

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

### **Decision notice**

**Date:** 11 September 2019

**Public Authority:** Berrynarbor Parish Council  
**Address:** Firstone  
Yarnscombe  
Barnstaple  
EX31 3LW

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

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1. The complainant requested from Berrynarbor Parish Council (the Council) information relating to the decision it took to refuse an offer concerning the re-location of the play equipment in the village Recreation Field. The Council stated that it did not hold the information requested.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any recorded information falling within the scope of the request. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

#### **Background to the request**

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3. The complainant provided the Commissioner with a brief synopsis of his dispute with the Council in the following terms:

*"In April 2015 the BPC installed 3 items of playground equipment in the village Recreational Field (Rec) close to the mutual border of our property. There followed much discussion on the re-location of the equipment to another part of the Rec.*

*The BPC said that they had been advised by the providers / installers of the equipment that there was no other suitable location."*

4. The subject relates to a refused offer to fully finance the relocation of all the play equipment in the Recreation Field.
5. On 3 October 2017 the complainant wrote to the Council and requested information in the following terms:

*"The decision which you took to refuse the offer must have been minuted within the PC – although understandably it was not in the published meetings.*

*We now require you under the Freedom of Information Act 2000, to furnish us with the minutes / records of all meetings and conversations that refer to the decision that refused our offer and the reasons for that decision."*

6. On 19 October 2017 the Council responded and stated that it did not hold the information requested. The Council added that it had *"already confirmed its position on the relocation of the equipment prior to this offer and, following the advice of the play installation company, the Parish Council did not believe there was an alternative location suitable for the play equipment. Therefore, there was no change to the Parish Council's position on the matter following your offer."*
7. On 28 November 2017 the complainant requested an internal review.
8. On 5 January 2018 following an internal review, the Council maintained its position that it did not hold the requested information. The Council referred the complainant to its previous correspondence in which it stated it had fully explained its position to him regarding this matter.
9. On 15 January 2018 the complainant expressed his dissatisfaction with the Council's internal review response and said to the Council that he would take the matter further.
10. On 20 February 2018 the Council replied and maintained its position. The Council also guided the complainant to the Information Commissioner's Office if he remained dissatisfied with the Council's answer to his request.
11. The complainant contacted the Commissioner on 1 September 2018 to complain about the way his request for information had been handled.

12. On 12 October 2018 the Commissioner informed the complainant that she is under no duty to deal with a complaint if she considers that there has been undue delay in bringing it to her attention. The Commissioner highlighted the fact that the Council had informed the complainant in February 2018 that it had exhausted its internal appeals process and that he should contact the Commissioner if he remained dissatisfied. The complainant did not submit his complaint to the Commissioner for a further 8 months.
13. Therefore, the Commissioner considered that there had been an undue delay in bringing the complaint to her attention and under section 50(2)(b) of the FOIA the Commissioner declined to investigate the complaint. However, the ICO informed the complainant that he could make a fresh request to the Council if he wished to do so.

### **Request and response**

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14. On 17 January 2019 the complainant wrote to the Council and requested information in the following terms:

*"12 months have passed since the letter and we ask that you confirm that the Council has not, in the meantime discovered any such minutes and / or records of all meetings and conversations held on this matter and confirm that, as far as the Council is concerned, the matter is closed."*

15. On 2 February 2019 the Council confirmed that *"There is no further information to add in relation to your FOI request and the review which the Chairman undertook in January 2018."*

### **Scope of the case**

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16. The complainant contacted the Commissioner on 8 February 2019 to complain about the way his request for information had been handled.
17. The complainant considered there to be inaccuracies within the Council's correspondence. He argued that the Council was aware of the offer via its solicitor and that the Council had made the decision to reject it in November 2016 and again later in March 2017. Therefore, the complainant is of the view that there is recorded information regarding this decision held on the Council's files, and also of this communication to its solicitor. The complainant strongly believes that the Council is withholding the information relating to his request.

18. Although the complainant did not request an internal review in relation to his 17 January 2019 request, the Commissioner took the view that this was not necessary given the history detailed above and so accepted the case without an internal review in relation to the 17 January 2019 request having been carried out.
19. The following analysis focuses on whether the Council holds any recorded information within the scope of the request of 17 January 2019.

