

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 June 2021

Public Authority: Kirby Muxloe Parish Council
Address: Parish Council Office
Station Road
Kirby Muxloe
Leicester
LE92EN

Decision (including any steps ordered)

1. The complainant has requested information regarding council byelaws and policies.
2. The Commissioner's decision is that, on the balance of probabilities, Kirby Muxloe Parish Council has disclosed all of the information held that is within the scope of the request.
3. However, she finds that it contravened its obligations under section 10 of the FOIA in failing to respond in a timely manner in accordance with the legislation.
4. The Commissioner considers that the council breached section 17(1) of the FOIA by not issuing a valid refusal notice within 20 working days of the request which stated that the requested information is not held.
5. The Commissioner does not require any steps.

Request and response

6. On 16 January 2020, the complainant requested information from Kirby Muxloe Parish Council ("the council") in the following terms [numbering added by ICO]:

"I would be grateful if you as Proper Officer would forward to me a list of all the [1] byelaws applicable to Kirby Muxloe parish which are held by the council"

7. On 18 February 2020 the complainant made a further request for information [numbering added by ICO]:

"... Without delay, please therefore provide me with [2] the council's up-to-date complaints policy, [3] including its service standards policy, together with [4] the codes of conduct for councillors and staff (if the latter exists)."

8. The council responded on 12 October 2020 with a list of the byelaws held by the district council in respect of request [1].

9. In respect of the other requests it stated:

"the Council are in the process of reviewing all Policies and therefore only ones which have been considered by Council to date, have been transferred to the Council's new website. Unfortunately, the [2] Complaints Policy and [4] Code of Conduct for Councillors and staff have not yet been reviewed by Council and are therefore not currently reflected on the new website...should you require copies of these at this moment in time, I would be happy to send these to you, but please be aware that these may not be effective within the next few days"

10. The council responded further on 16 November 2020 and provided a copy of the "Code of Conduct for Councillors" [4].

11. The complainant expressed dissatisfaction that the information provided as in scope of [1] did not list those byelaws that were either written specifically for the council, or the byelaws held by another council which the parish relies upon. In summary the complainant stated that it is not possible to determine from the list provided on 12 October 2020 which byelaws are applicable to the parish council.

12. On 9 June 2021, during the course of the investigation, the council provided the complainant with further information in regard to [1] and [2]. The information comprised of updated versions of the "Complaints Policy" and a list of the byelaws which it stated were subsequently

published on the council website and are specific to Kirby Muxloe and the district.

Scope of the case

13. The complainant initially contacted the Commissioner on 22 July 2020 to complain about the way the request for information had been handled. During the course of the investigation, and taking account of subsequent responses from the council, the complainant confirmed that they considered that:
- The list of the byelaws provided does not answer request [1].
 - The council has not provided a copy of a service standards policy [3], or stated the information is not held, or issued a refusal notice.
 - The council provided the "Code of Conduct for Councillors" [4]. However it has not provided a copy of a code of conduct specifically for staff, or stated that the information is not held, or issued a refusal notice.
 - The council responded outside of statutory timescales.
 - The council did not provide an adequate refusal notice.
14. The FOIA provides the public with the right of access to information that is held by public authorities. The legislation is not concerned with the accuracy, suitability or scope of records that a public authority should hold. The Commissioner raises this point in order to explain her approach in dealing with this complaint.
15. The Commissioner considers that the scope of this case is to determine whether, on the balance of probabilities, the council has provided all of the information it holds that is within the scope of the requests. The Commissioner will also consider how the council dealt with the requests and whether it has made any procedural breaches of the FOIA.

Reasons for decision

Section 1 general right of access

16. Section 1 of the FOIA states that:

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

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him."*

17. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
18. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
19. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the council and other information or explanation offered by the council which is relevant to her determination.

The complainant's view

20. In regard to request [1] it is the complainant's view that:
 - The list provided refers to the applicable byelaws held by the district council.
 - The response is incorrect as there is no confirmation from the council that it holds any of the listed byelaws. The complainant states *"It seems to be totally improbable that they are now held in a 'Byelaws Box' by the parish council whether as hard copies or electronically."*
 - The response does not identify any byelaws that were created by the council itself, and are therefore held by the council, rather than held by the district council. The council has not confirmed that no byelaws are held by the council nor originated from the council.
21. The complainant considers that the council has not confirmed whether or not information in scope of [3], being the service standards policy; and [4], specifically in relation to a code of conduct for staff, is held.

22. The complainant states they remain unconvinced that the council has searched for information that should be in its archives.

