

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

### **Decision notice**

**Date:** 20 November 2018

**Public Authority:** Bempton Parish Council  
**Address:** C/O Ebor Cottage  
80 High Street  
Bempton  
Bridlington  
North Humberside  
YO15 1HP

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

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1. The complainant has requested details of the council's financial records and contact details for its councillors. The council provided the information it holds as regards its financial records, but refused the request for councillors' contact details on the basis that it was personal data and section 40(2) of the Act applied. The complainant complained that the council had not provided all of the information falling within the scope of his request.
2. The Commissioner's decision is that the council has provided all of the financial records to the complainant which it holds, and that it was correct to apply section 40(2) to councillors contact details. She has however decided that the council did not comply with section 10(1) of the Act in that some information was provided after the relevant period of 20 working days.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 10 January 2018 the complainant wrote to the council and requested information in the following terms:
  - (1) *Names and contact details (including phone number and e-mail address if used) of all parish councillors*
  - (2) *Financial reports including annual return form and report by auditor, finalised budget, precept, financial standing orders and regulations, list of current contracts awarded and their values, members' allowances and expenses*
  - (3) *Any documented strategies or plans for current or previous year (including annual report) and any working papers*
  - (4) *Agendas and meeting minutes for past 2 years (including draft meeting minutes for most recent meeting where these have not yet been approved)*
  - (5) *Any reports presented to council meetings*
  - (6) *Policies and procedures for the conduct of council business (including procedural standing orders, orders for any sub-committee, any delegated authorities and codes of conduct).*
  - (7) *Policies and procedures for handling complaints and requests for information (such as this one)*
  - (8) *Information security policies (for example, what data is regarded as confidential and what is not) and data protection policies*
  - (9) *Assets register*
  - (10) *Register of members' interests (including any gifts and hospitality received)*
5. The council responded on 7 February 2018. It directed the complainant to the council's website for the information he had requested, however the complainant wrote back to it on 9 February 2018 saying that not all of the information which fell within the scope of his request was available from this. Further correspondence occurred between the parties culminating in a request for review being made by the complainant.
6. Following the internal review the council wrote to the complainant on 7 June 2018. It withheld information in response to part 1 of the request on the basis that section 40(2) of the Act applied (personal data of a third party).
7. It also clarified that some the information on part 2 of the request on the basis that this information was withheld under section 40(2), and clarified that other information was either already available from the council's website as it had indicated previously, or was not held.

## Scope of the case

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8. The complainant initially contacted the Commissioner on 30 March 2018 to complain about the way his request for information had been handled. Following the internal review response the complainant outlined that the basis of his complaint was that the following information had not been disclosed in response to his request:
  - (1) Contact details of the parish councillors
  - (2) List of all payments made (and received) by the parish council for goods and services to include the name of the supplier, the amount and the purpose of the payment.
9. The Commissioner asked the complainant why he considered that the information outlined in (2) above would fall within the scope of part (2) of his request.
10. The complainant clarified that in regards to part (2), he considered that *"The information I am looking for in (2) is a (periodic) summary of the parish accounts in order to be able to correlate the spending to the budget. The parish clerk consistently claimed that the only record of spending was that documented in the council meeting minutes, but this information is incomplete insofar as Joe Bloggs - £100 gives no indication as to what service was provided, what the budget category for this expenditure was, and whether the amount included VAT."*
11. He also said that *"The data in (2) is specifically mentioned in paragraph 3.3 of the parish council's Financial Regulations (see attachment) so I would have thought that it was just a matter of sending me copies of what must already exist..."*.
12. The Commissioner therefore considers that the complaint is that the information outlined above was not disclosed by the council in response to the complainant's request and subsequent clarifications.

## Reasons for decision

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### Section 40(2)

13. The council refused to provide contact information for its councillors on the basis that that doing so would breach the provisions of The Data Protection Act 1998 (the DPA). It therefore applied section 40(2) to withhold the information from disclosure.

14. Section 40(2) states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the legislation would breach any of the data protection principles or section 10 of the DPA.

15. In order to rely on section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

*“personal data” means data which relate to a living individual who can be identified –*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”*

16. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

### Is the withheld information personal data?

17. The council clarified that all of the parish councillors’ names are available from East Riding of Yorkshire Council’s website and provide the complainant with a link to the relevant page. It also said that the Pecuniary Interests of councillors is available from this website, and that the complainant is aware that these contain the addresses of the councillors.

18. The withheld information is the contact details, aside from the addresses, of all of the councillors who form the council. The Commissioner recognises that this information is clearly personal data relating to the councillors.

