

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 June 2020

**Public Authority:** Thorne-Moorends Town Council  
**Address:** Assembly Rooms, Fieldside, Thorne  
Doncaster  
DN8 4AE

#### **Decision (including any steps ordered)**

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1. The complainant requested from Thorne-Moorends Town Council information about the outcome of two public consultations held in 2014. The requests were largely for information about employment and housing planning matters. She also asked to view information held by Thorne-Moorends Town Council about her subsequent complaints to it arising from those consultations.
2. The Commissioner decided, on the balance of probabilities, that Thorne-Moorends Town Council has now disclosed all of the relevant information it holds and has complied with the FOIA legislation.
3. She does not require Thorne-Moorends Town Council to take any steps.

#### **Request and response**

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4. The information requests arose from a neighbourhood planning matter that remains a concern to the complainant. Thorne-Moorends Town

Council (TMTC) conducted two public consultations on the neighbourhood planning matter in March 2014 and October 2014. In October 2016 a further draft neighbourhood plan made proposals, some of which the complainant disagreed with. She has corresponded on the matter with TMTC and has complained to its supervisory Metropolitan Borough Council. In 2019, the complainant made several connected FOIA information requests but was dissatisfied with TMTC's responses.

5. On 12 January 2020 the complainant appealed to the Commissioner. On 18 March 2020 the complainant clarified the drafting of her requests to the Commissioner. She made small amendments to requests R1 and R2 and more substantial amendments to request R5. The information requests, as confirmed to the Commissioner by the complainant on 18 March 2020, were:

First request (R1) on 27 March 2019:

*I would like details of the number of local residents who chose west of Thorne and west of Moorends adjacent to the railway line as their location for new housing sites and the number of local residents who chose Selby Road/ North Common Road off M18 for new employment site deduced from both key formal public consultations held in the year 2014 by use of Questionnaire in both cases.*

Second request (R2) also on 27 March 2019

*For any recorded information held by Thorne Moorends Town Council and its Neighbourhood Plan Working Group/ Steering Group which relates to my entire complaint (March 27th 2019) which includes 'that the map on page 2 of the Consultation on Policy Areas October 2014 Document ["the map"] which I had stated was misleading by giving out false information and therefore can be considered as fraudulent and grossly unfair' and also for a clearer explanation relating to Policy ME1 Allocation of New Employment Sites and the lack of an equivalent employment policy for Thorne (as Moorends), which I also questioned and referred to as new employment sites.*

Third request (R3) on 15 July 2019

*I make request for the minutes of the [Neighbourhood Plan] meeting of 4 June 2019.*

Fourth request (R4) on 31 July 2019:

*The October 2014 Consultation on Policy Areas Policy on Employment land for Thorne [to supplement that contained within the corresponding plan for Moorends].*

Fifth request (R5) on 10 January 2020:

*recorded information from the Neighbourhood Plan Working Group meeting dated 4<sup>th</sup> June 2019.*

6. On 18 March 2020 the complainant told the Commissioner that her requests R3 and R4 were no longer outstanding.
7. In the course of further correspondence, TMTC provided the complainant with minutes of its relevant meetings, including that held on 4 June 2019 and satisfying her request R5.
8. On 9 January 2020 TMTC told the complainant that its Working Group was happy with: the advice and support it had received, the process followed and the outcomes that arose. TMTC said that its group was not about to start an all-out opposition to any of those outcomes.
9. On 10 January 2020 the complainant requested an internal review of its response. She said that she could not believe that TMTC did not document serious complaints which in her view was not good practice and was unreliable. TMTC said that her complaint had been documented in very lengthy detail and that there was nothing more it needed to add in writing.

### **Scope of the case**

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10. On 12 January 2020 the complainant contacted the Commissioner to complain about the way her requests for information had been handled. She said that her information requests concerned principally the validity of the map. She added that her request for assurance of the map's validity had been ignored and her request for an internal review had not been answered.
11. As requests R3, R4 and R5 were no longer outstanding, the Commissioner considered whether any, as yet undisclosed, information was held by TMTC falling within the scope of requests R1 and R2.
12. In her investigation, the Commissioner has considered carefully the representations from both parties and the evidence they provided. She has viewed some relevant information held by TMTC.

## Reasons for decision

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### Section 1 of the FOIA – Information held/ not held

13. Section 1 FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to the applicant.
14. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held the Commissioner, following the lead of a number of First-tier Tribunal decisions, is not expected to prove categorically whether or not the information was held. She must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or which was held at the time the request was made).
15. TMTC responded to the Commissioner's enquiries and explained that most of the information it held had already been shared with the complainant previously and added that much of it was also available in the public domain.

