

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2024

Public Authority: Wanborough Parish Council

Address: clerk@wanborough.info

Decision (including any steps ordered)

1. The complainant requested copies of messages sent in a Parish Council WhatsApp group. Wanborough Parish Council ("the Parish Council") stated that the information requested did not relate to the business of the Parish Council and was therefore not subject to disclosure under FOIA.
2. The Commissioner's decision is that the requested information is held by the Parish Council for the purposes of FOIA.
3. The Commissioner requires the Parish Council to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the request in accordance with FOIA, on the basis that the requested information is held for the purposes of FOIA.
4. The public authority 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

5. On 28 June 2024, the complainant wrote to the Parish Council and requested information in the following terms:

"Pursuant to the FOI Act, please could I request the contents (ie. a transcript) of the council's WhatsApp group for the week

commencing Monday 3 June (ie. from Monday 3/6 to Sunday 9/6 inclusive).”

6. The Parish Council responded on 17 July 2024 and stated that the information requested did not relate to the business of the Parish Council and was therefore not subject to disclosure under FOIA.
7. Following an internal review the Parish Council wrote to the complainant on 24 July 2024. It maintained its original position.

Reasons for decision

Section 3(2)- Information held by a public authority for the purposes of FOIA

8. Section 3(2)(b) of FOIA states that, for the purposes of FOIA, information is held by a public authority if it is held by another person on behalf of the authority.
9. The Commissioner’s guidance for public authorities on official information held in non-corporate communications channels¹ states:

“You should also always remember that information held in non-corporate communications channels may be subject to FOIA if it relates to the public authority’s official business. Regardless of whether you hold it in an official or non-corporate communications channel, all such information held by someone who has a direct, formal connection with the public authority is potentially subject to FOIA. If the information held in a non-corporate communications channel amounts to public authority business, it is very likely to be held on your behalf in accordance with section 3(2)(b).”
10. The question for the Commissioner to consider is therefore whether the information in the messages in scope of the request amounts to Parish Council business.
11. Despite the Parish Council upholding its position at internal review that the information requested did not relate to the business of the Parish Council and was therefore not subject to disclosure under FOIA, there

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/official-information-held-in-non-corporate-communications-channels/>

were strong indications in its internal review response that the WhatsApp group is, in fact, used for Parish Council business.

12. The internal review states that the group was set up by the Chair of the Parish Council and that it is used for the following purposes:

“Council business should be discussed at council meetings - we are careful not to discuss items, but occasionally may share a link or offer background information where appropriate for an issue. The WhatsApp group is more a means for councillors to flag issues brought to their attention, share updates, coordinate meetings and ask for advice on how to respond to social media posts or resident requests”.

13. The internal review also states that the Clerk uses the group to “[ask] the councillors to help understand the background to issues or to help find something or ask for a contact or help with an approach. More formal business/advisories are conducted by email”.
14. From these statements, it appears clear that the WhatsApp group does include information that relates to the Parish Council’s official business. However, these statements refer to the use of the group in general, rather than the content of the specific messages requested. The Commissioner therefore asked the Parish Council to provide a copy of the specific messages in scope of the request for his consideration.
15. Having considered the content of the messages in question the Commissioner is satisfied that all of the messages relate to Parish Council business. They refer to a range of local issues, including planning matters, as well as to specific meetings, the role of specific Councillors and to arranging Parish Council communications. None of the messages relate solely to the group members’ personal lives or, for example, to social plans between the group members.
16. In its submissions to the Commissioner the Parish Council provided the following argument as to why it does not consider the content of some of the messages to relate to Parish Council business:

“Parish Councils are not responsible for Local Authority Planning Enforcement, and therefore this subject matter has nothing to do with Parish Council business. It is the business of Swindon Borough Council”.

The Commissioner has considered this argument, however, his view is that a discussion of potential planning enforcement in the local area between Parish Councillors constitutes Parish Council business even though it would not be the Parish Council that would take any action directly.

17. It is clear to the Commissioner that, in the messages, the Parish Councillors are discussing a local issue that they believe may concern some local residents, the Commissioner's view is therefore that it is relevant to their role as Parish Councillors and that they are having the discussion in that capacity.
18. The Parish Council also appears to suggest in its submissions to the Commissioner that the requester already being aware of the content of the messages they have requested somehow invalidates the request. This has no bearing on the validity of the request or on whether the messages are held by the Parish Council for the purposes of FOIA.
19. The Commissioner's decision is that all of the messages within the scope of the request amount to information about Parish Council business. Therefore, the messages are held by the Parish Council for the purposes of FOIA. The Commissioner has ordered the Parish Council to issue a fresh response to the request in accordance with FOIA, on the basis that the requested information is held for the purposes of FOIA, at paragraph three of this notice.

Other matters

20. In addition to a copy of the messages in scope of the request, the Parish Council also separately sent the Commissioner a copy of a different set of messages, not in scope of this request, from November 2023. It appears this may have been an error. When complying with the step the Commissioner has ordered in this notice, the Parish Council should, of course, ensure it is considering the correct set of messages.
21. When issuing its fresh response, the Parish Council should consider whether any of the messages are environmental information as defined in regulation 2(1) of the Environmental Information Regulations 2004 (EIR). For example, information relating to planning matters may fit the definition of information on measures likely to affect the landscape. The Parish Council should consult the Commissioner's guidance on determining whether information is environmental information² and ensure that it deals with the request under the correct access regime(s). If the Parish Council finds that part of the information in scope is environmental information and the remainder is not, it should apply the

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

EIR to the environmental information and FOIA to any other, non-environmental information, in line with the Commissioner's guidance.

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