

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2019

Public Authority: Potto Parish Council

Address: pottopc@btinternet.com

Decision (including any steps ordered)

1. The complainant has requested information with regards to trustees. The council responded to the complainant, but the complainant did not consider the council was clear as to whether it held the information requested or not.
2. The Commissioner's decision is that the council has breached section 1(1) of the FOIA as it has not confirmed to the complainant whether or not the information requested is held or not.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response in accordance with the Freedom of Information Act (2000).
4. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 February 2019 the complainant wrote to the council providing background information and made the following information request to the council:

"...In light of the above disparity and so as to identify clearly the current Lawful trustees, please provide copies of recorded parish council information to state:-

- 1. The date when the details published in the 2006 minutes about trustees were amended or revised*
- 2. Where [eg minutes/month/year] the council resolution recording the revised identity of the trustees is published*
- 3. Provide any details from any council records that state the identity of the trustees, as published in 2006, is now invalid*

However, if there is no recorded information in the records of Potto parish council about the above three information requests (as it appears likely), then it is clear that the 'parish council, as a body' remains the Lawful trustee. It follows, therefore, that the data submitted by cllr [name redacted] (using his Charity Commission password) and subsequently published on the Charity Commission's website must be invalid, unlawful and False.

In the event that Potto council has no recorded data to answer the above three requests, please provide information to the following requests;

- 4. Please provide copies of parish council data (eg, emails or other correspondence), that record the Action that the parish council has taken (or intends to take) to advise the Charity Commissioner about the false details published on the Charity Commission's website*
 - 5. When [eg, date] the parish council has (or intends) to inform the Charity Commissioner that Potto parish council is the Lawful trustee of Potto village hall"*
6. The council responded on 10 March 2019 advising that if the complainant requires the information regarding Potto Village Hall, to contact the trustees.

7. The complainant requested an internal review on the 11 March 2019 as he did not consider the council had complied with section 1 of the FOIA because it did not state whether or not it held the information.
8. On the 22 April 2019 the council responded to the internal review request. It determined that its initial response was accurate and stated that it held no further information.
9. The complainant contacted the council on the 29 April 2019 dissatisfied with the council's response to his internal review request.
10. The Commissioner wrote to the council expressing that, on reviewing the council's responses to the request, it is not clear whether information is held or not.
11. The Commissioner asked that the council respond further to the complainant stating whether or not it holds information falling within the scope of the request, in accordance with section 1 of the FOIA.
12. The council responded to the complainant on the 11 November 2019 stating that *"the information previously provided remains valid"* and that it *"does not hold any further documents relating to your request."*

Scope of the case

13. The complainant contacted the Commissioner to complain further that the council is still not being clear as whether it holds any information relevant to his request.
14. The Commissioner considers the scope of the case is to determine whether the council has complied with section 1(1) of the FOIA with regards to the responses it has issued to the complainant.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

15. Section 1 of the FOIA 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."*

16. The complainant does not consider that the council has confirmed to him whether or not the information is held, as required by section 1(1) of the FOIA.
17. The Commissioner has firstly reviewed the council's initial response dated 10 March 2019. The Commissioner notes that the initial response does not state whether or not the council holds the requested information. It simply states he should contact the trustees.
18. The Commissioner also considers that the email the council sent prior to its response, where it advised that 'a response was sent on the 10 March 2019 and the matter is now closed', only served to add confusion to the requester as its actual response was sent after this message.
19. The Commissioner has also reviewed the council's internal review which stated that the council "*holds no further information*".
20. The Commissioner's sees that this could be interpreted that the council holds no information, but it could also be interpreted that there is some information held, which has previously been provided. The Commissioner's view is that the council's response is not clear to the complainant in this regard.
21. The Commissioner highlighted the above to the council during her investigations and asked it to respond to the complainant clearly stating whether or not it holds information falling within the scope of the request and if so to either:
 - a) provide the information or;
 - b) issue a valid refusal notice to the complainant.
22. The council's third and final response to the complainant, dated 11 November 2019, stated "*the information previously provided remains valid*" and that it "*does not hold any further documents relating to your request.*"
23. The Commissioner does not consider this response is again clear to the complainant. "*Information previously provided*" and "*Does not hold further documents*" only suggests that there are documents, but when read with the previous responses, the Commissioner does not consider the council is clear with the complainant.
24. It has not identified what, if any, parts of his request he has previously received information for.

Council response to the Commissioner

25. The council has advised the Commissioner that the complainant has sent it 14 emails on this matter during 2019, additionally, he has raised this as part of his objections to the Annual Audit of the council each year since 2014 and he received responses to each of these requests.
26. The council has told the Commissioner that it is clear that the complainant has received the information on multiple occasions, but continues to make these requests, which it says can only be seen as vexatious and unreasonable in behaviour.

Commissioner's considerations

27. Although the council has told the Commissioner the above, it has not stated this to the complainant in its responses to the request.
28. The Commissioner clearly asked the council to state to the complainant whether or not it holds the requested information and if so provide it or issue a valid refusal. The council has not taken any of these steps.
29. The complainant's complaint to the Commissioner is very clear in that he wants to know whether the information he has requested is held or not. This is not a dispute as to whether information is held or not.
30. On review, the Commissioner does not consider that the council has responded to the complainant clearly or in accordance with section 1(1) of the FOIA and therefore has breached this section of the act.
31. If the council has previously provided information to the complainant, it still needs to identify to the complainant which parts of the request it does and does not hold information to, as per section 1(1) of the FOIA. Once it has identified this, it would be appropriate to then go on to advise if the complainant has previously received that specific information.
32. With regards to the council telling the Commissioner it considers the request can be seen as vexatious. the Commissioner is not in a position to consider this statement as the council has not refused this request under any relevant exemption.
33. The Commissioner requires the council to carry out the step identified in paragraph 3 above.

Right of appeal

34. 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

35. 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.
36. 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

Andrew White
Group Manager
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