

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

### **Decision notice**

**Date:** 26 November 2024

**Public Authority:** Bournemouth, Christchurch and Poole Council  
**Address:** Civic Centre  
Bourne Avenue  
Bournemouth  
BH2 6DY

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

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1. The complainant requested information with regards to cemetery by-laws. Bournemouth, Christchurch and Poole Council (the council) provided some information and confirmed the remaining information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the council has provided all of the information it holds within the scope of the request. He also found that the council breached section 10(1) of the FOIA as it did not confirm whether it held all the requested information within the required timeframe.
3. As the council has now provided that confirmation, the Commissioner does not require any steps.

## Request and response

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4. On 13 December 2023 the complainant wrote to the council and requested information in the following terms:
  - “1. All documents, emails, reports, minutes etc relating to the officer and member decision making about changing the cemetery byelaws.
  2. The cabinet/council minutes of the decision to change the cemetery byelaws.
  3. The impact assessment of the above cabinet/council meeting.
  4. The details, minutes, emails and documents of the public consultation prior to making the decision.
  5. The details, minutes, emails and documents of the stakeholder consultation prior to making the decision.
  6. The details of how the Council enforces control of the byelaws, with particular regards to dogs off leads in cemeteries.
  7. The number of fines the Council has enforced for dogs being off lead in cemeteries since the new byelaws were introduced.
  8. The decision making around new signage for the cemeteries as to why only the Bournemouth crematorium has signage which details the control of dogs.”
5. The council responded on 12 January 2024. For part 1 of the request the council stated no public consultation was carried out in changing its position on permitting dogs to enter the cemetery on leads. It then quoted section 6.8 of its Cemetery Rules and Regulations.
6. For parts 2 and 3 of the request the council advised the information was on its website and provided two links.
7. For parts 4 and 5 of the request the council advised no information was held as no public consultation took place. It also stated no information was held to parts 6, 7 and 8 of the request.
8. On 12 January 2024 the complainant sought some clarification on some points. The council responded on 9 February 2024 providing the clarification.

9. It also amended its response to part 1 of the request as it found that it did not address what was actually requested. It amended its response to this part stating that the information was not held, other than the documents that accompanied the Cabinet Report that were previously disclosed.
10. The complainant then requested an internal review on 9 February 2024 as they considered the council held more information than that provided and was not satisfied with the length of time it took the council to respond to their request.
11. The council provided its internal review on 21 May 2024. It clarified that the information requested at part 1 of the request was not held and confirmed that it held no further information falling within the scope of the remaining parts of the request.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 14 June 2024 as they considered that the council held further information and that it had delayed responding to his request.
13. The scope of the following analysis is for the Commissioner to determine whether or not the council holds further information falling within the scope of the case and whether it responded within the required timeframes of the FOIA.

### **Reasons for decision**

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#### **Section 1 of the FOIA – Information held / not held**

14. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
15. 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 any information which falls within the scope of the request (or was held at the time of the request).

16. The Commissioner asked the council to explain what searches it carried out to locate any information falling within the scope of the request.
17. The council told the Commissioner that in relation to part 1 of the request, its IT department carried out an email search of an ex-employee who was Project Officer at the time, but no longer in post. The result was that none of the emails located fell within the scope of the request.
18. For the overall request, the council has stated to the Commissioner that its Environment Directorate, Bereavement Service and Information Asset Advisor were contacted to determine what information was held as these are the relevant departments that would hold any information.
19. The council has confirmed that any information held would be held electronically and no relevant information was found to be deleted or destroyed.
20. The council has told the Commissioner that the information relating to the decision making process was provided to the complainant at part 2 of his request, with the links to its website.
21. The council has confirmed to the Commissioner that no further information was found other than that it has already provided.

The Commissioner's conclusion

22. The Commissioner has considered the above. The complainant is of the view that further information is held.
23. The council, however, has confirmed that it has carried out adequate and appropriate searches in the relevant areas of its records, but it has failed to locate any information, further to what has been provided to the complainant, falling within the scope of the request.
24. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
25. On this basis the Commissioner has concluded that, on the balance of probabilities, the council has provided to the complainant all the information it holds falling within the scope of the request.

## **Section 10 of the FOIA**

26. Section 10 of the FOIA requires a public authority to comply with section 1 of FOIA within 20 working days following receipt of an information request.
27. Section 1(1)(a) of the FOIA states:
  - (1) "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"
28. In this case the complainant made his request on 13 December 2023 and the council provided its initial response on 12 January 2024, which was within the required timeframe.
29. However, in the council's internal review response it stated that its initial response to the first part of the complainant's request may have been misunderstood as it provided a response relating to a public consultation.
30. It found that this response did not address the scope of the request. On 9 February 2024 the council confirmed that the information was actually not held within the scope of part one of the request. It further confirmed this in the internal review.
31. As the council did not confirm whether or not it held the specific information that was actually requested at part 1 of the complainant's request until its further response of 9 February 2024, this is outside the required 20 working days it had to comply with section 1(1)(a) of the FOIA.
32. Therefore the Commissioner finds that the council breached section 10(1) of the FOIA.
33. As the council has since complied with section 1(1)(a) of the FOIA, the Commissioner does not require any steps.

## **Right of appeal**

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**