Would a disclosure of the information breach any of the data protection principles of The Data Protection Act 1998?

19. The relevant data protection principle in this case is the first data protection principle. This states that:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*

20. The council argues that a disclosure of the personal data would be unfair and that it would fail to comply with the first data protection principle.
21. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In deciding whether the disclosure of this information would be unfair, the Commissioner has again taken into account the nature of the information, the reasonable expectations of the data subjects, and the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.
22. In considering fairness, the Commissioner also finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in the information being disclosed.

Nature of the information and reasonable expectations

23. The council argues that the individuals would have no expectation that their personal contact details would be disclosed to the public in response to an FOI request. It further argues that those wishing to contact individual councillors are able to do so via the council clerk.

24. It argues that as a small parish council, the councillors' contact details are their own private email and telephone numbers, and for this reason the information is not disclosed. Whilst it recognises that some councillors from other councils may publicise their contact details, there is no legal requirement for them to do so, and in this case the council does not make such details public.
25. The council clarified that it is not a requirement under the Local Government Act 1972 to provide such information, but that it is recommended as good practice.
26. It highlighted that the names of councillors are available from the parish website at <http://www.bemptonparishcouncil.eastriding.gov.uk/councillors.aspx>, and that this page also directs interested parties to the county council website at <http://www2.eastriding.gov.uk/council/councillors-and-members-of-parliament/parish-councillors-register-of-interests/> for the councillors' register of interests information, which it says includes councillors' addresses.
27. In the case of councillors, there is a general expectation that personal information relating to them when they are carrying out their public roles on behalf of the council will hold a different level of expectation to personal information about their private lives. They will have an expectation that some information relating to the actions and decisions they take on behalf of the council will be disclosed in order for the council to be transparent and accountable for its decisions. However they will not have such an expectation regarding information relating to their private lives. The contact details that the council holds for its councillors are the private email and telephone numbers of the individuals.
28. The Commissioner recognises that councillors may choose to disclose their contact details to parishioners individually as part of their role in representing the community. They may therefore have a degree of expectation that their details may be disclosed whilst undertaking their role with the council in this respect, however, in general it is for them to manage such disclosures as they see fit. Should they choose not to disclose their personal information then the council said that the correct way to contact councillors is through the parish council clerk.

29. Responses issued in response to FOI requests are considered to be to the whole world. The Commissioner considers that disclosing their private personal contact information to the world would not fall within the expectations of these individuals. As the council does not generally publish these details councillors would not expect that to change due to the receipt of an FOI request for that information.
30. Having considered the information the Commissioner is satisfied that the individuals would not expect that their contact details would be disclosed in the context of the disclosure of information relating to this request.

#### Consequences of disclosure

31. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
32. As regards the disclosure of email addresses and the telephone numbers, as information disclosed under the Act is considered to be to the whole world the Commissioner must take into account the possibility that the disclosure would lead to an increase in them receiving unwanted contact during and after their working hours.
33. It would potentially mean that they could be contacted directly by any members of the public not directly related to their current or past work with the council, potentially even outside of working hours. They would have no control over who would use their contact details, how their personal details may be used nor who they are passed on to.
34. The Commissioner also acknowledges that if their details were disclosed to the whole world then their private email addresses or telephone numbers may be picked up by marketing companies, increasing the likelihood of spam or malicious emails, and unsolicited telephone calls.
35. Given the nature of the information this would be a distinct possibility and it would potentially result in a significant intrusion into their personal privacy.

#### Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure

36. The Commissioner considers that it is not necessary for the contact details of councillors to be disclosed in order to make their actions transparent and accountable. The council has told the complainant that if he wishes to contact any specific councillors he is able to do so through the clerk to the council. Therefore the contact details of the

clerk is all that is necessary in order for members of the public to contact individual councillors.

37. Additionally, in its review the council clarified to the complainant that no councillor has the authority to make a decision on behalf of the council unless a resolution has been passed by the council for them to do so.
38. Whilst the Commissioner recognises that their personal details (such as their addresses) may have a bearing on potential conflict of interests which arise, details such as email addresses and telephone numbers are not required under the circumstances given that the council has made clear that councillors can be personally contacted via the council clerk. The councillors' register of interests is available from the county council website.
39. Balanced against this is the potential unwanted, and unwarranted loss of privacy the disclosure of the information to the whole world might entail.
40. The Commissioner therefore considers that any disclosure would be unwarranted as regards the individuals' rights and freedoms, and particularly in respect of their expectations of privacy. The Commissioner therefore considers that a disclosure of this information would not comply with the first data protection principle.
41. The Commissioner's decision is therefore that the council was correct to apply section 40(2) to this information.

Information relating to part 2 of the complainant's request for information

42. The council argues that it has provided the information which the complainant has requested, other than details of one contract which it has entered into for grass cutting. It argues that that information is exempt under section 40(2) as it does not have the permission of the contractor to disclose details of the contractor's name and contact details. That being said, it did provide some financial details of the contract to the complainant, and stated that some details of the contractor are available in the minutes to the parish council meetings including the name of the contractor.
43. The complainant argues that the financial information which has been provided to him is incomplete, and as a result he is not able to establish a full understanding of the council's financial transactions/ financial health.



44. During the course of the Commissioner's investigation the complainant outlined to the Commissioner that the information he was seeking is information which the council states is required to be published. He said that *"The data in (2) is specifically mentioned in paragraph 3.3 of the parish council's Financial Regulations"*.
45. The complainant provided a copy of these Regulations to the Commissioner. The relevant section states:  
  
*"The RFO shall regularly provide the Council with a statement of receipts and payments to date under each head of the budgets, comparing actual expenditure to the appropriate date against that planned as shown in the budget. These statements are to be prepared at least at the end of each financial quarter."*
46. In his request for review to the council (dated 9 February 2018) the complainant had clarified that the information he considered had still not been provided by the council in respect of part 2 of his request was copies of the Finalised Budget, the Precept, a List of current contracts awarded and value of contract and a copy of Members' expenses. From this list, it is not clear to the Commissioner that what the complainant was also seeking included the information required by paragraph 3.3 of the parish council's Financial Regulations.
47. On 14 February 2018 however, during correspondence with the council where he sought to be specific about the information he was seeking in response to part 2 of the request the complainant did clarify that *"I would like to see details of any expenditure and/or contracts which exceeded £100 in value for the past 2 years please"*.
48. During subsequent correspondence between the parties the council clarified that further information would be available should the complainant use his rights to inspect the accounts under the Local Audit and Accountability Act 2014, which allows member of the public to inspect the accounts within a set time period as governed by the external auditor. The council however said that this period was restricted to that set period of time, and that this was not available to the complainant until that point. It said that it would apply section 22 of the Act if the complainant were to seek to view this information under the FOI Act. The council subsequently said that on 9th July 2018, the clerk/Finance Officer and one of the councillors met with the complainant under his rights under the Audit Act.
49. It said that the meeting lasted for over 30 minutes, during which the complainant questioned every invoice/receipt asking what they were for, all documentation was there to view with the acceptance of any documents related to clerk as an employee.

50. It confirmed that he was provided access to all 56 invoices and 4 receipts relevant to the council accounts, following which the complainant made an official complaint to the External Auditor over one of the items which he deemed to be incorrectly authorised. The council however disputed this allegation.
51. During this meeting the complainant was given a copy of the council's ledger, which shows who submitted invoices to the council, and the amount concerned is placed under an appropriate category heading (i.e. indicating the service provided).
52. This information appears to provide the information which the complainant described in his clarification of his request of 14 February 2018. This was though, provided subsequent to the complainant being told that no further information is held in response to his FOI request.
53. The Commissioner notes that the council should have provided a copy of, or access to, the ledger to the complainant in response to his request for information. However she further notes that some information within the ledger may, at times, fall within the scope of valid exemptions to the Act, such as section 40(2), (personal data of third parties), and section 43 (commercial interests).
54. Should such information be recorded within the ledger and a further request for this information be received, the council is able to redact relevant sections from the ledger in providing a copy to the request where it can justify these redactions under the FOI Act. It is not, however, able to refuse to provide a copy of this document outright unless a valid exemption is applicable, and it is not able to withhold this information based purely on the grounds that the 4 week period for inspection prescribed under the Audit Act will allow access to the information in the future without being able to demonstrate that an applicable exemption allows it to do so. The council had indicated within the correspondence with the complainant that it would consider applying section 22 to this information. It will be for the council to justify its application of this exemption in the future should it choose to rely upon this exemption to withhold information on this basis.

Has all of the information now been provided?

55. The council argues that the complainant may misunderstand the level of information which the financial records of a Parish Council will hold. It says that it is not a large corporation and so it would not be expected to hold the same level of information as the complainant seems to consider that it should. It argues that as it is a small parish council it does not process that many invoices and as such the accounting is basic in its needs.

