Freedom of Information Act 2000
Environmental Information Regulations 2004

Decision notice

Date: **30 August 2017**

Public Authority: **Bury Parish Council**
Address: **buryparish@aol.com**

Decision (including any steps ordered)

1. The complainant requested information from Bury Parish Council (the Council) relating to the ownership of properties, whether certain individuals were under observation from law enforcement agencies, and whether certain residents had paid rent and council tax.

2. The Council stated that the first two items of the request related to the complainant's personal data and so were Subject Access Requests (SAR) under the Data Protection Act 1998 (DPA). The Council denied holding any relevant information. The Council refused items 3–8 of the request under section 40(2) of the Freedom of Information Act 2000 (the Act) and regulation 13 of the Environmental Information Regulations 2004 (EIR) as the information was third party personal data. The Council denied holding any information for items 9–12 of the request. This was amended at the internal review stage, where the Council denied holding any relevant information to the entire request.

3. The Commissioner's decision is that on the balance of probabilities the Council does not hold any of the requested information. No steps are required.

Request and response

4. On 31 December 2016, the complainant wrote to the Council and requested information that shows:

1. [Complainant's name] *was an owner or occupier of Hill Villa at any time?*
2. [Complainant's name] *was not a prospective buyer of 15 Hill Estate or Hall Farm Cottage at any time.*
3. [Person A] *bought and moved into Hall Farm Cottage in 1996.*
4. [Person A] *was the landlord of the HMO called Hall Farm Cottage from 2000 to 2008.*
5. [Person A] *moved out of Bury in 2000 and later relocated to Market Harborough and then to Lindal.*
6. [Person A] *travelled to and from Europe without being stopped by any police force or immigration officer in the United Kingdom.*
7. *Since his arrival in the United Kingdom* [Person A] *was on the radar of Cambridgeshire County Council, Cambridgeshire Constabulary, Huntingdonshire District Council and a significant number of law enforcement agencies.*
8. *In 2008/9* [Person A] *and* [Person B] *have proved, on the balance of probabilities, to a Judge at Cambridge County Court that the owner of Hill Villa had by deed of Gift donated Hill Villa to* [Complainant's name] *in 1996. Does your Council hold the Witness Statements of* [Person A] *and* [Person B] *that were filed with Cambridge County Court if not why not?*
9. *The late Tom Blackhurst,*[1] *the former owner of Hall Farm was the sole tenant of the Field forming part of the premises of Hill Villa.*
10. *The current Trustees of the Field forming part of the premises of Hill Villa have received the yearly rent from the sole tenant of the Field from 1989 to 2016.*
11. *The current tenant(s) of the Field have insured and paid Council Tax for the Field.*
12. *Some Owners/Occupiers of Hill Estate and Hall Farm Cottage have been Fly Tipping and encroaching on the premises of Hill Villa and the Field.*

5. The Council responded on 16 January 2017 as follows:

[1] The Commissioner removes personal data contained in requests as standard. However, personal data by definition refers to living individuals, so deceased individuals such as Mr Blackhurst are not conferred the same protection.

- Items 1 and 2 of the request were SARs as per the DPA rather than a request under the Act as they asked for the complainant's personal data. The Council confirmed no information was held.

- Items 3–8 of the request: the Council stated the information would be third party personal data and so refused these parts of the request under section 40(2) of the Act and regulation 13 of the EIR.

- Items 9–12 of the request: the Council denied holding any relevant information. For items 10–12 the Council recommended that the complainant refer his request to Huntingdon District Council.

6. Following an internal review the Council wrote to the complainant on 31 January 2017. It now stated that no information was held for any item of the request.

Scope of the case

7. The complainant contacted the Commissioner on 7 February 2017 to complain about the way his request for information had been handled.

8. The Commissioner considers the scope of the case to be whether on the balance of probabilities the Council holds any information relevant to the request.

Is the information environmental?

9. The Commissioner notes that the Council cited the EIR in its initial refusal of the complainant's request. In order for a request to be handled under the provisions of the EIR it would need to be for 'environmental information' as defined within regulation 2 of the EIR. The Commissioner's view is that the following items of the request ask for environmental information:

    - Items 3, 4 and 9 of the request ask for information on property ownership. The ownership of property is an activity that affects land and so meets the definition of environmental information provided at regulation 2(1)(c).

10. Under the EIR a denial that requested information is held is a refusal under regulation 12(4)(a). This is subject to a public interest test, but this is not required as there can be no public interest test about the value of disclosure if there is no information held. In the Commissioner's view there is no material difference between considering whether

relevant information is held under either the Act or the EIR and so the decision will treat them as the same.

Reasons for decision

11. Section 1(1) of the Act states:

"(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."

12. Regulation 12(4)(a) of the EIR states:

"(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(a) it does not hold that information when an applicant's request is received;"

13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities. To do so, she will examine the information provided by the Council in response to the Commissioner's questions, as well as any reasons the complainant put forward for why the information might be held.