The council's response

23. In regard to [1], the council advised that the byelaws listed relate to the district of Blaby in its entirety. It stated that it had removed the byelaws which are not applicable to the parish council in the updated version provided to the complainant on 9 June 2021.
24. In regard to [3], the council advised that it does not hold a service standards policy and is not aware of the existence of such policies for local government.
25. In regard to [4], the council advised that the "Code of Conduct for Councillors" does not apply to staff. The council confirmed that it does not hold such a policy for staff.
26. The Commissioner asked the council for confirmation that adequate searches for the requested information had been undertaken. It advised that two separate examinations for information falling within the scope of the request had been undertaken of all manual and electronic records using appropriate search terms.
27. The council confirmed that no recorded information ever held that was in scope of the request had been deleted or destroyed.
28. It advised that it had been unable to access information for a short period, due to an issue with the website supplier no longer trading, however this was now rectified.

Conclusion

29. The issue raised by the complaint in regard to [1], is whether the council have provided "*a list of all the bye-laws applicable to Kirby Muxloe parish which are held by the council.*" The key issue for the complainant appears to be whether or not the byelaws identified on the list are held within the council's records.
30. However the council have answered the request by providing a list of byelaws that are applicable to Kirby Muxloe. The actual records of the byelaws are not physically held in the council's files as they are the byelaws of the district or county councils.
31. The Commissioner considers that the provision of the list of byelaws applicable to the parish could be interpreted as a partial answer to the request raised. She considers that the alternative position of not

providing this list could be argued as withholding information which is partially within the scope of the request.

32. In any case the Commissioner is required only to assess whether or not the council are withholding any information in scope of [1]. She is satisfied that the council undertook appropriate searches for information in scope of [1] and has confirmed that no information was deleted. Furthermore, she considers that the information released verifies that the only records appertaining to the byelaws relied upon by the council are held by the district and county authorities.
33. The complainant raises the issue that the council has not categorically stated, in the form of a refusal notice, that it holds no information in scope of request [1]. The Commissioner will consider the issue further in relation to the section 17(1) requirements, below.
34. In regard to [3], the council has confirmed that it does not hold such a policy. In regard to [4] the council has confirmed that it only holds a code of conduct for councillors, but not one that is for staff. Furthermore, in relation to [3], the council states, specifically, that it is unaware of any requirement for such a policy. It is not within the Commissioner's remit to determine whether or not such information should exist, rather just whether information is held by the council.
35. Having considered the council's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold any further information within the scope of the requests.
36. The Commissioner therefore considers that the council complied with its obligations under section 1(1) of the FOIA.

Procedural Matters

Section 10 – Timeliness

37. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
38. The requests were made on 16 January 2020 and 18 February 2020. The initial response was made by the council on 12 October 2020 was incorrect in relation to [1], and did not provide either the remainder of the information requested nor a refusal notice.
39. The "Code of Conduct for Councillors" [4] was provided on 16 November 2020. This is nine months after the request was made, and therefore well outside of the statutory time limit.

40. The "Complaints Policy" [2] was provided on 9 January 2021. This is almost eleven months after the request was made and therefore well outside of the statutory time limit.
41. The Commissioner therefore finds that the council has breached section 10(1) of the FOIA by failing to respond to the requests within 20 working days. However, as the responses were issued, no steps are required.

Section 17 – Refusal notice

42. Section 17(1) of the Act states:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,*
 - (b) specifies the exemption in question, and*
 - (c) states (if that would not otherwise be apparent) why the exemption applies".*
43. The council failed to issue refusal notice stating that the following information is not held: a code of conduct policy for staff; a service standards policy.
 44. The Commissioner has reviewed the information requested in [1], and concurs that it is a request for a list of byelaws held by the council. As the council does not hold any byelaws itself then a refusal notice should have been issued in this respect.
 45. The Commissioner therefore finds that the council breached section 17(1) of the FOIA.
 46. No steps are required as the issue has been resolved in this decision notice

Other matters

47. The Commissioner regards it as appropriate to make reference to the council's poor handling of the information request.

48. The Commissioner considers that the council demonstrated a lack of clarity regarding the records held. It failed to provide an adequate response to the request initially in terms of either providing information or issuing a refusal notice, which has extended the duration of the request unnecessarily.
49. The circumstances within the council that led to the extended duration of the request are unknown to the Commissioner, however the chronology is a matter of concern. The Commissioner will write separately to the council in regard to these matters.

Right of appeal

50. 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

51. 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.
52. 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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