#### *First information request – R1*

16. As regards the first request for information, that concerning the views of local residents as recorded in the 2014 consultations, TMTC said, based on its then understanding of her request, that it did not hold the requested information.
17. The complainant told the Commissioner:

*I know the Council holds this information as the former [senior officer name redacted] sent me the consultation summaries from both of the 2014 consultations and I know the number involved .*

18. On 12 January 2020 the complainant told the Commissioner:

*My request for information concerned principally the validity of [the map which] included information that was inaccurate ... [and] I believed was misleading ,grossly unfair to local residents and therefore could be considered as fraudulent . the Council has evaded all reference to the map ... and has ignored my request for assurance of its validity.*

19. The complainant also told the Commissioner:

*[TMTC] must hold recorded information concerning the map named as the Thorne & Moorends Site Map which is found on page 2 of the Consultation on Policy Areas October 2014 Document. It is a whole page coloured map and was obviously very expensive to reproduce so information must be held by them relating to it and why they chose it and its origin and who put it together .*

*There must be recorded information concerning ... :Allocation of new employment sites .*

20. She added subsequently:

*I know [TMTC] does hold the information that I requested by FOI which concerns the Consultation Summaries 2015 taken from the 2 formal Consultations undertaken in 2014 ... I have those consultation summaries [ICO emphasis] ... [TMTC are] aware ... but will not confirm to me that as many local residents objected to new housing west of Moorends and Thorne adjacent to the railway line as those who supported it. [TMTC] is very unwilling to part with this information ... .*

21. TMTC told the Commissioner in its representations:

*... [the complainant] has also seen these documents before and if it helps I am happy to put every bit of Neighbourhood Plan documentation in my conference room for her to look at and she can study it for as long as she wishes ... .*

22. TMTC invited the complainant to its office to view the information, something she had done previously. However the complainant said that she knew TMTC held the relevant information but did not wish to visit its office at present. She added that TMTC's offer of the facility to inspect the papers was unnecessary, would cost money and would be time wasting. She said she should not have to visit the TMTC office and delve through masses of papers which could be sent to her by email. In the light of these exchanges and a revised interpretation of her request, TMTC agreed to email the relevant 2014 and 2015 information disclosing residents' then views regarding employment and housing.

23. The Commissioner considered carefully the representations from both parties and the evidence they provided to her. The complainant indicated that she has seen and appears to hold at least some of the information she is now requesting such as the consultation summaries and an indication of the numbers favouring different areas. In the light of the evidence she has seen she decided that, on a balance of probabilities, no further undisclosed information was held regarding request R1.

*Second information request - R2*

24. The second request was for information about the complainant's concern that the map was misleading. TMTC told the complainant that its officers held no information falling within the scope of the request other than the complaint itself and officer memories of discussions held with different people about it.
25. TMTC confirmed that its relevant working group was happy with the advice and support it got, the process it had followed and the outcomes that arose.
26. The complainant told TMTC that she could not believe that, given its size, TMTC conducted its business by relying on an officer's memory and did not document serious complaints. She said this was not good practice and was unreliable.
27. In its representations, TMTC assured the Commissioner that it held no as yet undisclosed working papers or manuscript notes etc relating to the complainants' concern as put to it and that there were no undisclosed papers relating to the 4 June 2019 Neighbourhood Plan meeting. A senior officer for TMTC told the Commissioner that:  
  
*[The complainant] made the complaint in writing by e-mail. I then discussed the complaint with a number of other parties but kept no written record of those discussions. I then took the complaint to the meeting of the Neighbourhood Plan working group and relayed to the meeting what other parties had told me. The minutes were taken and [the complainant] has been provided with a copy of the draft minutes. There are no other documents, ... [the complainant's] only wish is to try and stop a planning application going through on land next to where she lives. ... . No one else ... has been involved in the complaint/request ... .*
28. In the light of the assurances she has received from TMTC, and in the absence of any persuasive evidence to the contrary, the Commissioner decided, on a balance of probabilities, that no further undisclosed information was held falling within the scope of the request.
29. The practice of resolving a case without the need for a formal decision notice is part of the FOIA casework process. In an attempt to resolve the matter informally, TMTC invited the complainant to visit its' office and view the information, something she had already done previously.
30. The Commissioner believes that offering an inspection of the requested information can, in principle, be a compliant response to a FOIA request

and can lead to informal resolution of the matter. The detail of how this works is contained in her guidance on section 1 FOIA <sup>1</sup>.

31. The complainant had not specified in advance that she wished to inspect the information at TMTC's office and in the event she refused the offer to do so. Had that course of action been agreeable to the complainant, the Commissioner would have considered it a valid response.
32. However, while appreciating the complainant's frustration about the amount of information held by TMTC, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085)<sup>2</sup> which explained that FOIA:  
  
*"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".*
33. As informal resolution has not proved possible in this matter, the Commissioner proceeded to issue a Decision Notice setting out her decision for the parties. While preparing her decision, the Commissioner noted evidence from both parties to the effect that the complainant has previously had access to, and may already hold, most if not all, of the information she is now requesting. The Commissioner considered that this action had placed an unnecessary burden on TMTC officers.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1163/means-of-communicating-information-foia-guidance.pdf>.

**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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Dr Roy Wernham**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**