Items 1 and 2 of the request

1. [Complainant's name] *was an owner or occupier of Hill Villa at any time?*

2. [Complainant's name] *was not a prospective buyer of 15 Hill Estate or Hall Farm Cottage at any time.*

14. The Commissioner considers that both these requests are SARs as per section 7 of the DPA. In a situation where the relevant information held is entirely the personal data of the requester then a public authority should refuse the request under section 40(1) of the Act and inform the requester of its SAR procedure. Unless a situation arises in which it would contravene a data protection principle to confirm or deny that the

requester's personal data is held, in which case a public authority should refuse the request under section 40(5)(a) of the Act and inform the requester accordingly.

15. The Commissioner asked the Council what information it held on house purchases or the occupation of properties. The Council stated that the only information remotely relevant was a copy of the electoral register, and that there was no purpose for it to hold the information requested.

16. The Commissioner is satisfied that the on the balance of probabilities the Council is unlikely to hold any relevant information for items 1 and 2 of the request. It is not within its functions to hold information about property ownership or occupation, and even if information was held then it would have been refused under section 40(1) of the Act.

Items 3, 4, 5 and 9 of the request

> *3.* [Person A] *bought and moved into Hall Farm Cottage in 1996.*
>
> *4.* [Person A] *was the landlord of the HMO called Hall Farm Cottage from 2000 to 2008.*
>
> *5.* [Person A] *moved out of Bury in 2000 and later relocated to Market Harborough and then to Lindal.*
>
> ...
>
> *9. The late Tom Blackhurst, the former owner of Hall Farm was the sole tenant of the Field forming part of the premises of Hill Villa.*

17. The Commissioner has grouped these requests together as they all concern property ownership or details about the residence of individuals.

18. The Council's position was the same to these items of the requests as to the previous ones: it did not hold information about tenancy or property ownership beyond the electoral register, and there was no requirement for it to hold such information.

19. The Commissioner is satisfied that the on the balance of probabilities the Council is unlikely to hold any relevant information for items 3, 4, 5 and 9 of the request. The requested information does not relate to the functions of a parish council and there is no requirement for the Council to hold information of this sort.

Items 6, 7 and 8 of the request

> *6.* [Person A] *travelled to and from Europe without being stopped by any police force or immigration officer in the United Kingdom.*
>
> *7. Since his arrival in the United Kingdom* [Person A] *was on the radar of Cambridgeshire County Council, Cambridgeshire Constabulary,*

Huntingdonshire District Council and a significant number of law enforcement agencies.

8. *In 2008/9* [Person A] *and* [Person B] *have proved, on the balance of probabilities, to a Judge at Cambridge County Court that the owner of Hill Villa had by deed of Gift donated Hill Villa to* [Complainant's name] *in 1996. Does your Council hold the Witness Statements of* [Person A] *and* [Person B] *that were filed with Cambridge County Court if not why not?*

20. The Commissioner has grouped these requests together as they relate to law enforcement.

21. The Commissioner asked the Council whether it held any information relevant to law enforcement activities, whether that was specific to immigration enforcement, police investigations, or court statements. The Council confirmed that it had no involvement in the events specified in these items of the request and did not hold information relevant to these events.

22. The Commissioner is satisfied that the on the balance of probabilities the Council is unlikely to hold any relevant information for items 6, 7 and 8 of the request. A parish council is not the usual holder of law enforcement information and the Council's own confirmation is enough for the Commissioner to accept its unlikely relevant information is held. The Commissioner would expect such information to be held – if at all – by the public authorities that the complainant himself specified in these items of the request.

Items 10, 11 and 12 of the request

10. *The current Trustees of the Field forming part of the premises of Hill Villa have received the yearly rent from the sole tenant of the Field from 1989 to 2016.*

11. *The current tenant(s) of the Field have insured and paid Council Tax for the Field.*

12. *Some Owners/Occupiers of Hill Estate and Hall Farm Cottage have been Fly Tipping and encroaching on the premises of Hill Villa and the Field.*

23. The Commissioner grouped these items of the request as they relate to Hill Villa and the Field. The Commissioner also notes that the Council grouped these together and recommended the complainant contact Huntingdon District Council to obtain the information.

24. The Commissioner asked the Council whether it held information relating to the payment of council tax, and as confirmed previously asked

questions relating to property tenancy and law enforcement activities. The Council again confirmed that no relevant information is held.

25. The Commissioner is satisfied that on the balance of probabilities the Council is unlikely to hold any relevant information for items 10, 11 and 12 of the request. None of the information requested relates to the Council's functions, as council tax is handled at levels above parish council level, and for reasons explained earlier about property tenancy and law enforcement activities.

Commissioner's decision

26. The Council's submissions confirmed that there was no practical purpose for it to hold the information. The complainant has made a number of statements to the Council and the Commissioner claiming that he had hard evidence to show this was not true. However, what the Commissioner has seen of the complainant's claims provide no reasonable arguments as to why the information would be held. The Commissioner's decision is that on the balance of probabilities it is unlikely the Council does not hold information relevant to the complainant's request. No steps are required.

Right of appeal

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 123 4504
    Fax: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: 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 ……

Sarah O'Cathain
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