

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2019

Public Authority: Winthorpe with Langford Parish Council

Address: 38 Blatherwick Road

Newark

NG24 2JY

Decision (including any steps ordered)

1. The complainant requested a copy of the revised tenancy agreement (the agreement) between Winthorpe with Langford Parish Council (the Council) and the Allotment Association.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information to that already disclosed.
3. However, the Commissioner finds that the Council breached section 10(1) of the FOIA by failing to disclose the information which was held within the statutory time for compliance.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. On 2 July 2018, the complainant wrote to the Council and requested information in the following terms:

"I would be grateful if you would send me a copy of the revised agreement between the Parish Council and the Allotment Association?"

6. The Council responded on 12 July 2018 and refused to provide the requested information stating that it was "*not for public consumption*".

However, the Council did not specify any exemption it was relying on as its basis for doing so.

7. The complainant requested an internal review on 10 August 2018.
8. Following the Commissioner's intervention, the Council undertook an internal review. It revised its position and provided the complainant with an unsigned copy of the agreement. This document stated the Land Registry title number as NT473767.
9. The complainant contacted the Council again on 3 November 2018 as she was not satisfied that the Council had disclosed all of the information it held which fell within the scope of her request. Specifically, she believed that the Council held a signed copy of the agreement.
10. The Council subsequently provided a signed copy of the agreement. This stated the Land Registry title number as SK8157SW.
11. The complainant contacted the Council on 5 December 2018 to query which Land Registry title number was correct. On 9 December 2019 the Council confirmed to the complainant that the Land Registry title number was NT473767. It explained that SK8157SW was the grid reference number.

Scope of the case

12. The complainant contacted the Commissioner on 1 October 2018 to complain about the way her request for information had been handled and again on 10 January 2019 following the Council's internal review.
13. The Commissioner considers that the scope of her investigation is to determine whether, on the balance of probabilities, the Council holds further information falling within the scope of the request. The Commissioner will also consider the Council's procedural handling of the request.

Reasons for decision

Section 1 – general right of access to information held by public authorities

14. Section 1(1) of the FOIA states 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."

15. In scenarios where there is some dispute between the public authority and the complainant about the amount of information that may be held, following the lead of a number of Information Tribunal decisions, the Commissioner applies the civil standard of the balance of probabilities.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held; she is only required to make a judgement whether on the balance of probabilities a public authority holds any information within the scope of the request.
17. The complainant believes that the Council holds a further copy of the tenancy agreement which is signed, dated and contains the correct Land Registry title number, NT473767.
18. The Council explained that the Land Registry title number of the site is NT473767 and SK8157SW is the ordnance survey map reference number. It told the Commissioner that it has explained this to the complainant. As both the title number and map reference are stated on the official Land Registry title plan, both the Council and Allotment Association did not feel there was any need to sign a further agreement with the correct title number.
19. The Council told the Commissioner:

"The Parish Council is aware that the signed tenancy agreement dated 17 May 2018 stated the Land Registry title number as SK8157SW when it should read NT473767. This was an oversight but in no way does it affect the agreement between the Parish Council and the Allotment Association.

As it is such a minor point, both the Parish Council and the Allotment Association were of the view that there was no need to reissue the tenancy agreement".

20. The Council has confirmed that it does not hold a signed copy of the agreement with the Land Registry title number NT473767.

21. The Commissioner would highlight that the FOIA only provides applicants with the right to request recorded information that is held by a public authority. The Commissioner cannot comment on the accuracy of the information which the Council has provided to the complainant.
22. The Commissioner is satisfied that the Council has provided a detailed explanation of its position. She is satisfied that it has carried out adequate searches and there is no business requirement for it to hold an additional copy of the tenancy agreement.
23. The Commissioner is satisfied that the Council does not hold any further information falling within the scope of the complainant's information request and that it has complied with the requirements of section 1 of the FOIA in this case.

Section 10 – time for compliance

24. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt."*
25. As the Council failed to disclose the in-scope information it held within the required timescale it breached section 10(1) of the FOIA.

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: 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF**