

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 1 August 2017

**Public Authority:** Wark Parish Council  
**Address:** C/o The Haining  
Wark  
Hexham  
NE48 3ED

#### Decision (including any steps ordered)

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1. The complainant has requested information which he has termed 'the Cherryman Papers', together with a copy of minutes which he believes were received by the council from Tynedale District council relating to a village green association. The council directed the complainant to a county archive to obtain the information, and said that it did not hold a copy of a relevant Tynedale District Council minute.
2. The Commissioner's decision is that the council was correct to rely on section 1 as regards the second part of the request. She has also decided that it was correct to direct the complainant to the archive to obtain the information in the first part on the basis that section 21 of the Act applied. She has however decided that the council did not provide advice and assistance as requested by the complainant and so the council failed to comply with section 16 of the Act.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. Following a long history between the parties, on 29 October 2016 the complainant wrote to council and requested information in the following terms:

*"I would like to add a further request for information. If the Council decides not to respond to it I will formalise it under the FOIA and the ICO can deal with the two issues together. This refers to documentation which the Chairman has claimed at official meetings that she holds relating to the SVGC. The first set of documentation relates to that she confirmed she held personally, this being release from the estate of Mrs Cherryman on her death. The second is a copy of the minutes of Tynedale District Council which the Chairman claimed to have had in her possession and which she offered to the Information Tribunal Chairman at the hearing on 27 May 2016."*

5. The council responded on 23 November 2016. It said that:

*"You have requested the following.*

- 1. Copies of documents that you claimed I had from Mrs Cherryman*
- 2. Copies of Tynedale Council Minutes*

- 1. I can inform you that these documents are stored at NCC Archives at Woodhorn. If you want any copies of these documents it is your responsibility to retrieve them yourself.*
- 2. I never claimed to have copies of Tynedale District Council Minutes"*

6. Following an internal review the council wrote to the complainant on 14 December 2016. It upheld its previous response.

## Scope of the case

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7. The complainant contacted the Commissioner on 9 January 2017 to complain about the way his request for information had been handled. He believes that the council is deliberately withholding the information or has deliberately destroyed the information. He therefore asked the council to consider the potential for a criminal offence having been committed under section 77 of the Act.
8. For the reasons outlined in the decision notice below the Commissioner considers that there is no evidence which would lead the Commissioner to consider that a criminal offence may have occurred under section 77 of the Act. She has therefore considered the complaint under section 50 of the Act.

## Reasons for decision

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### Background to the case

9. The complainant has had previous dealings with the council over an issue relating to the Stonehaugh Village Green Association (the SVGA). Following a previous request the complainant took a complaint to the First-tier Tribunal regarding information which he believed the council should have held, but which the Commissioner, and ultimately the Tribunal, concluded it did not.
10. The complainant argues that the council took a decision to adopt the village green association as a sub-committee of the parish council in 2008. Council minutes at the time refer to this plan, however the council argues that following the meeting it took no further action to ratify the plan as it received advice that this was 'not a good idea'. The First-tier Tribunal, in refusing the appeal, accepted that the plan had not been taken any further forward and that the association remained a completely separate entity to the council.
11. The complainant is seeking copies of relevant minutes and papers to help him determine whether the council did in fact take the SVGA 'in house' as a sub-committee as he considers to be the case. He argues that the information he has requested is held by the council because the chair of the council sought to provide it as evidence to the First-tier Tribunal in the first case. For its part the council argues that the 'Cherryman Papers' are held in the council archive, formerly at Woodhorn but now at the county council archive. It argues that they sent papers there in May 2015 but does say that the chair retrieved them for the purposes of the tribunal hearing, returning them later that year.
12. The complainant however asked staff at Woodhorn if the information he requested is held by it and was told that:

*"I have looked again at our list of accessions and as per our previous communication can confirm that Wark Parish Council made a deposit of Parish Council records on 15 May 2015. This is the most recent deposit of records made by the Council. Details of these records are incorporated into the PC 67 catalogue to which I previously provided a link and there is no direct reference to the documents that you are seeking. You are most welcome to come to Woodhorn to look at items within the collection if you think that the records you are seeking might be contained therein. Alternatively, we could undertake a search for you as part of our charged for research service - details of which can be found here - <http://www.experiencewoodhorn.com/research-service/>."*

