

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2014

Public Authority: Bretforton Parish Council
Address: 6 Station Road
Bretforton
Worcestershire
WR11 7HX

Decision (including any steps ordered)

1. The complainant has requested the council to confirm the councillors on the council in February 1993 and the councillors on the burial committee at that time. The council failed to issue a refusal notice within 20 working days of the receipt of this request so the Commissioner has found the council in breach of section 10 of the FOIA in this case.
2. When the refusal notice was issued it stated that the requested information was not held. The Commissioner has reviewed this and made detailed enquiries to the council. He is satisfied that on the balance of probabilities the requested information is no longer held.
3. The Commissioner does not require any further action to be taken in this case.

Request and response

4. On 18 November 2013, the complainant contacted the council and requested information in the following terms:

"Could you please tell me the names of Councillors serving on Bretforton Parish Council in February 1993. Would you also indicate those that were serving on the Burial Committee at that time.

I would also like to know where Bretforton Parish Council publishes details of its Model Publication Scheme, as required under the FOI Act.

Finally, could you please tell me where I can obtain a copy of the Councillors Code of Conduct."

5. The complainant contacted the Commissioner on 21 January 2014 to complain that he had not received any form of response from the council.
6. The Commissioner wrote to the council on 10 February 2014. He requested the council to issue a response within 10 working days.
7. The complainant contacted the Commissioner on 28 February 2014. He stated again that he had not received a response despite the Commissioner's intervention on 10 February 2014.
8. On 6 March 2014 the Commissioner wrote to the council and the complainant to state that the matter would not be formally investigated.
9. The council wrote to the complainant on 11 March 2014 providing a response to his request.

Scope of the case

10. As stated above the complainant first contacted the Commissioner on 21 January 2014. As the council failed to take the necessary action the Commissioner required, the case was accepted on 6 March 2014 for formal investigation. Following this the council issued a response to the complainant's request on 11 March 2014. Due to the problems the complainant experienced in obtaining a formal response and the fact that the matter was accepted for formal investigation prior to the council's response eventually being issued, the Commissioner has not required an internal review to be carried out on this occasion.

11. The complainant's request relating to the council's publication scheme has already been addressed under case reference FS50533604.
12. It was agreed with the complainant that this notice would focus on any procedural breaches of the FOIA and the council's response that it holds no records from 1993 which would confirm who was on the council the February of 1993 and who was on the burial committee. The complainant believes the council should hold records going back to this date from which this information can be obtained. He considers the council may be deliberately saying that records are missing from this date to prevent him gaining access to this information.

Reasons for decision

Section 1

13. Section 1 of the FOIA provides a general right of access to information held by public authorities. It 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.

Section 10

14. Section 10 of the FOIA requires a public authority to comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt of the request.
15. The Commissioner notes that the Council complied with the requirements of section 1 of the FOIA on 11 March 2014, almost four months after it received the complainant's request for information.
16. In complying with the request on that date, the Council exceeded the time for compliance provided by the Act and therefore breached section 10.

Is the requested information held?

17. The Commissioner discussed this matter with the council at length to establish exactly what searches had been undertaken to date and to see whether any further action could be taken.
18. The council informed the Commissioner that it does not hold any records from 1993 from which this information could be obtained. It advised him that it has searched through the records it does hold several times to make sure this is the case and has provided a list itemising all records it does hold to the complainant. The council explained that all council records are securely held by the parish clerk and transferred over when a parish clerk is replaced. The council explained that it does *now* hold an attendance register but it did not do in 1993. The only requirement then was for those present at council meetings to be formally recorded in the minutes taken and the minutes from this period are no longer held.
19. The council confirmed that it has contacted previous clerks and councillors and the parish clerk from 1993 to try and establish what happened to these records and it has been unable to obtain any further information or clarification. The council advised that they were either destroyed at some point due to their age and no longer being required for council's purposes or they were misplaced at some time.
20. The Commissioner asked the council to confirm whether *any* records from 1993 are held from which this information could be obtained. The council explained that it does hold the burial records from this time and in fact these go back to 1934. These contain the signature and name of the parish clerk in the relevant period but do not record any details of any other council staff.
21. The council confirmed that the complainant has already got a copy of this information, as he took digital copies of all pages when he visited the premises. The council stated that there is no further it can give the complainant in order to satisfy his request and informed the Commissioner that if this information *was* held it would have provided the complainant with a copy for some ago in previous dealings it has had with him.
22. The Commissioner has given this matter careful consideration. He is satisfied from the enquiries he has made that on the balance of probabilities the requested information is no longer held. He accepts that the council has carried out several detailed searches and even itemised the recorded information it does hold to assist the complainant. It has also made enquiries to staff that were previously involved with the council to try and locate the information he requires. The Commissioner accepts that the records the complainant requires date

back 20 years and therefore it would be difficult now to know exactly what happened to the council minutes in 1993.

23. The Commissioner does not consider there is any further action the council could take in order to comply with its duties more fully under the FOIA.

Other matters

24. The Commissioner notes that this is the third decision notice he has issued against the council relating to this complainant where there has been a clear breach of section 10 of the FOIA. The council is reminded of its obligations under the FOIA and that it has a duty to respond to any applicant within 20 working days of the receipt of their request.
25. The Commissioner retains records of repeated breaches of the FOIA and would remind the council that further regulatory action may be taken if future cases of similar breaches are received.

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.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

Rachael Cragg
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