

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

Date: 9 November 2022

Public Authority: Ashbury Parish Council
Address: 2 Red Row Cottages
Idstone
Ashbury
SN6 8LQ

Decision (including any steps ordered)

1. The complainant requested information about a village shop in Ashbury. Ashbury Parish Council (the Council) provided some information and withheld other information under section 36(2) (effective conduct of public affairs). The complainant disputed the application of section 36 and queried whether further information was held. During the course of the Commissioner's investigation the Council withdrew reliance on section 36 and disclosed the withheld information. The Council also located other relevant information which it disclosed. The Commissioner's decision is that the Council does not hold any further information falling within the scope of the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 7 May 2021, the complainant wrote to Council and requested information in the following terms:

"....I request under the Freedom of Information Act 2000 the minutes of the APC meeting on 29 April to discuss my original letter to VoWH. Also I request under the Freedom of Information Act 2000 a copy of the Business Plan submitted to the then APC by the current tenants of 1,

Wixes Piece, which was used as a basis to award them a 7 year lease in 2015”.

3. The Council responded on 11 May 2021 and stated that the meeting on 29 April 2021 was a closed meeting “and is therefore not covered by the FOI Act 2000”. In respect of the business plan, the Council advised that “this is a confidential document issued by the current tenants of the Village and is therefore not covered by the FOI Act 2000”.
4. The complainant wrote back to the Council on 11 May 2021 and pointed out that they considered the information requested to be subject to the FOIA as it was information held by the Council. In this communication the complainant made a new request for “copies of all the minutes of the APC Shop and sub committee established in 2013, from 2013 until August 2015.”
5. The Council responded on 24 May 2021 and again repeated that the minutes of the meeting on 29 April 2021 and the business plan were not covered by FOIA. The Council did provide copies of three sets of minutes of the shop committee and the minutes of the Council meeting on 6 May 2021.
6. On 27 May 2021 the Council wrote to the complainant again and stated that the minutes of the meeting on 29 April 2021 were considered exempt under section 36(2)(b) of the FOIA.
7. The complainant wrote a lengthy letter to the Council on 30 July 2021 regarding the subject matter of the village shop. In this letter they stated that:
 - a. They had not received all the minutes of meetings of the APC shop committee from 2013 – 2015.
 - b. They had still not received the minutes of the meeting on 29 April 2021.
 - c. They had still not received a copy of the business plan.
 - d. They did not agree with the application of section 36(2)(b) to withhold the minutes of the meeting on 29 April 2021.
8. The complainant wrote another detailed letter to the Council on 8 October 2021 in response to an email they had received from the Council dated 30 September 2021. The complainant expressed concern at being classed as a “frivolous, vexatious, abusive or unjustifiable persistent complainant” in line with the Council’s policy.
9. The Council responded on 15 November 2021 and referred to its frivolous, vexatious, abusive or persistent complaints policy and stated

that it had nothing further to add to its earlier responses. The Council also asked the complainant to refrain from future correspondence on the matter.

Scope of the case

10. The complainant contacted the Commissioner on 23 November 2021 to complain about the way their request for information had been handled.
11. As stated in the summary, during the course of the Commissioner's investigation, the Council disclosed information it originally withheld - the minutes of the closed meeting on 29 April 2021 and the business plan. The Council also disclosed two additional sets of minutes of meetings of the shop committee which it located. The Council advised that it was unable to find any minutes of shop committee meetings after 2014.
12. In light of the above, the scope of the Commissioner's investigation is to consider whether the Council holds any additional information falling within the scope of the request other than that which it has disclosed, and specifically any additional minutes of the shop committee.

Reasons for decision

Section 1 – general right of access

13. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
14. 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 arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

The Council's position

15. The Council advised the Commissioner that all minutes of meetings are held electronically and some minutes are also held in paper format. The Council is a small parish council with no office premises and as such its

clerk works from home. The current clerk started in post in 2018 and during the Commissioner's investigation conducted comprehensive searches of all electronic and hard copy information. Councillors are all volunteers and use their own laptops. All councillors conducted searches of their own laptops to identify relevant information and nothing was found. Five of these councillors were not serving on the Council for the period covered ie 2013 to 2015. The search terms used included "Ashbury Shop", "Shop Committee", "Minutes", "Lease", "Negotiations" and "APC minutes"

16. The Council advised the Commissioner that enquiries were made with both the previous Clerk and "the Chair of the then sub-committee". These searches resulted in an additional two sets of minutes being located, which were disclosed to the complainant.
17. To the best of the Council's knowledge no information relevant to the request has ever been deleted or destroyed. None of the individuals currently in post who were involved in Council business at the time of the committee meetings in question are able to recall how the decision relating to the shop lease was made and/or recorded and no one has any recollection as to whether 'a final meeting' of the shop committee even took place.

The Commissioner's view

18. The complainant has not put forward any representations as to why the information is held. However, the Commissioner accepts that it is reasonable to expect there to be minutes of further meetings of the shop committee detailing the decision making process around awarding a lease to run a new village shop as the minutes that the Council has disclosed to date do not formally record this decision. However, the Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
19. Based on the representations provided by the Council the Commissioner is satisfied that it has carried out searches of the places where relevant information would be held. Having considered the circumstances of the case, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further recorded information relating to the request.

Right of appeal

20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. 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.
22. 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

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