

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

### **Decision notice**

**Date:** 5 April 2023

**Public Authority:** Bickenhill & Marston Green Parish Council  
**Address:** clerk@bmgpc.org

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

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1. The complainant requested information relating to ownership of a particular piece of land.
2. Bickenhill & Marston Green Parish Council (the Parish Council) refused to provide some of the requested information, citing section 42 (legal professional privilege) of FOIA.
3. The Commissioner's decision is that the Parish Council was entitled to withhold that information under section 42.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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5. On 17 November 2022, the complainant wrote to the Parish Council and requested information in the following terms:

"Copies of all documents held by the PC [Parish Council] concerning their purported attempt to determine ownership of the particular piece of land [...], to include, but not limited to, internal correspondence, external correspondence, meeting notes, notes of telephone calls and any communications with third parties, including but not limited to, contact with the PC Solicitor".

6. The Parish Council responded on 14 December 2022. It provided some information in scope of the request, denied holding some of the requested information and refused to provide the remainder, citing section 42 (legal professional privilege) of FOIA.
7. The complainant requested an internal review relating to the information withheld by virtue of section 42.
8. The Parish Council sent him the outcome of its internal review on 22 December 2022: it upheld its original position.
9. The complainant disputes the Parish Council's refusal to provide the requested information that relates to contact with their Solicitor on the basis that it is legally privileged.
10. The Parish Council provided the Commissioner with a copy of the withheld information. With reference to the wording of the request, it described that information as emails "which come under the headings 'external correspondence' and 'contact with the Parish Council's solicitors'".
11. The Commissioner considers that FOIA is the appropriate access regime in this case.
12. While he acknowledges that the complainant told the Parish Council that they would accept the information on a restricted disclosure basis, the Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of FOIA. Accordingly, the Commissioner must consider whether the requested information is suitable for disclosure to the world at large.
13. The following analysis explains why the Commissioner is satisfied that the Parish Council is entitled to rely on section 42(1) of FOIA to refuse to provide the requested information – information comprising contact with their solicitor.

## **Reasons for decision**

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14. Section 42(1) of FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings. Legal professional privilege protects the confidentiality of communications between a lawyer and client.
15. The Parish Council told the Commissioner that, in order to determine who owns the land, it sought legal advice from its solicitors.

16. The Commissioner is satisfied that the withheld information constitutes confidential legal advice provided by a legal adviser to their client. This means that this information is subject to legal professional privilege, and the Commissioner is aware of no evidence suggesting that this privilege has been waived. The exemption provided by section 42(1) of FOIA is, therefore, engaged in relation to this information. The Commissioner will now go on to consider the public interest test.

### **Public interest test**

17. The Commissioner acknowledges that the complainant has personal reasons for wanting access to the requested information. He also accepts the complainant's argument that there is a public interest in ensuring that public authorities are transparent in their actions.
18. The Commissioner recognises that there will always be a general public interest in transparency and accountability.
19. However, the Commissioner must also take into account that there is a public interest in the maintenance of a system of law which includes legal professional privilege as one of its tenets.
20. In balancing the opposing public interest factors under section 42(1), the Commissioner considers that it is necessary to take into account the in-built public interest in this exemption: that is, the public interest in the maintenance of legal professional privilege.
21. The general public interest inherent in this exemption will always be strong due to the importance of the principle behind legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice. A weakening of the confidence that parties have that legal advice will remain confidential undermines the ability of parties to seek advice and conduct litigation appropriately and thus erodes the rule of law and the individual rights it guarantees.
22. It is well established that where section 42(1) of FOIA is engaged, the public interest in maintaining the exemption carries strong, in-built weight, such that very strong countervailing factors are required for disclosure to be appropriate. The Commissioner notes the decision in the *Cabinet Office v Information Commissioner and Gavin Aitchison* (GIA 4281 2012) where, at paragraph 58, Upper Tribunal Judge Williams said:
- “...it is also, in my view, difficult to imagine anything other than the rarest case where legal professional privilege should be waived in favour of public disclosure without the consent of the two parties to it”.

23. In reaching his decision in this case, the Commissioner has considered the prior findings of the Commissioner and the Information Tribunal in relation to legal professional privilege. He has also had regard to the content of the withheld information.
24. The Commissioner is mindful that, while the inbuilt weight in favour of the maintenance of legal professional privilege is a significant factor in favour of maintaining the exemption, the information should nevertheless be disclosed if that public interest is equalled or outweighed by the factors favouring disclosure.
25. In all the circumstances of this case, however, the Commissioner is not satisfied, from the evidence he has seen, that there are factors present that would equal or outweigh the strong public interest inherent in this exemption.
26. The Commissioner has therefore concluded that the public interest in maintaining the exemption at section 42(1) outweighs the public interest in disclosure. It follows that the Parish Council has correctly applied section 42(1) in this case.

## Right of appeal

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

28. 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.
29. 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 .....**

**Laura Tomkinson**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**