13. Following further correspondence between the archive service and the complainant it stated:

*"... have looked at the catalogue list and I cannot easily identify the records that you refer to in your message. Is it possible that the information is to be found within one of the minute books for the period?"*

14. Again it provided details as to how he could view documents within the catalogue should he choose to do so, or alternatively he could pay for searches to be carried out and copies of documents provided to him under its normal search service.
15. The Commissioner understands that the complainant has not contacted the archive to arrange for copies of the information to be sent to him and is not willing to travel the distance to the archive to inspect the documents without further confirmation from the council that the Cherryman papers are held. He specifically wrote to the council on 29 November 2016 asking *"For the avoidance of doubt can you please let me know exactly how these documents are identified in case I make a fruitless 100-mile journey in the event that they cannot be located"*. For its part the council confirmed to the complainant that the papers are part of the archive catalogue PC 67 but it did not explain further what the Cherryman papers were.
16. As regards the request for Tynedale Council Minutes the council said that the complainant is mistaken and it has never held a copy of these minutes.

### Section 1

17. Section 1 of FOIA states that

*"Any person making a request for information to a public authority is entitled –*

*(1) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(2) if that is the case, to have that information communicated to him."*

18. 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 argument. 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. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

The 'Cherryman Papers'

19. The council has argued that the information requested in the first part of the complainant's request is available from the county archive. The chair of the council has stated that she has recently checked with the archive and the information is still available.
20. The archive itself has said that it has been unable to identify the specific information which the complainant has asked for, but questioned whether the information was held within the minute books provided to it by the parish council in May 2015.
21. In her response to the Commissioner the chair of the council said:

*"Wark PC were given old hand written minute books from the estate of a previous chairman Mrs Lena Cherryman, these were deposited at County Archives, I have recently reviewed this deposit and everything is at County Archives ref: PC 67. In order to accrue [sic] evidence for Case ref: FS50584908 and attend the Lower Tier Tribunal I requested permission to borrow these documents from Archives and returned them later in the summer. These are the documents that I offered to the judge at the LTT. These documents are still available from County Archives. [The complainant] was given a link to this catalogue and an offer from Archives staff to have them available for his inspection if he decided to visit in person.*
22. The Commissioner notes that the withheld information is therefore minute books, but it appears that this has never been explicitly described to the complainant previously.
23. The Commissioner therefore considers that minute books are the 'Cherryman papers' identified by the council as falling within the scope of the request. The county council archive online catalogue service shows that minute books are still held within PC 67.
24. The complainant said that he has not visited the county archive as he considers that it is too long a journey simply to determine whether this is the information which he actually wishes. He said that this would be a journey of over 100 miles. The complainant has also not paid the archive to provide him with copies of the relevant information through

its research facility, presumably because he does not wish to pay the costs when the information may not prove to be what he wishes. He therefore asked the council to clarify what the information is which is held by the archive.

25. Given that the council has explained to the Commissioner that the 'Cherryman Papers' were minute books, and given that the council chairman has said that she has also checked very recently and that information is still available in PC 67 (which was confirmed by the archive), then the Commissioner considers that on a balance of probabilities this is the information which the council has identified as falling within the scope of the complainant's request.
26. It is not the Commissioner's role to obtain the information from the Archive to verify that it is the information which a complainant is requesting. The council has directed the complainant that this is the information it was referring to before the tribunal; the 'Cherryman papers', and the Commissioner has found no reason to dispute that that is the case. That information is also publically available to inspect.
27. The council has told the complainant where he can obtain copies of the information, and the County Council Archives department has confirmed that it is willing to provide access to this should he follow the correct procedures. The information is publically available for inspection and is easily available to the complainant, albeit at the cost of paying for archive employees to search and provide this.
28. Section 21 of the Act provides that:

*"(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*

*(2) For the purposes of subsection (1)—*

*(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and*

*(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.*

*(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the*



*information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme."*

29. The Commissioner considers that, in effect, the Parish Council has applied section 21 to the information although it did not specifically cite this exemption when responding to the request. It did however inform him that the information is available by other means, and has explained to him how to obtain a copy of the information he has requested.
30. The Commissioner therefore considers that the council has fulfilled its duties under section 1 of the Act insofar as part 1 of the request is concerned.