## Reasons for decision

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### Section 1 – information held/not held

20. Section 1 of the FOIA states that:

*"Any person making a request for information to a public authority is entitled -*

*a) to be informed in writing by the public authority whether it holds the information within the scope of the request,*

*b) and if so, to have that information communicated to him."*

21. In cases where there is some dispute between the public authority and a complainant as to whether the information requested was held by the public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check that the information was not held and any other reasons offered by it to explain why it was not held.
22. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

#### *The complainant's position*

23. The complainant considers that the Council do hold information relating to the decision that refused the offer and the reasons for that outcome. Specifically, the transmitting of this decision to the Council's solicitor. The complainant believes that the Council must hold records, details, notes of its discussions and communications with its solicitors.

24. The complainant argued that the Council must have discussed the offer, *"otherwise how could it have gone back to its solicitor with the refusal?"*
25. The complainant further argued *"How can a decision on this, involving public assets and public money, not have been discussed and minuted?"* He believes that the Council should divulge this information and that it is incorrectly denying holding any information relating to his request.

*The Council's position*

26. The Commissioner asked the Council a series of questions to determine whether any relevant recorded information was held. This included questions about the searches the Council conducted to locate the requested information and she asked for details about the possible deletion/destruction of information which might be relevant to the complainant's request. The Commissioner also asked the Council to provide any general explanations or arguments as to why it should not be expected to hold information relating to the request.
27. The current Parish Clerk at the Council informed the Commissioner that the Parish Clerk who was in post at the time of the request had carried out searches of electronic and paper records to check whether information was held within the scope of the request. This search included minutes and emails along with correspondence between the Council, Council's solicitor and the insurance company.
28. The searches, the Council said, were carried out by using the task bar, search bar in 'my documents', visually exploring the relevant folders and a search of the Office Outlook email system. All searches were conducted by the Parish Clerk and subsequently by the Chairman, and the Council reiterated that no information relating to the request was located.
29. The Council reported that *"both the electronic and paper records of Council decisions are legal documentation, therefore if any information was found, this would have come to light and any minutes of meetings are published on the Berrynarbor website as public documents."*
30. The Council said that a verbal conversation had taken place with its solicitor concerning the complainant's offer. The Council was asked by the Commissioner whether it held recorded information relating to exchanges with its solicitors. The Council stated that it did not hold any such information.

31. The Council confirmed that there was no recorded information ever held relevant to the scope of the request that had been deleted/destroyed. The Council provided the Commissioner with a copy of its document retention policy. This document shows that the policy applies to all records created, received or maintained by the Council.
32. The Council informed the Commissioner that details relating to the refusal of the offer in question were not discussed at any Parish Council meeting. It said that this matter was dealt with by the Council's insurance company as they were funding the legal process and with the Council's solicitor, due to it being a legal dispute. The Council stated that it was updated by the solicitor on the decision to reject this offer, via a telephone conversation.
33. The Council was asked to confirm whether its councillors had been asked whether they held anything relating to the request, on behalf of the Council, on their personal devices. The Council's response was that having questioned its councillors about this (including the Chairman and Vice Chairman), it was confirmed that no information was held in this way. The Council also stated that any correspondence that is sent from any councillor's personal device on behalf of the Council, is always copied to the clerk, and that this is its policy.
34. With regard to any statutory requirements upon the Council to retain the requested information, the Council reported that there is no information available. It said that *"Town and Parish Councils have a duty and legal responsibility to keep minutes of meetings of the Council in accordance with The Local Government Act 1972. All minutes are published on the BPC website and signed paper copies are kept at the address of BPC."*

#### *The Commissioner's view*

35. The complainant is clearly keen to understand the rationale behind a decision which the Council has taken, but that does not amount to a reason as to why the information should be held.
36. The Commissioner has sought to determine whether the Council holds the information which the complainant has asked for in his request. To make a determination of that question, the Commissioner applies the civil test which requires her to consider the question in terms of "the balance of possibilities." This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.

37. The Commissioner has investigated whether the Council holds recorded information relevant to the complainant's request, by asking the Council questions about the searches it has made to locate the information which the complainant seeks, and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.
38. The Council advised the Commissioner that it carried out searches of all of its existing paper sources and relevant electronic records, in order to locate the information specified by the complainant in his request.
39. Having considered the Council's response and on the basis of the evidence provided to her, the Commissioner is satisfied that on the balance of probabilities, the Council does not hold the requested information.

## Right of appeal

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40. 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](mailto:grc@justice.gov.uk)

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

41. 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.
42. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**