.

19. The Commissioner's decision is therefore that, on the balance of probabilities, the Parish Council has now identified all of the information it holds within the scope of the request.

Other matters

20. While the Commissioner acknowledges that very specific circumstances led to the requested information being lost in this case, the Parish Council should nevertheless ensure it has appropriate records management policies and processes in place. It should give due consideration to ensuring that the illness or absence of one individual would not lead to a similar loss of information in the future.
21. The section 46 Code of Practice ("the Code")¹ sets out the standard of record keeping considered acceptable for public authorities to adopt. The Code is not directly legally binding but failure to follow it is likely to lead to breaches of the FOIA. As a public authority for the purposes of both the EIR and the FOIA the Parish Council should have regard for the recommendations of the Code.

¹ [Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000 \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

Right of appeal

22. 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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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