

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2020

Public Authority: Lamerton Parish Council

Address: clerk@lamertonparishcouncil.gov.uk

Decision (including any steps ordered)

1. The complainant has requested information from Lamerton Parish Council ("the Council") about meeting minutes and communications regarding the Neighbourhood Planning Group.
2. The Commissioner's decision is that on the balance of probabilities, the Council does hold the requested information. By failing to provide the complainant with the requested information, the Council has breached section 1 of the FOIA. By failing to provide an initial response to the complainant within 20 working days, the Council has also breached section 10(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested documents. When providing these, the Council is entitled to redact any personal data.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. When the complainant made their request to the Council, they received a response from the Neighbourhood Planning Group. This was due to the Parish Clerk being off work for personal reasons.
6. The Chairman of the Neighbourhood Planning Group is also a Councillor within the Parish and, as such, they were provided with the complainant's request.
7. The complainant was not satisfied with the Neighbourhood Planning Group's response and, as such, addressed their complaint to the Acting Parish Clerk.
8. The Acting Clerk advised the complainant that they were not aware of their FOIA request and asked for this to be provided.
9. The Neighbourhood Planning Group has been formed to establish general planning policies for the development and use of land within the Parish. Its members are on a volunteer basis. However, some of its members are Councillors, including the Chairman.

Request and response

10. On 27 December 2019, the complainant wrote to the Council and requested information in the following terms:

"In order that I might be well informed and better able to fulfil my duties as a Group member, I would be grateful if you could: -

1) direct me to the published minutes of the NPG- the link to which I can no longer find through the parish website;

2) provide copies of minutes not published on the website, especially of any meetings after July 2017 until late 2018, which were never published on the website;

3) provide copies of communications between WD and the NPG / PC providing / regarding advice on formulating a NP;*

4) provide copies of communications between NPG / PC and site owners responding to the call for sites and any subsequent communications*;*

5) provide copies of communications between NPG / PC and potential developers relating to potential sites under consideration in the NP;*

including memorandum of meetings and/or phone calls.

11. A response to acknowledge the request was provided by a Parish Councillor 20 January 2020.
12. The complainant contacted the Council again on 6 February 2020, requesting a substantive response. The Council responded to this, advising that they were not aware of the request and asking the complainant to provide details of it.
13. The complainant contacted the Commissioner on 10 February 2020, advising that they had not received a response from the Council.
14. The Commissioner wrote to the Council on 22 February 2020, advising that a response should be provided within 20 working days of a request being received. The Commissioner provided the Council with a further 10 days to respond.
15. The Neighbourhood Planning Group responded to the complainant on 11 February, providing a partial response to the request. It answered parts 1 and 2 of the request. However, it refused to provide the requested information for the remainder of the complaint.
16. Following an internal review the Council wrote to the complainant on 16 March 2020. It stated that it does not hold any further information in relation to the request.

Scope of the case

17. The complainant contacted the Commissioner on 10 February 2020 to complain about the way their request for information had been handled.
18. During the course of the investigation, the Neighbourhood Planning Group provided the Commissioner with copies of the withheld correspondence and the Terms of Reference for the group itself.
19. The Commissioner considers that the scope of this case, is to determine if the Council holds the requested information on behalf of the Neighbourhood Planning Group.

Reasons for decision

Section 1 of the FOIA – information held by public authorities

20. Section 1 of the FOIA states that:

"(1) 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 information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

21. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).
22. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
23. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider any other information or explanation offered by the Council which is relevant to her determination.

Section 3(2) of the FOIA – Information held/not held

24. Section 3(2) of the FOIA states that:

"For the purposes of this Act, information is held by a public authority if-

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

25. During her investigation the Commissioner has considered whether the information is held by the Council in its own records, section 3(2)(a), or whether the information is held by another body on its behalf, section 3(2)(b).

3(2)(a)

26. The Commissioner's guidance explains how each case must be considered individually to determine whether a public authority holds the

requested information for its own purposes and therefore for the purposes of FOIA. There are various factors that assist in this determination; some of these are listed in paragraphs 9 and 11 of the Commissioner's guidance¹.

27. The Council has advised that it does not hold any information in relation to the Neighbourhood Planning Group. It explained that the Council was not included in email exchanges between the group and third parties.

3(2)(b)

28. The Commissioner's interpretation of section 3(2)(b) is that information is held by a public authority under the terms of the FOIA, if it is held by another person, which means a legal person and could be an individual or an organisation, for the public authority's own purposes.
29. The Council has confirmed that the members of the Neighbourhood Planning Group are all volunteers, drawn from residents of the Parish.
30. It has advised that the Neighbourhood Planning Group is not a sub-committee of the Council and as such, it is not a public authority.
31. The Council has stated that the Neighbourhood Planning Group has not been directed in any manner by the Council.
32. While the Council has stated the above, it has also advised that the Neighbourhood Planning Group has a responsibility to provide updates to the Council and uses it as a base to seek Grant Funding.

