

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 March 2016

**Public Authority:** South Gloucestershire Council  
**Address:** Council Offices  
Castle Street  
Thornbury  
Gloucestershire  
BS35 1HF

#### Decision (including any steps ordered)

---

1. The complainant has made a request to South Gloucestershire Council ("the council") for information relating to a specific vote undertaken by councillors at a committee meeting. The council confirmed that the information was not held, which was subsequently contested by the complainant.
2. The Commissioner's decision is that the requested information is not held.
3. He does not require any steps to be taken.

#### Request and response

---

4. On 2 June 2015 the complainant wrote to the council and requested the following:

*Regarding recent media stories concerning the 'Scrapping of green bin tax' and the council's alleged decision to remove the fee. It is my understanding that during the previous financial year councillors actually voted to keep the green bin fee and therefore during this current financial year there will not be any changes. I would therefore please ask you to confirm the following:*

1. *Is this correct that SGC did vote to keep it for this year?*
2. *How many councillors voted on it and who voted for or against?*
3. *What was the breakdown of votes against each political party?*

*4. What date was the vote/decision taken?*

*5. Is there a motion to remove the fee and when was it put forward?*

5. The council responded on 9 June 2015. It provided information in respect of parts 1, 4 and 5, and confirmed that no requested information was held in respect of parts 2 and 3.
6. The complainant requested an internal review in respect of parts 2 and 3 on 12 July 2015.
7. The council responded on 28 July 2015 and provided contextual information about why the requested information was not held.

### **Scope of the case**

---

8. The complainant initially contacted the Commissioner on 2 July 2015 to complain about the way his request for information had been handled.
9. Following the council's response to the complainant on 28 July 2015, the ICO advised the council that it should provide the complainant with an internal review, as the council's response confirmed that it was not a review, even though this was requested by the complainant on 12 July 2015.
10. The council subsequently provided its internal review outcome on 17 September 2015. In this the council maintained that its response in respect of parts 2 and 3 was correct.
11. The Commissioner considers the scope of this case to be the determination of whether the information sought by parts 2 and 3 of the request is held.

### **Reasons for decision**

---

#### **Section 1(1) – Whether information is held**

12. Section 1(1) states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.

#### *The complainant's position*

13. The complainant has requested a list of councillors who took part in a vote to maintain an annual subscription fee for 'green bin' refuse

collection, and a breakdown of the votes by political party. The Commissioner understands, from reviewing the council's correspondence with the complainant, that this vote took place at a committee meeting on 9 September 2014.

14. Whilst the Commissioner has considered the complainant's submissions in detail, he notes that the complainant does not directly dispute the council's position that the information is not held, but instead provides arguments for why the information should be recorded as a matter of standard.
15. The complainant proposes that the recording of votes by specific councillor and political party would ensure full transparency and accountability on the part of councillors and their parties. By allowing such information to go unrecorded it conflicts with the underlying principles of the FOIA.

*The council's position*

16. The council has informed the Commissioner that in the circumstances of the vote in question, the total number of councillors present was not recorded, and neither was the voting preference of any individual councillor.
17. The council has confirmed that Standing Order 81 of its constitution only requires the clerk of a committee to record whether a vote is carried or lost, and there is no requirement for the clerk to record the total number of councillors present at a vote.
18. The council has further confirmed that Standing Order 82 of its constitution allows individual councillors to request that their vote be specifically recorded in the minutes for the meeting. However, at the meeting that the vote was carried out, no individual councillor requested this, and no information was entered into the minutes.
19. Furthermore, Standing Order 82 also provides that if six or more councillors (or one third of the total number of councillors) request that a detailed named vote be undertaken, this must then be undertaken by the Monitoring Officer. However this was not requested by councillors and so no information was entered into the minutes.

*The Commissioner's analysis*

20. The Commissioner must decide on the balance of probabilities whether the information sought by parts 2 and 3 of the request is held by the council in recorded form.
21. Whilst the Commissioner has considered the complainant's arguments for why the information should be recorded as a matter of standard, such a matter falls outside the Commissioner's jurisdiction. The FOIA does not impose an obligation on a public authority to record information, and it is for the public authority itself to ascertain whether there is a business need or statutory duty upon it to record specific information. The Commissioner's role in the circumstances of this case is to determine whether the information is held in recorded form.
22. The council has explained that the councillors present at the vote did not ask for their individual voting preference to be recorded, and there is no requirement on the council to record any information about the vote other than whether it was carried or lost. No evidence has become available to the Commissioner that contradicts the council's position or else suggests that the information may be held in some other manner by the council. On this basis the Commissioner must conclude, on the balance of probabilities, that the requested information is not held.

**Other matters**

---

23. Under the Section 45 Code of Practice, the Commissioner expects all public authorities to provide complainants with an internal review outcome within twenty working days of this being sought. In situations where a request is particularly complex or voluminous, this timeframe may be extended up to a maximum of forty working days.
24. In the circumstances of this case, the Commissioner is aware that the council did not proceed to an internal review due to the fact that the requested information was not held. The Commissioner would remind the council that if an internal review is requested in a matter where there is some dispute about the amount of information held, it is good practice to provide this; even in situations where the council's position remains the same as its original response.

## Right of appeal

---

25. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

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