#### The Tynedale Council Minutes

31. The council has said that it never held any Tynedale Council Minutes and that complainant is mistaken in his view that that was the case.
32. The complainant has provided correspondence he has received from 2 other councillors at the Wark Parish Council which he argues clarifies that the chair did hold this information and offered to provide it to the First-tier tribunal. One statement is as follows:

*"However, I now confirm that I believe [name redacted] said that she had, at one time, held what you refer to as 'the Cherryman Papers and the Tynedale Minute'. I also confirm my understanding that these documents were lodged with the NCC Archives at Woodhorn in May 2015."*

33. The second statement provided by the complainant in his argument states:

*"I confirm that it was said that [name redacted] had the papers found in Mrs Cherryman's house and they were stored in Woodham in May 2015".*

34. The Commissioner notes that both of these statements do in fact fit in with the council's statement that information was held which was lodged with the County Archive in May 2015. It does not provide evidence backing the complainant's argument that information has been purposely destroyed or withheld from him by the council.
35. The Chair of the council said that when she spoke to the tribunal and offered it information she was in fact referring to minutes from Wark Parish Council for September 2005, rather than minutes from Tynedale

District Council. She says however that these minutes do refer to advice received from a member of the Tynedale District Council. The advice provided was that it was 'not a good idea' to bring the association in as a sub-committee of the parish council. This fits within the description of the information provided to the council by the complainant in his request for review, where he said:

*"You said that this decision was made even though in 2005 a [name redacted](???) of Tynedale Council had advised against it.*

*You confirmed that you had a copy with you at the hearing of that minuted advice if the Tribunal Chairman wished to see it. As he did not do so I have since taken the matter up with the Tribunal and it forms one of the issues to be discussed at the appeal hearing scheduled for some time in early 2017.*

*It is the minuted copy of this advice, presumably from a Tynedale Council officer or councillor, which I am seeking. I would now be obliged for a copy of the note, minute or whatever document that you intended to give to the Tribunal, had they wished to take advantage of it."*

36. The Commissioner asked the council to provide her with a copy of the relevant minute. After viewing this, she can confirm that the minute relates to advice from an officer of Tynedale District Council regarding the SVGA but it is not a Tynedale Council minute. It is minutes from Wark Parish Council dated September 2005.
37. Given this explanation the Commissioner considers that on a balance of probabilities the council does not hold any relevant minutes from Tynedale District Council.
38. The Commissioner has however considered this further in her analysis of section 16 below.

### Section 16

39. Section 16(1) of the Act provides that: *"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."*
40. The complainant sought clarification from the council that the information held by the archive was the information he was seeking to obtain. As noted above, the Commissioner notes that the council did not, insofar as she has been able to establish, specify to the complainant that the Cherryman Papers were minute books when asked to clarify



what the information was which was held by the archive. Had the council done so the complaint to the Commissioner might have been avoided insofar as part one of the request is concerned as the complainant would then have been assured that the information he was seeking was held by the archive within PC 67 and could then have arranged to either view the information or paid to receive copies of it.

41. Similarly the council simply said that the information is not held insofar as the second part of the request is concerned. Had it confirmed to the complainant that the information was in fact a Wark Parish Council minute which referred to advice received from a member of Tynedale District Council, and then asked the complainant if he wished a copy of this document then, again, the complaint to the Commissioner may not have proved necessary.
42. The Commissioner therefore considers that the council failed to comply with the requirements of section 16 for the reasons outlined above.

## Right of appeal

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- (a) 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

- (b) 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.
- (c) 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** .....

**Andrew White**  
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