Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **22 July 2019**

Public Authority: **Easton on the Hill Parish Council**
Address: **clerk@eastononthehill-pc.gov.uk**

Decision (including any steps ordered)

1. The complainant has requested various information about the use of a playing field. Easton on the Hill Parish Council ("the Council") disclosed some information, and stated that the majority of that sought by the request was not held.

2. The Commissioner's decision is that, on the balance of probabilities, the Council has disclosed all held information. However, the Council breached section 10(1) by disclosing information outside the time for compliance.

3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 3 October 2017, complainant wrote to the Council and requested information in the following terms:

   1. *All correspondence regarding the advice sought and received as mentioned in your email of 9th June 2017 in which you state "Because of the advice we sought from both NALC and Stapleton's, there is no need to draft an agreement between the Parish Council and the third-party cricket clubs." and any subsequent correspondence relating to this same matter.*
      If NCALC and Stapleton only gave verbal recommendations, I hereby request that you ask your sources to confirm these in writing or, if this is not possible, relate their specific and detailed advice to me in writing, together with the names and contact details of the persons you sought advice from.
   2. *With regards to the draft Playing Field Association Constitution and Licence Agreement. I hereby request that you provide your sources for the drafting of this constitution, i.e. NCALC, legal advice, Playing Fields Trust, etc, and any related documentation including but not restricted to the documentation mentioned in your email of 7th September 2017, listed below:*
      - *1970/71 lease agreement.*
      - *Template documents from Fields in Trust.*
      - *What you describe as 'working documents from current playing field organisations'.*
      - *The full review and comments from the development manager from Fields in Trust; the legal advice (to be) received by Fields in Trust; full written reports or any conversations you have had relating to this matter, to include names and contact details of the persons you discussed the matter with or/and sought advice from.*
   3. *The alleged complaint made by the Chairman of the Cricket Club against the Parish Council.*

5. The Council responded on 1 November 2017. It stated that it was refusing to comply with the request under sections 12 and 14.

Scope of the case

6. The complainant contacted the Commissioner on 5 July 2018 to complain about the way the request for information had been handled.

7. During investigation, the Council revised it's position. It disclosed some information, but concluded that a significant amount of that sought by the request was not held.

8. The Commissioner considers the scope of the case to be the determination of whether the Council has disclosed all relevant held information.

Reasons for decision

Section 1(1) – General right of access to information

9. Section 1(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 relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

10. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

11. The Commissioner emphasises that the FOIA is an access regime for official information that is held in recorded form. Whilst requesters may phrase a request as a 'question', there is no obligation for a public authority to create 'new' information in order to answer it.

<u>The Council's position</u>

Part 1 of the request

12. This part of the request seeks information about the advice sought and received by the Council prior to it's decision that there was no requirement for a formal agreement with third party cricket clubs.

13. The Council has informed the Commissioner that it has undertaken fresh searches for information in response to the ICO's investigation. These searches have spanned:

    - A search for electronic documents (including the 2017 minutes, of which electronic copies are also held in addition to the hardcopy minute books) held on the Council's laptop. This search utilised the file explorer quick access search facility, and used keywords

including 'cricket club', 'lease', 'Stapletons' 'constitution' and 'Fields in Trust'. No relevant information was identified.

- A manual search for hardcopy documents within those files passed from the previous Clerk to the current Clerk. No relevant information was identified.

- A search for emails held in the Council's previous email account (Eastononthehill.parishclerk@gmail.com). This search used the same keywords as those used when searching the Council's laptop. No relevant information was identified. The Council has clarified that this email account was not created until late 2017 at the earliest, and on this basis would not expect it to contain any emails relevant to the subject matter of the request.

14. The Council has further informed the Commissioner that information may have been previously held in other email accounts, but subsequently destroyed. These email accounts are:

    - The account used by the previous Clerk during 2017 (eastononthehill.parishclerk@aol.co.uk), which was subsequently closed.

    - The personal account used by the Chairperson during 2017, which the Chairperson still has access to, but has verbally confirmed that all emails relating to his role of Chairperson in 2017 have been deleted and not archived.

Part 2 of the request

15. This part of the request seeks information about the 'sources' for a document (the "*draft Playing Field Association Constitution and Licence Agreement*"), including a 'lease agreement'.

16. The Council has confirmed that the 'lease agreement' was publicly circulated to all members in advance of a meeting in January 2019, and hardcopies were made available to the public in attendance.

17. No further information has been identified following the fresh searches since undertaken (as described in paragraph 13-14). The Council has also indicated that whilst verbal communications may have informed the draft document, it is not aware of any written legal advice being provided.

Part 3 of the request

18. This part of the request seeks information about a complaint submitted to the Council.

19. The Council has explained that, whilst the Cricket Club made enquiries about submitting a complaint, no such complaint came to be made. Consequently, the Council would not expect any recorded information to be held.

The Commissioner's analysis

20. The Commissioner has noted the searches undertaken by the Council, and in particular, the changes in emails that have been used by the Council. Whilst it is recognised that it is possible that information may have been previously held by the Council, the searches now undertaken by the Council have not revealed any additional information that would fall within the parameters of the request.

21. Having considered the thoroughness of these searches, there is no evidence available to the Commissioner that further recorded information is held.

Section 10(1) – Time for compliance

22. Section 10(1) states than an information request should be responded to no later than twenty working days after the date of receipt. In this case the Council disclosed held information outside the time for compliance. On this basis the Commissioner must find a breach of section 10(1).

Other matters

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23. The Commissioner understands that the Council may have previously held information, either in since closed accounts, or the private email account used by the Chairperson.

24. The Commissioner has emphasised the importance of good records management to the Council, and in particular, the problems that can arise in the use of private email addresses for official business.

25. The Commissioner understands that the Council has now implemented a gov.uk email account to ensure that good records management processes are followed.

Right of appeal

26. 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@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.

28. 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
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