

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2022

Public Authority: Potto Parish Council

Address: pottopc@btinternet.com

Decision (including any steps ordered)

1. The complainant has requested information relating to items such as meeting minutes, reports, a decision notice appeal and the village hall. Potto Parish Council (the council) provided some information and advised that other information was not held.
2. The complainant believed that further information was held and that the council was a trustee to the Village Hall, meaning it would therefore hold the Village Hall Trustee minutes / agendas.
3. The Commissioner's decision is that the council holds no further information within the scope of the request.
4. The Commissioner does not require the council to take any steps.

Request and response

5. On 19 December 2020 the complainant made the following information request to the council:

"1. I note that the words copied below, describing the 'annual village hall trustee' meeting, were published in each of the minutes for the Jan, Feb, March, April, May, June and August parish council meeting held in 2018. Annual Village Hall trustee meeting upcoming.

I realise this 'annual trustee meeting' is very important council business, as is shown by this most prolific record in 2018, but there is no mention whatsoever of this 'annual trustee meeting' in any of the council's published records for 2019 or for 2020. This omission seems odd.

Please advise me where the agendas and minutes for these statutory 'annual village hall trustee meetings' are published; but if not yet published, please provide me with an explanation for the delay and a (pdf) copy of these data for the last two meetings.

2. I refer to an 18 page letter dated 3rd November 2019, sent by Potto council to its Auditor (ref, objections to the council's 2018-19 accounts). I understand that [name redacted] at YLCA provided Potto council with some specific advice/feedback about this 18 page letter. However, this important YLCA advice/feedback has not been recorded as council correspondence, nor has it been discussed as an item of council business.

I wish to request a copy of the YLCA's advice/ feedback.

3. The May 2020 minutes (still only published marked DRAFT, despite the vote to approve of 17 June 2020) state that the council's policy for 'recording at meetings' has 'been agreed and added' to the council's website. This record is deceitful; the policy still isn't on your website in December 2020 – seven months later.

- Recording at Parish Council meetings
All have been agreed and added to the PPC website.*

Please explain why these minutes were approved as a correct record, when the record is False, and I also wish to request a (pdf) copy of this policy.

4. The February 2020 minutes state the council has appealed against this Decision Notice, but I can't find any more details about this 'appeal' in the council's published records throughout all of 2020.

4.6 FOI request FS50858819 – the Parish Council has appealed against the decision notice.

I wish to request a copy of the Appeal Tribunal's case reference number and a brief update of the status of this Appeal.

5. I note the council's Financial Regulations state, see extract below, that 'the RFO will determine the accounting procedures'. However, the annual accounting statements don't seem to state the statutory 'accounting procedure' anywhere.

4.ACCOUNTING AND AUDIT

4.1 All accounting procedures and financial records of the Council shall be determined by the RFO as require by the Accounts and Audit Regulations 2015.

I wish to clarify if the council's accounts are prepared on the widely accepted 'income and Expenditure' basis?

If not, what is the basis of the accounts?

6. Scrutiny of the council's Document Retention Policy finds that it does not refer to members' Register of Interests. How long are these important data retained by Potto council?"

6. The council responded to each part of the request on the 26 January 2021. For part 1 it advised that he would need to contact the trustees of the Potto Village Hall for this information. For parts 2 to 6 the council provided information.
7. The complainant then requested an internal review on 4 February 2021 to parts 1, 2 and 5 of his request.
8. He then complained to the Commissioner on the 18 March 2021 as no internal review had been received. On the 25 March 2021 the council provided its internal review.
9. For part 1 of the request the council responded that the Potto Parish Village Hall Trustees are a separate body to the council and that the council does not hold information falling within the scope of this request. For part 2, the council stated there is no other YLCA (Yorkshire Local Councils Association) advice / feedback. For Part 5 of the request it advised how the accounts had been prepared.

