ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **3 February 2022**

Public Authority: **Shrewsbury Town Council**
Address: **Riggs Hall**
Castle Gates
Shrewsbury
SY1 2AS

Decision (including any steps ordered)

1. The complainant requested from Shrewsbury Town Council any information held in connection with a Code of Conduct outcome or investigation into the actions of named officers and councillors concerning alleged malfeasance in public office relating to the disposal of Greenfields Recreations Ground. Shrewsbury Town Council stated it did not hold any recorded information as no Code of Conduct investigation had been carried out at the date of the request.

2. The Commissioner's decision is that Shrewsbury Town Council does not hold the requested information based on the balance of probabilities and therefore complied with Section 1(1)(a) of FOIA.

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

Background

4. On various dates in 2020 and 2021, the complainant contacted the Council and requested its Personnel Committee to carry out a Code of Conduct review or investigation into the actions of named officers and councillors relating to alleged malfeasance in public office regarding the disposal of Greenfields Recreations Ground.

5. The Council responded on a number of occasions indicating that any review or investigation would be the responsibility of the Personnel Committee and that any such review would not start until Michael Redfern QC, had completed his independent investigation into the sale

of land on Greenfields Recreation Ground in 2017 and published his report[1].

6. The Council also stated that if any of the named councillors were members of a different council, the monitoring officer of that public authority should be approached.

7. The Commissioner pointed out to the complainant that he did not have any authority in relation to requests for investigation to be undertaken by the Council, only for requests relating to information held by the Council.

Request and response

8. On 20 April 2021 the complainant emailed Shrewsbury Town Council (the Council) and requested:

   "In this case:

   1. Can you please provide me with the document that states that there is any outcome or investigation currently ongoing that relates to Code of Conduct issues or potential abuses of Public Office, If necessary we can see this as a Freedom Of Information request".

9. The Council responded on 11 May 2021 stating:

   "There is no formal paperwork regarding your request as this has not yet formally been discussed by Personnel Committee. Given some time has passed since your original request [for an investigation into the named councillors and officers] *I will remind Personnel Committee that they need to consider this request as soon as the new committee is formed next week".*

Scope of the case

10. The complainant contacted the Commissioner on a number of occasions in 2021 to complain about the way his request for information had been handled. In particular, he was unhappy the Council was unable to

[1] https://www.shrewsburytowncouncil.gov.uk/greenfields-recreation-ground/

specify what, if any, recorded information it held falling within the scope of the request.

11. The scope of the Commissioner's investigation will be to determine whether at the date of the request the Council held any recorded information falling within the scope of the complainant's request.

Reasons for decision

Section 1(1) of the FOIA – Information held / not held

12. Under Section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.

13. Where there is a dispute between a public authority and a complainant as to whether any recorded information falling within the scope of a request is held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of a balance of probabilities.

14. The Commissioner contacted the Council on 17 May 2021 and requested a more detailed response to the complainant's request dated 20 April 2021.

15. The Council responded on 18 May 2021 stating that, as the matter had not been formally discussed at the Personnel Committee, there was no paperwork held. In other words, as there was no investigation at the time of the request due to the decision to carry out one being postponed, no recorded information was held.

16. The Commissioner responded on 20 May 2021 stating he was aware a decision had been made to defer any Code of Conduct issues until Michael Redfern's report had been released/published. However, he suggested there might be some information (possibly internal emails and file notes) relating to the Code of Conduct review/investigation itself. He therefore asked the Council for details of the enquiries and searches that had been carried out in relation to this.

17. The Council responded on 28 May 2021 by disclosing all the information it held in relation to the Code of Conduct request which consisted of a number emails, most of which had already been copied into the complainant. In relation to its decision to postpone any Code of Conduct investigation until after the publication of Michael Redfern's report, the

Council stated this was discussed verbally on a Microsoft Teams' meeting with three group leaders where no notes were taken.

18. On the 30 June 2021 the Commissioner contacted the complainant and provided him with copies of the information disclosed by the Council, with the exception of the emails that were either sent to, received by or copied to him.

19. With regard to the context of the complainant's request dated 20 April 2021, the Commissioner said it appeared fairly clear that he was seeking clarification in relation to the Council's decision in or around November 2020 not to proceed with the Code of Conduct investigation until after the publication of Mr Redfern's report. The Commissioner pointed out the Council had advised that this matter was discussed and the decision made during a Microsoft Teams' meeting between three group leaders and no notes or minutes were taken. Therefore, the Council's position was that it did not hold any additional recorded information apart from that already disclosed.

20. The complainant responded on 1 July 2021 by stating he would like to see the original submission to the Personnel Committee and its response regarding the Code of Conduct investigation. The Commissioner pointed out that this was effectively a new request and should be submitted to the Council as such. He also commented that by sending numerous emails containing a mixture of questions and related information requests, the complainant had made it difficult for the Council to distinguish between them all. He therefore suggested a single communication containing a specific request would help to focus the Council's attention.

21. The complainant then said he wanted to see the meta data for the Microsoft Teams meeting.

22. The Commissioner does not consider that a request for the meta data of the Microsoft Teams Meeting strictly falls within the scope of the complainant's relatively narrowly worded request, which clearly asked for "the document". The Commissioner therefore responded on 12 July 2021 stating he had no reason to challenge the Council's explanation that the decision to postpone any Code of Conduct investigation was made during a Microsoft Teams' video call for which there was no recorded information held. He pointed out the Deputy Town Clerk who set up and participated in the video meeting had already stated no information in the scope of the request was held and provided the names of the individuals whom she recalled had attended. The Commissioner said he was only obliged to reach a decision based on a balance of probabilities not absolute certainty. However, just to further

clarify the position he agreed to contact the Council in relation to any meta data held in the relation the video meeting.

23. The Council replied on 18 August 2021 stating that no meta data was held in relation to the meeting.

24. From the information provided by the Council, the Commissioner is satisfied that there was no 'outcome or investigation' in relation to a Code of Conduct investigation by the Personnel Committee, as the decision to carry one out was postponed at during a Microsoft Teams' video meeting. Therefore there is not a document in which such an outcome or investigation is recorded. The Council has provided information regarding the video meeting, including the Deputy Town Clerk's statement that no recorded information was held. The Council did however, disclose some information relating to complainant's request for a Code of Conduct investigation to be carried out, which the Commissioner considers to be outside the scope of this request.

25. Based on a balance of probability test, the Commissioner is satisfied that the Council does not hold any information falling within the scope of the complainant's request.

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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: 0203 936 8963
    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 ……

Laura Tomkinson
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