

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 June 2014

**Public Authority:** St Albans City & District Council  
**Address:** St Peter's Street  
St Albans  
AL1 3JE

#### Decision (including any steps ordered)

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1. The complainant has requested email correspondence which relates to "Marquis Lane" from St Albans City & District Council (the "Council") from July 2011 between a named councillor and other parties.
2. The Commissioner's decision is that the emails are not held by the Council. The Commissioner does not require the Council to take any steps.

#### Request and response

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3. On 25 May 2013, the complainant wrote to the Council and requested information in the following terms:  
  
*"If possible I would like to request to see any email correspondence between [named Councillor] and the following Harpenden Town Clerk, [named councillors] and the general public with the words Marquis Lane in since July 2011."*
4. The Council responded on 24 June 2013. It explained that information in the Councillor's email accounts would only be held by the Council (for the purposes of the FOIA) if it related to certain matters. Information held by the Councillor for their own 'private political or representative' purposes would not be held on behalf of the Council, and therefore would not fall under the scope of the FOIA. Given the nature of the request, the Council stated that the information requested was not held.

5. Following an internal review the Council wrote to the complainant on 16 August 2013. It upheld its decision that the information was not held for the purposes of the FOIA.
6. On 9 October 2013 the complainant contacted the Commissioner to complain about the way her request for information had been handled.
7. On 12 February 2014 the Council provided the complainant with a copy of the emails which it had obtained from Harpenden Town Council. The Council stated that it did not hold the information requested at the time of the request. However, in response to the complainant the Council sought the requested information from another council. The Council confirmed that other than what was disclosed to the complainant, there is no further information held that relates to the request.

### **Scope of the case**

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8. The Commissioner acknowledges that the Council had provided the complainant with a copy of the emails which it obtained from Harpenden Town Council. However, the Commissioner notes that the Council did not hold the emails when the original request was made or after the internal review was conducted.
9. Although the complainant has been provided with the requested information, the complainant is of the view that the Council should hold this information and not have to obtain it from another authority.
10. The Commissioner considers the scope of this case is therefore to determine whether the information in the requested emails relates to council business and should be disclosed under the FOIA.

### **Reasons for decision**

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#### **Section 3(2) public authorities**

11. Section 3(2) of the FOIA states:

*"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."*

12. Under section 3(2)(a) information will be held by the public authority for the purposes of the FOIA if it is held to any extent for its own purposes. Only if information is held solely on behalf of another person will the public authority not hold it for the purposes of FOIA.
13. Section 3(2)(b) provides that in circumstances where information is held by another person on behalf of the public authority, the information is considered to be held by the authority for the purposes of FOIA. It is this sub-section that is of relevance to information held in personal email accounts.
14. The Council provided the Commissioner with an explanation to why the requested information is not held for council purposes.
15. Individual councillors are not "authorities" for the purposes of the FOIA so the requests cannot be made to them specifically. However, information is "held" for the purposes of the FOIA if it is in the possession of the authority (and they have produced or received it) or if it is held by someone else on behalf of the authority.
16. The Council clarified that it did not consider emails could be held, as the discussions about the Marquis Lane matter between Harpenden Town Councillors and the named councillor are in his role as a ward councillor.
17. Having examined the emails in question, the Commissioner considers that none of them are about council business. He considers that they relate either to correspondence between the councillor and constituents in his role as a ward councillor, to personal matters of the councillor, or to business which is external to his council activities.
18. The Council has referred to the Commissioner's guidance on "Information held by a public authority for the purposes of the Freedom of Information Act".<sup>1</sup> Paragraph 32 of this guidance states that,

*"Information created or received by a councillor but held on a local authority's premises or computer system will be covered if it is held by the authority on its own behalf (section 3(2)(a)). It will not be covered*

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx)

*by FOIA if it was produced by the councillor for private or political purposes and the authority is just providing storage, office space or computing facilities (i.e. the authority is not holding the information to any extent for its own purposes)."*

In this case the Council has argued that some of the information in question was made from the councillor's district councillor email which holds his emails temporarily before forwarding them to his own private email box.

19. The Commissioner notes that the Council has also argued that other emails were made from a private email address and were then held in a private email box by the district councillor in his elected ward councillor capacity and were not about district council work.
20. The Commissioner considers that due to the fact that this information is not council business, it cannot be argued to be held by the councillor on behalf of the Council. It may be considered to be held by the council, on behalf of the councillor as an individual, solely by virtue of being hosted on the Council's email systems.
21. The Commissioner acknowledges the Council's clarification that the councillors were attending the meeting as ward councillors. It explained that the meeting was not a District council meeting and that the councillors were not attending as representatives of any District council function. It stated that the email exchanges relating to this matter are "*ward councillor matters and not Council matters*". Therefore, the Council upheld its decision that the requested information is not held for the purposes of the FOIA.
22. The Commissioner has noted the Council's explanation of the email inboxes of the named Councillor, it clarified that it is set up to pass on the emails to his own private email box, so it can only be considered to "*hold*" it if it can be described as held by someone else on its behalf. Correspondence held by a councillor for his or her own "*private political or representative purposes*" does not fall within the FOIA. However, information held by a councillor on behalf of the local authority, i.e. acting in an executive role as part of the council cabinet will be held for the purposes of the FOIA.
23. The Commissioner acknowledges that the Council had provided the complainant with a copy of the emails which it obtained from Harpenden Town Council on 12 February 2014. However, the Commissioner notes that the Council did not hold the emails when the original request was made or after the internal review was conducted.

24. The complainant argues that the named councillor "*has no available council email address, he uses his private email address for all his council business.*" The Complainant clarified that her request is not about the named councillor's correspondence on behalf of an individual, she stated that in her view, the named councillor is discussing council business (meetings relating to consultations regarding parking restriction etc.) The Complainant had asked to see all of the relevant emails requested via her initial request, from the named councillor's email account and not just some of the emails which the Council had obtained from another authority.

### **The Commissioner's position**

25. The Commissioner's position is that unless the information in the emails relates to council business, it is not held by the Council in its own right, and there is no right of access under FOIA. This is clear from the provisions of section 3(2) of the FOIA. Having considered the information in question, and taking into account the Council's submissions, the Commissioner is satisfied that in this case the information is not held by the Council.
26. Therefore the Commissioner considers that the Council was correct to confirm that it did not hold any further information, other than that which was provided to the complainant, under section 1(1)(a) of the FOIA.

## Right of appeal

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27. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

28. 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.
29. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**