Scope of the case

10. The complainant contacted the Commissioner further, still dissatisfied with the council's response to parts 1 and 2 of his request.
11. For part 1 of the request, the complainant considers that the council is a trustee of the village hall and that it does hold the requested minutes/agendas.
12. For part 2 of the request, the council did provide the complainant with a YLCA (Yorkshire Local Councils Association) advice / feedback report from October 2019, but the complainant did not accept that this was all the information the council held that was within the scope of this request.
13. The scope of the case is therefore for the Commissioner to determine whether the council holds information within the scope of part 1 of the request and also whether it holds any further information within the scope of part 2 of the request.

Reasons for decision

Part 1 of the request

Section 3(2)(a) of the FOIA – Information held not held

14. Section 3(2) of the FOIA sets out the legal principles that establish whether information is held for the purpose of the FOIA.
15. Section 3(2) of the FOIA states:

"3.(2) For the purposes of this Act, information is held by a public authority if-

(a) it is held by the public authority, otherwise of behalf of another person, or

(b) it is held by another person on behalf of the authority."

16. In this case, the complainant is of the view that the council is a trustee of the village hall and by default holds the information to part 1 of his request.

17. The Commissioner's guidance¹ on section 3(2) states at paragraph 22 about charitable trusts:

"...Public authorities, usually local authorities, can be trustees of charitable trusts. They could be a trustee of a public facility such as a playing field or a leisure centre, or the trustee of funds. When a local authority is the sole trustee of a charitable trust, the information is held for the purposes of FOIA."

18. The Charity Commission website lists the Trustees of Potto Village Hall². The council is not amongst them. On the basis of this evidence the Commissioner's view is that the complainant's belief that the council is a trustee of the village hall is mistaken.
19. Therefore any information held by the village hall trustees is not information that is held by the council for the purposes of the FOIA.

Section 1 of the FOIA – Information held not held

20. Although the Commissioner has found that information held by the village hall trustees is not information held by the council, this does not mean that it is impossible that information within the scope of the request may be held by the council.
21. The Commissioner has therefore gone on to determine whether the council holds the requested "*agendas and minutes for these statutory 'annual village hall trustee meetings'*".
22. Section 1 of the 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 him.
23. 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 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 was held at the time of the request).

¹ [Document history and version control \(ico.org.uk\)](https://www.ico.org.uk/document-history-and-version-control)

² <https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/700596/trustees>

24. The council has responded to the Commissioner's enquiries explaining that whilst the council is not a trustee of the village hall, a councillor and the council's clerk are two of the trustees of the village hall. The council advises that Potto is a small parish and people tend to be involved in multiple public activities.
25. The council has told the Commissioner that although two members of the council serve as trustees, no agendas or minutes are taken for or provided back to the parish council.
26. As the council is not a trustee of the village hall, the Commissioner accepts that the two members of the council who are trustees are operating in a different capacity when acting as a trustee of the village hall – separate to their roles with the council.
27. That a mention of village hall trustee meetings is recorded in council meeting minutes does not, in the Commissioner's view, suggest that it is likely that the council holds the minutes and agendas of village hall trustee meetings. The Commissioner's conclusion is that, on the balance of probabilities, the council does not hold any information falling within the scope of request 1.

Part 2 of the request

28. The complainant, in relation to part 2 of his request, was provided with a copy of the requested advice/feedback dated October 2019. However he considers that the council holds a YLCA report dated sometime after 3 November 2019.
29. The council's response to the Commissioner on this is that the October 2019 advice/feedback disclosed to the complainant was sent to the council on the 8 November 2019 by the YLCA. Therefore this is the correct document as there is no other held.
30. The council has told the Commissioner that the majority of the council's communications are held electronically and searches of relevant email addresses, and its cloud storage were used to locate relevant information.
31. It has confirmed that no relevant information has been deleted or destroyed.
32. A search for the YLCA advice / feedback via the council's email and cloud storage seems a relevant and appropriate search for such correspondence.

33. The Commissioner therefore finds that, on the balance of probabilities, no further information is held by the council falling within the scope of the request.

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: 0203 936 8963

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

Ben Tomes
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