

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2025

Public Authority: Tonbridge & Malling Borough Council

Address: Gibson Building
Gibson Dr
Kings Hill
West Malling
ME19 4LZ

Decision (including any steps ordered)

1. The complainant requested information regarding parking and parking restrictions at a specific location. Tonbridge & Malling Borough Council (the Council) provided information in scope of the request and stated that all information held had been provided in its response.
2. The Commissioner's decision is that, on the balance of probabilities, the Council did not hold further information in scope of the request and has complied with section 1(1)(a) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 15 July 2024, the complainant wrote to the Council and requested information in the following terms:

"I should be grateful if you would let me have, under the Freedom of Information Act, all information that you have, going back to 1 January 2021, relating to:

Parking and parking restrictions in Common Road, Blue Bell Hill, Chatham; and

Parking at the viewpoint/picnic site off Common Road, on Blue Bell Hill."
5. The Council responded on 9 August 2024 providing information it held in scope of the request.
6. Following the complainant's internal review request on 19 August 2024, the Council wrote to the complainant on 2 October 2024 answering each point in turn and stating no further information was held in scope of the request.

Scope of the case

7. The complainant contacted the Commissioner on 23 October 2024 to complain about the way their request for information had been handled.
8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of FOIA.
9. With respect to the concerns raised by the complainant which are the subject matter of this decision notice, the analysis below considers whether, on the balance of probabilities, the Council holds further information in scope of the request.

Reasons for decision

Section 1 - general right of access to information held by public authorities

10. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the

information communicated to them if it is held and is not exempt information.

The complainant's view

11. The Commissioner recognises that the complainant believes that the Council should hold information in scope of their request.

The Council's view

12. In its response to the complainant, the Council explained that it had searched its records and that further information in scope of the request was not held. At internal review it further clarified that information may be held by Council Elected Members but as they are considered as their own 'Data Controllers' they fall outside the scope of this request and the complainant would need to contact them directly for any information held.

The Commissioner's view

13. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
15. During the Commissioners investigation, the Council further explained how searches had been carried out to ensure all relevant information held would be captured: "Though the work of the Parking Team is fairly insular, the lead officer asked that all within the Parking Team, the Technical Services Team, the Head of Service, the Director of Streetscene, Leisure & Technical Services and his P.A. review any information held (on the same criteria) and all responses from these officers were also included, though many were duplications of email threads where there were more than one recipient."
16. In reaching his decision in this case, the Commissioner has taken account of the views put forward by the complainant. He has also considered the explanation the Council provided as to why the information is not held.

17. Based on the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, the Council did not hold any further recorded information falling within scope at the time of the request.
18. He is therefore satisfied that the Council has complied with the requirements of section 1 of FOIA in this case.

Other matters

19. The complainant believes that the Council's poor records management and internal procedures have contributed to the issues highlighted in their complaint about what information is held and what should be held in terms of accountability and transparency.
20. It is not for the Commissioner to comment on this although he does encourage good record-keeping as outlined in the [section 46](#) code of practice.

Right of appeal

21. 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

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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