56. The council said that if the complainant is referring to having each invoice/receipt explained in full within the minutes, this is not the purpose of the minutes, explanations are carried out within the meeting only the resolutions are stated in the minutes.
57. The council clarified that under the Transparency Code the parish council is only instructed to list all payments over £100 and the VAT claimed. It currently lists all (except relating to employees).
58. The council said that if the complainant was referring to budget records, he was sent a copy of this on the 13 July 2018. It provided a copy of the budget records document to the Commissioner for her to consider. It said that there is no standard layout of either the accounts or budgets that any of the parish or town councils have to use, with the exception of the external audit forms.
59. It clarified that it is during the parish council meeting that the figures are explained in details should the need arise, there is no written report produced and it provided the Commissioner with a copy of a budget review which it says is given to parish councillors to study, which it argues has also already been provided to the complainant in response to his request for information.
60. It therefore clarified that the complainant has had access to the information which it does hold, and that it is not able to provide any further information to him in response to his request.

### Conclusions

The council's arguments in response to this request are specific and pointed in that it has responded to the complainant's requests where it is able to. The clerk, as the responsible financial officer for the council, has provided details of the financial information which she does hold to the complainant, and has stated that she does not prepare financial records for the council to the level which he is suggesting. There is no evidence to suggest that others at the council would hold such information given that it is the role of the clerk as the responsible financial officer for the council, to both prepare and hold such information for the council.

61. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records". It clarified in that case that the test to be applied as to whether or not

information is held was not certainty but the balance of probabilities. This is the test the Commissioner will apply in this case.

62. In discussing the application of the balance of probabilities test, the Tribunal stated that, *"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."* The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.
63. The Commissioner is also mindful of the case of *Ames v the Information Commissioner and the Cabinet Office (EA/2007/0110)*. In this case Mr Ames had requested information relating to the September 2002 "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the Iraq dossier was *"...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what..."* However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not *"...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one..."*. Therefore the Commissioner is mindful that even where a person might reasonably expect that information should be held, this does not necessitate that information is held.
64. In coming to a conclusion in this case, the Commissioner has considered what information she would expect the council to hold and whether there is any evidence that the information was ever held. The evidence suggests that in spite of the specific wording of the councils Financial Regulations the level of detail which the complainant expects will be held by the council is incorrect. The council has clarified that the information it does hold has already been provided, and he has made further use of his access rights in respect of inspecting the accounts under the rights provided in the Audit Act. As noted, the Commissioner does however expect the council to consider the disclosure of this information in response to a request for information in the future, and the council must be able to justify any refusal or redaction under the terms of the FOI Act.

65. The Commissioner has no powers to consider or determine whether the levels of information which the council does say it holds are legally adequate for a parish council. If the complainant believes that, based upon its response, it is not making adequate records of its financial transactions he is aware of the council's auditors and is able to make a formal complaint.
66. Having provided further information to the complainant and allowing him to inspect the accounts the Commissioner has concluded that, on a balance of probabilities, the council was correct to state that it holds no further information falling within the scope of the request.

### Section 10

67. Section 10(1) of the FOI Act provides that:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

68. The complainant made his request for information to the council on 10 January 2018. The council responded providing some information on 7 February 2018, however it did not provide all of the information until it met with the complainant on 9 July 2018 wherein it provided him with access to the full council receipts and provided him with a copy of the Ledger.
69. This falls outside of the period of 20 working days set by section 10(1) of the Act.
70. The Commissioner has therefore decided that the council did not comply with the requirements of section 10(1) in its response to the complainant.

### **Other matters**

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71.

- (a) In the complainant's submission to the Commissioner he also raised issue with the council's review of its response to his complaint.
- (b) The complainant argued that the parish council failed to conduct an internal review of its decision. He argued that although a review was conducted by the parish clerk she also made the original decision to withhold the information.

(c) The council did conduct an internal review as noted above, however the complainant is correct in that this was carried out by the clerk, who did also consider and respond to the initial request for information.

(d) The Code of Practice issued under section 45 of the FOI Act which was in place at the time that the council carried out its review of this request states, at paragraph 40, that:

*"Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable."*

(e) However this Code of Practice was superseded by an updated version, published by the Cabinet Office on 4 July 2018<sup>1</sup>, after this review had been dealt with. This states at Paragraph 5.9 that

*"5.9 It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision. The public authority should in all cases re-evaluate their handling of the request, and pay particular attention to concerns raised by the applicant."*

(f) The Commissioner notes that, in the case of Parish Councils', this may not be feasible in all situations given the size of these authorities. Nevertheless, she wishes the council to note this guidance and to consider whether it is possible for it to introduce a process allowing for a separate reviewer to undertake reviews should there be a requirement to carry out a review of council decision under the Act in the future.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

## Right of appeal

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72. 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)

73. 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.
74. 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**  
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**SK9 5AF**