

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

Date: 29 March 2022

Public Authority: Capel Parish Council
Address: Parish Office and Hall
55A The Street
Capel
Surrey
RH5 5LD

Decision (including any steps ordered)

1. The complainant requested information regarding the change of ownership for some land.
2. Capel Parish Council provided some information in response to the request, but stated that some information is not held.
3. The Commissioner's decision is that, on the balance of probabilities, Capel Parish Council does not hold any further information in scope of the request.

Request and response

4. On 8 February 2021, the complainant requested information from Capel Parish Council ("the council") in the following terms:

"We hereby request all information pertaining to:

1) The claim and subsequent registration of ownership of the wasteland registered under title number: SY76777 dated 9th August 1952 in the name of Dorking & Horley Rural District Council, the title of which was passed to Capel Parish Council as part of a local government reorganisations on 23 March 1971.

2) The Declaration of that title as Common Land in 20th Nov 1957 by Capel Parish Council and signed by [redacted].

3) The sale by Capel Parish Council of a section of that same land which was registered separately as the number SY532508 to the Broadwood Trust on 19th Oct 1981 for £500.

This request includes, but is not limited to, all those legal documents, the minutes of the relevant council meetings, the valuations, letters of consultation etc."

5. The council responded on 23 February 2021. It provided short copies of two HMLR land titles and stated the following:

"...I have obtained the Land Registry information for the two pieces of land mentioned in your original email. This information is attached.

Parish minutes dated 19 October 1981 mentions the Broadwood Trust purchasing the frontage outside Bonnetts Farm

I regret there is no further information available at the parish council"

6. The complainant responded on 23 February 2021 and requested a copy of the minutes dated 19 October 1981 which hadn't been provided. They also stated that the information provided by the council was already publicly available and therefore the request had not been answered.
7. The council responded on 26 February 2021. It advised that it would provide a copy of the minutes, however this required a visit to the office to scan the minutes (during the pandemic lockdown period). It stated that no further information in scope of the request was held by the council. It confirmed that it had contacted the council's solicitors and asked them to search their archives.

8. The council wrote to the complainant on the 4 March 2021 and provided a copy of the minutes dated 19 October 1981. It advised that the solicitor had searched their records and found no additional information. The council concluded that no further information is held within scope of the request.
9. The complainant contacted the council on 29 March 2021 stating that according to the retention policy the information should be retained indefinitely. Furthermore that the minutes provided indicated that the topic had been discussed at meetings prior and post that meeting.
10. On 29 March 2021, the council responded advising that it had carried out further searches of legal files and minutes and found no information in scope of the request. It advised that whilst the council's retention policy states the information should be kept indefinitely, the policy was only recently implemented, prior to that there had been no policy. Until the parish office was established in 2016, the council's documentation was kept at parish clerks' private addresses, since then there have been numerous changes of clerks and officials.

Scope of the case

11. The complainant contacted the Commissioner on 6 May 2021 to complain about the way their request for information had been handled. Specifically that the council must hold further information within the scope of the request.
12. The scope of this case is to determine whether, on the balance of probabilities, the council holds any further information which is within the scope of the request.

Reasons for decision

Regulation 5(1) – Duty to make environmental information available on request

13. Regulation 5(1) of the EIR states that: "a public authority that holds environmental information shall make it available on request." This is subject to any exceptions that may apply.
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. She will also consider the actions taken by the authority to

check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held.

15. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that "there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records". It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner applies in this case.
16. In discussing the application of the balance of probabilities test, the Tribunal stated that, "We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed." The Commissioner has therefore taken the above factors into account in determining whether or not further information is held, on the balance of probabilities.

The complainant's view

17. The complainant states that they cannot accept the council's position that it only holds one page of relevant minutes, and nothing relating to either the claim of title, the declaration of common or the subsequent sale of the common land which is the subject of the request.
18. The complaint identifies that all of the requested documents fall within the categories of information which the council's published retention policy states are retained indefinitely.
19. The complainant contends that considering the age of the information, the records are likely to have been archived or stored by the council's legal representatives.
20. It is the complainant's position that the documents must be retained somewhere given their significance.

The council's response

21. Whilst council information can be legally be stored off-site, the council has adequate storage facility in the Parish Office therefore an off-site facility is not used.
22. Document searches have been undertaken at the council offices. As the records date back to 1981 there is no electronic information, only those held in the minutes.
23. The "Minute Books" held at the Parish Office have been searched by the Clerk, and the complainant, for any information in scope of the request. The searches were undertaken in person by the Clerk and then by complainant in the Parish Office.
24. The council advised that the complainant was given access to and spent many hours in the Parish Office, photographing sections of the minutes that they felt were relevant to the case.
25. The clerk who was in post in 1981 is no longer available to answer any questions on the information in scope of the request.
26. The council recognises that its retention policy states the information should be kept indefinitely, however it advises that the policy was only adopted recently. Before that there was no governing policy.
27. It explained that until 2016 all council documentation was kept by clerks at their private addresses. There have been numerous changes of clerk and officials. It was not until 2016, when an office was made available, that all the files were brought together.
28. The council has checked with its legal representatives and confirmed that they do not hold any information in scope of the request. It stated that since 1981 the solicitor has also changed name, premises, and staff.
29. The council confirmed that no information has been knowingly destroyed. However information may have been mislaid when the clerkship changed hands, and prior to the establishment of the Parish Office.

Conclusion

30. In coming to a conclusion, the Commissioner has considered the complainant's view and the council's responses.

31. The EIR provide the right to access recorded information, which the council holds at the time a request is received. The regulations are not concerned with whether or not information should be held.
32. The Commissioner considers that the council has undertaken adequate searches of its records for information in scope of the request. It has confirmed that information has not been knowingly destroyed, and it states that information of this age may have been mislaid in the years prior to the establishment of the Parish Office in 2016.
33. Whilst the Commissioner understands the complainant's view that the information should be held, he has found no evidence that the council is withholding any records within the scope of the request.
34. In conclusion, the Commissioner considers that the council have provided an explanation of the records held and the searches undertaken with regard to this request. In the absence of any firm evidence to the contrary, the Commissioner has decided that, on the balance of probabilities, the council has provided all the information it holds within the scope of the request.
35. The Commissioner therefore finds that the council has complied with regulation 5(1) of the EIR.

Right of appeal

36. 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

37. 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.
38. 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

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