The complainant's view

33. The complainant has explained that they consider that the Council holds the information as all reports undertaken by the Neighbourhood Planning Group were paid for by the Council, and the work undertaken by the Neighbourhood Planning Group was for the benefit of the Council.
34. The complainant has also advised that the Neighbourhood Planning Group was established so that the Council could further its responsibility in preparation for a Neighbourhood Plan.

¹ https://ico.org.uk/media/fororganisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

35. The complainant has also referred to a decision notice², under the EIR, in which a similar circumstance occurred and the Commissioner found that the Council held the requested information.

The Council's position

36. The Council's position is that it does not hold the information on behalf of the Neighbourhood Planning Group.
37. The Council has explained to the Commissioner that the Neighbourhood Planning Group is made up of a group of volunteers, drawn from residents of Lamerton and several members of the Parish Council.
38. It explained that the Neighbourhood Planning Group is not a sub-committee of the Council and as such, is not a public authority.
39. The Council has advised that it has never instructed, or managed the Neighbourhood Planning Group and that it has never had any information passed to it, other than the Draft Plan, along with the accompanying documents, which was presented to the Council, for approval, in December 2018.
40. The Council maintains that there is no statutory requirement for it to hold copies of any information or emails in relation to the Neighbourhood Planning Group.

The Commissioner's Analysis

41. During the Commissioner's investigation, she reviewed all the information provided to her by the Council, the complainant and the Neighbourhood Planning Group. She also requested that all of the information that falls within the scope of the complainant's request, held by the Neighbourhood Planning Group, to be provided so that she could review it.
42. The information provided to the Commissioner contained the Terms of Reference for the Neighbourhood Planning Group.
43. The Commissioner notes that the wording of the Terms of Reference is contradictory. It states that *"...Purpose of the group: To become the working group, functioning on behalf of the Parish Council..."*. It later

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259816/fer0689234.pdf>

states, *"The Group shall not be a sub-committee of the Parish Council..."*.

44. The Council and Neighbourhood Planning Group advised the Commissioner that the wording, in relation to "...the group functioning on behalf of the Parish Council", was intended only to confirm that the Neighbourhood Planning Group was only for the benefit of the Parish Council and the Community as a whole.
45. The Council sent an email to the Commissioner, providing a background to the Neighbourhood Planning Group. Within this email, it states that, *"Subsequent progress reports and updates from the LNPSG delivered at each LPC meeting were the sole requirement and involvement of the LPC other than providing the support base from which appropriate Grant Funding could be sought."*
46. The Commissioner has considered the Council's position regarding this and notes from the evidence provided that the Neighbourhood Planning Group uses the Council as a base for Grant Funding, along with having a responsibility to report to the Council, and it functions on behalf of the Council. The Commissioner therefore finds that on balance, it appears the Council does not control the Neighbourhood Planning Group, however, the information may be held by the Neighbourhood Planning Group on behalf of the Council within the meaning of regulation 3(2)(b).

Conclusion

47. The Commissioner has considered both the arguments of the complainant and the Council's responses in respect of whether it holds the information. The Commissioner has also reviewed the Terms of Reference for the Neighbourhood Planning Group, the Council's arguments and all of the evidence and further information provided by the complainant.
48. The Commissioner understands the purpose of the request, as stated by the complainant. Upon consideration of all the information, it is clear from the Council's responses that, the Neighbourhood Planning Group acts on its behalf and as such it does hold the requested information.
49. The Commissioner considers, on the balance of probabilities, that the Neighbourhood Planning Group does hold the information on behalf of the Council.
50. While the Council may not consider that the the Neighbourhood Planning Group is accountable to it, the evidence provided demonstrates that it reports to the Council, receives Grant Funding from the Council and was also set up on behalf of the Council.

51. Having considered all the arguments presented, and on the basis of the evidence provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does hold information within the scope of the request.
52. The Commissioner therefore considers that the Council has not complied with its obligations under section 1(1) of the FOIA.
53. The Commissioner requires the Council to provide the complainant with copies of the requested information. When the Council is providing the information, it is entitled to remove the names and personal contact details of authors and recipients under section 40(2) – personal information. It should also consider removing any other personal data contained within the emails.

Section 10 – Time for compliance

54. Section 10 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 information of the description specified in the request, and*
- (b) If that is the case, to have that information communicated to him."*

55. Section 8(1) of the FOIA states:

"In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested."*

56. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
57. Section 10 of the FOIA states that responses to requests made under the Act must be provided "promptly and in any event not later than the twentieth working day following the date of receipt."
58. While the Commissioner acknowledges the circumstances regarding the way in which this request for information has been handled, it is clear

that, in failing to issue a response to the request within 20 working days, the Council breached section 10 of the FOIA.

Other matters

59. The Commissioner has considered that this case could have been determined under the EIR, due to the information being requested from a Neighbourhood Planning Group. However, she has determined that the outcome would have been the same, regardless of the legislation used.
60. The Commissioner also considers that the Council should ensure that Communication between its members is more open. She notes that the Acting Clerk was not aware of any FOIA requests and as such, this caused a delay to the initial response resulting in a breach of section 10 of the FOIA.

Right of appeal

61. 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

62. 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.
63. 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
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