

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 9 March 2017

Public Authority: Hazlemere Parish Council
Address: Cedar Barn
Cedar Avenue
Hazlemere
High Wycombe
Buckinghamshire
HP15 7DW

Decision (including any steps ordered)

1. The complainant has requested information on who provided advice to the parish council regarding a contract under negotiation with a croquet club. The council said that no information is held.
2. The Commissioner's decision is that on a balance of probabilities the council does not hold the requested information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 12 February 2016 the complainant wrote to the council and requested information in the following terms:

"I have one further FOI question. Enclosed is extract from report to do with the negotiations between the Parish Council and High Wycombe Croquet Club which broke down after several months when the basic terms were almost agreed. The report is signed by the Croquet Club's current Chairman after the Club's Committee approved it. I have highlighted the paragraph relevant to this FOI request. Who advised the Parish Council that if the then Councillors agreed the terms they would be in trouble with the Council's auditors?"
5. The council responded on 7 March 2016. It said that it did not hold the requested information.
6. Following an internal review the council wrote to the complainant on 22 April 2016. It confirmed its position that relevant information is not held.

Scope of the case

7. The complainant contacted the Commissioner 3 September 2016 to complain about the way his request for information had been handled. His central complaint was that the council has said that it does not hold details of who provided the advice to a councillor prior to a meeting on 9 September 2011.
8. The Commissioner therefore considers that the complaint relates to whether the council holds recorded information on who provided advice to the councillor prior to the meeting of 9 September 2011.

Reasons for decision

Background to the case

9. High Wickham Croquet Club was in negotiations with the council to lease or use a new sports centre from the council. Broadly speaking, during the final course of negotiations, somewhere between the 6th and 9th September 2011, it is understood that the council received advice from a third party that suggested that if they agreed terms with the croquet

club in the terms suggested then the council would be 'in trouble with the council's auditors'.

10. The complainant suggests that his led the council pulling out from the negotiations.. As a result of this the croquet club uses other premises to base its activities.

Section 1(1)

11. Section 1(1) of FOIA provides 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."

12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
13. The council said to the complainant that the minutes of the meeting for the 9 September 2011 demonstrate that the advice was received by a councillor shortly before the meeting. It says that there was no clerk present at the meeting, (although the complainant has questioned this). The minutes do not record any details of who provided the advice which was reiterated to councillors at the meeting, and the clerk has not been able to find any subsequent report of the advice from the councillor who received it shortly before the meeting. The council therefore confirmed that it has no written record of the details, nor the provider of the advice.
14. The council has provided further explanation for why the information is not held. Many of the councillors at the time of the meeting, including the chair, have now left the council and been replaced by others. Two former councillors now act on the board of the CIO, the charitable organisation which now runs the sports centre.

15. The Commissioner asked the council if there were any invoices which might shed light on who provided the advice if this was given on a professional basis. The council said that there is an invoice for legal advice received from Buckinghamshire County Council, but having contacted it to determine what the advice was for it was not related to the issue of the sports centre.
16. The council also asked two former councillors if they had any written record of the advice, including the chair of the relevant meeting. The former chair confirmed that she does not hold any relevant information other than a copy of the draft minutes. The other former councillor, who the minutes report as receiving the advice prior to the meeting, did not respond to the council's request.
17. The council therefore argues that it does not hold any information which can respond to the complainant's request.
18. The Commissioner has considered the councils arguments. The council has explained that there were issues at the council at the time of the request which meant that the clerk did not attend all meetings. It explained that having searched its records no information is held. It has sought copies of the information from former councillors even though those individuals no longer sit on the council (on the basis that any information retained by these individuals may be held on the behalf of the council). Further to this it has sought details of the advice which was provided to the council from the County Council but proven that the invoice does not relate the relevant advice.
19. The Commissioner notes that some members of the council who were present at the meeting may know who provided the advice. Certainly the former councillor who received the advice would know who provided it, but he failed to respond to the council's request. In any event, the Commissioner can only consider information held by the council in recorded form. She has no powers to require councillors, or former councillors, to respond with any personal knowledge they may have where that information is not held in recorded form.
20. Having considered the steps taken by the council to locate the information and to determine whether it might be able to obtain details of the advice from former councillors and the county council the Commissioner has decided that on a balance of probabilities the council was correct to state that no information is held which falls within the scope of the complainant's request.

Right of appeal

21. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.

23. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF