

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2019

Public Authority: Buckingham Town Council
Address: Town Council Offices
Buckingham Centre
Verney Close
Buckingham
MK18 1JP

Decision (including any steps ordered)

1. The complainant has requested information about a Facebook Group that is operated by a named councillor. Buckingham Town Council ("the Council") responded that the information was not held.
2. The Commissioner's decision is that the Council has correctly confirmed that the information is not held.
3. The Commissioner does not require the Council to take any steps, but refers it to 'Other matters'.

Request and response

4. On 4 November 2019, the complainant wrote to the Council and requested information in the following terms:
 1. *"On saturday 2nd nov, on a post on BWM, Cllr [redacted name] claims he was contacted by a number of people from Tesco asking for a post which simply reported an overnight breakin at Tesco to be removed. (Please provide copies of this thread and the communications to Cllr [redacted name])"*
 2. *Please provide copies of any posts to BWM in the last three years by Cllr [redacted name] which could be deemed relating to his political party and or role as local Cllr*
 3. *Please provide the number of individuals banned from BWM since its inception and the reasons for this ban*
 4. *Please provide the number of individuals suspended from BWM since its inception and the reasons for this suspension"*
5. The Council responded on the same date. It stated that the information was not held.
6. Following the complainant asking for an internal review to be undertaken, the Council responded on 5 November 2019, and maintained that the information was not held.

Scope of the case

7. The complainant contacted the Commissioner on 13 November 2019 to complain about the way his request for information had been handled, and specifically that the requested information was held by the Council.
8. The Commissioner considers the scope of the case to be the determination of whether the information is held by the Council.

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.

The complainant's argument

10. The complainant considers the information to be held by the Council. This is because the Facebook Group is managed by the Councillor in their official capacity, rather than as a private individual.
11. The complainant has submitted screenshots of the Facebook Group that prove it is operated by the Councillor.

The Council's position

12. The Council has confirmed to the ICO that it has no oversight over this Facebook Group, which is independently operated by the Councillor as part of their communication with constituents.

The Commissioner's conclusion

13. In the circumstances of this case, the question that must be addressed by the Commissioner is whether the sought information is held by Council for the purposes of the FOIA.
14. The Commissioner has previously considered cases relating to information created by councillors, examples of which can be found in decision notices FS50422800¹ and FS50629586².
15. As explained in those decisions, information created by councillors will be subject to the FOIA only if the information relates to their carrying out of an executive function for the council (e.g. as part of a committee). If the information derives from the councillor carrying out duties in their 'official capacity' as an elected representative (e.g. holding surgeries, or communicating with constituents), the information is not covered by the FOIA. This difference in a councillors 'roles' was succinctly explained in decision notice FS50422800:

¹ Decision notice FS50422800, available at: https://ico.org.uk/media/action-weve-taken/decision-notices/2012/713050/fs_50422800.pdf

² Decision notice FS50629586, available at: <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625306/fs50629586.pdf>

"It is not disputed that a council is made up of councillors and that, once elected, councillors become members of the council. However, this does not mean that everything councillors do is council business and therefore covered by FOIA. The point is a functional one – are they acting in their capacity as members of the council in carrying out the functions of the council, or are they carrying out a separate constituency role or even acting in a purely personal capacity?"
[Paragraph 14.]

16. The distinction is further explained in the Commissioner's guidance³ on determining whether information is 'held' by a public authority:

*"**Local councillors** are likely to have a number of different roles. Information will not be held for FOIA purposes if it relates to their function as elected members (for example, corresponding with residents in their ward, discussing council business with fellow members in the context of voting strategy or campaigning on behalf of a political party). However, some information will relate to the functions of the local authority and will be held for FOIA purposes (for example, being a cabinet member and having executive responsibility for a service area, carrying out administrative functions or representing the authority, such as on a regional forum)." [Paragraph 24]*

17. It is evident in this case that the Facebook Group is operated by the Councillor; the Councillor has not only publicly confirmed their status, but has also provided a link to the Council's own Facebook Group. Having questioned the Council about the nature of the Councillor's Facebook Group, and further, having reviewed the written arguments and screenshots provided by the complainant, there is no evidence available to the Commissioner that suggests that the Councillor's Facebook Group relates to an executive function of the Council. Instead, the Commissioner has concluded that the Councillor's Facebook Group is operated in their official capacity as a councillor.
18. For the above reasons the Commissioner has concluded that, whilst the information may be accessible to the Councillor, it is not held by the Council for the purposes of FOIA.

³ 'Determining whether information is held', available at: https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

Other matters

19. The Commissioner notes, from correspondence between the complainant and Council, that the Council has indicated it does not have an "*appeal process*" for information requests under the FOIA, but does have a wider "*complaints policy and process*".
20. Under the FOIA, there is no obligation for an authority to provide a complaints process (also known as an 'internal review') if a requester is dissatisfied with the outcome to an information request. However, it is good practice (under the section 45 Code of Practice) and most public authorities choose to do so.
21. Whilst it would appear to the Commissioner that the Council does indeed provide such a complaints process, she advises the Council to refer to the following guidance to ensure that the process will accommodate internal reviews under the FOIA:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

Right of appeal

22. 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

23. 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.
24. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF