

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2015

Public Authority: Billingford Parish Council

Decision (including any steps ordered)

1. The complainant has requested information held about a charity. Billingford Charity Council (the council) provided the information it held, but the complainant considered that he had not been provided with all the information. During the Commissioner's investigation the council located another piece of information which it provided to the complainant and determined that it had now provided all the information it held.
2. The Commissioner's decision is that the council has provided all the information it holds.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 29 November 2014, the complainant wrote to the council and requested the following information in relation to the Billingford Fuel Allotment Trust:

"I hereby request copies of all documents, legal opinions received, and bills on this matter paid for out of Parish Funds. Also all Parish minutes, dates of meetings regarding this subject and those who attended those meetings."

5. The complainant contacted the council on the 2 January 2015 to advise that he had received its response to the request that day but was not satisfied that the council had provided him with all the information requested. He was provided with three quarterly minutes dated 17 July 2014, 24 February 2014 and 9 September 2013 and a receipt from a solicitor's bill.

6. The complainant contacted the Commissioner on the 7 January 2015 as he considered that the council was withholding the majority of information.
7. The council responded to the complainant on the 26 January 2015, its internal review, and advised that it did not hold any further information.

Scope of the case

8. The complainant has told the Commissioner that he considers that the council holds more information.
9. The Commissioner considers the scope of the case is to determine whether the council is correct when it says no further information is held.

Background information

10. The Commissioner's understanding to the background of this case, from information provided by the council, is that the Fuel Allotment Trust is a charity that's only asset is 55 acres of land located on the western edge of the parish.
11. In 1998, a local resident questioned the Charity Commissioner about the trustee structure of this charity whose response was that under their legislation of 1894, four of the 7 trustees are appointed by the council. However, over subsequent years, residents had raised concerns that the trusteeship and the terms of the charity trust deed were not being operated properly and there were also complaints of fast vehicles using the bridleway illegally to get to the land.
12. Following the election of the council in 2011, the clerk at that time contacted the Charity Commission with concerns about the Fuel Allotment Charity whose response again confirmed the role of the council is to appoint four of the trustees and also reminded those acting as trustees of the trust deed terms.
13. In April 2012 the clerk, at that time, informed the acting trustees that the parish council had appointed trustees to replace those that had previously been on the council. Due to meetings with the appointed trustees being refused, a solicitor was engaged to address concerns about the charity and who has the right to appoint trustees, to which, the council has informed the Commissioner that although the solicitor

was paid for by the council, he worked and corresponded on behalf of the charity and the trustees.

14. The council does not own or run the charity; its only involvement is to appoint four of the charity's trustees.

Reasons for decision

Section 1 of the FOIA – Held/ Not Held

15. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be information 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.
16. 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).
17. The complainant has advised the Commissioner the reasons why he considers there is more information held and provided examples of documents that suggest there may be.
18. The Commissioner has approached the council with these specific examples to see if it enables it to locate further information and if not, to provide some reasoning as to why no information is held.
19. The first example provided by the complainant was three documents he supplied to the Commissioner. One is an email dated 15 May 2012 that show's there has been communication between the council and the Charity Commission, the second is a letter from a parishioner to the Charity Commissioner dated 22 June 1998 with regards to the Fuel Allotment issue and third, a Land Registry letter dated December 2011.
20. The council has advised the Commissioner that the email of 15 May 2012 was to the clerk of the council at that time but this was 3 years ago and would have been in regards to obtaining general advice on the law from the Charity Commission, but this is no longer held as it was not retained as it was preceded by the appointment of a solicitor.
21. The council was unable to locate any further information on viewing the letter dated 22 June 1998.

22. The council has told the Commissioner that the Land Registry letter of December 2011 was addressed to a previous council clerk, but she was not clerk to the council at the time the Land Registry wrote to her. She is one of the replaced trustees of the Fuel Allotment Charity and so the letter was not to the council and therefore not held by it.
23. The complainant also drew the Commissioner's attention to point 4 of the council's meeting minutes of 9 September 2013. It notes from parts a) to d) that: the council's solicitor was to be involved in drawing up documents to finalise the transfer of Trustees, that the parish council be in favour of the appointment of the Trustees as suggested by the solicitor, and it notes finances being available to pay the solicitor.
24. The council explained to the Commissioner that four of the seven trustees were recommended by the council at council meetings and only recorded in the minutes, but that is as much as the council contributed to this. It would then fall on the trustees and charity to implement their appointment, not the council. So if there was further correspondence produced on this, then it would have been produced by the either the charity or trustees.
25. The council did locate one further document which was an invoice giving a breakdown of the solicitors work carried out and costs billed to the council. It posted a copy of this to the complainant on or around 3 May 2015.
26. The Commissioner, on viewing the invoice giving a breakdown of work carried out by the solicitors, asked the council about the specific work done by him that was listed in his costings.
27. The Commissioner asked who the emails and letters 'in' and 'sent' would have been from and to, and who received the 'Advice given'. The council explained that this would have been to and from the trustees and charity directly or another solicitor and no copies of these would have come to or be required by the council.
28. Part of the invoice stated work done on 17 September 2013 was a letter sent to Diocesan Registrar and an email to the clerk. The council has told the Commissioner that the Diocesan Registrar is another solicitor that the charity and trustees solicitor was in correspondence with. The Diocesan Registrar worked for the Diocesan Association and the email to the clerk was not the council's clerk but the clerk of the Diocesan Association. No copies of this correspondence are held by the council.
29. As well as addressing the above specific points, the Commissioner has asked the council a series of questions to determine if other further information may be held.

30. Form these questions the council has told the Commissioner that the most relevant place to search to determine if further information is held is in the council's meeting minutes as these record the actions of the council. It determined that all of the relevant information was recorded in the printed minutes and established that no electronic searches are relevant.
31. Other than explained above, the council has told the Commissioner that no information relevant to the scope of the case has been deleted or destroyed.
32. The council has informed the Commissioner that other than the recording of the appointment of trustees, there is no business purpose or statutory requirement for it to hold any other information with regards to this request.
33. The council has confirmed to the Commissioner that it paid the solicitor for his work. Even though the council paid for the solicitor, it has explained that the solicitor carried out the work on behalf of the charity and trustees not the council and therefore this is why it holds less information than what the complainant considers is held.
34. Paragraph 25 of the Commissioner's guidance¹ states about information held by solicitors:

"in cases where legal advice has been sought by a public authority client, the questions is whether the file held by the solicitor is held on behalf of the public authority or whether the solicitor holds the information in its own right, in which case it would not be held for the purposes of FOIA. In general, documents held by a solicitor in connection with instructions received by the solicitor are held on behalf of the client".
35. From the Commissioner's understanding of this case, even though the council paid the solicitor, the solicitor was acting on behalf of the trustees and/ or charity on this matter not the council. And the charity is not a part of the council.

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

36. The Commissioner is aware that some of the charity trustees - past and present - form or have previously formed part of the council but, from the Commissioners understanding, they are not working on behalf of the council when in their capacity as trustees for the charity. In view of this and the fact that the council paid the solicitor, the Commissioner can see why the complainant would consider that further information may be held by the council, other than that which has already been provided.
37. However, after considering the council's explanations as to why it does not hold any further information and explaining that its only main participation was to recommend four trustees for the charity and pay for the solicitor, the Commissioner has determined that on the balance of probabilities, no further information is held by the council within the scope of the request.

Right of appeal

38. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.
40. 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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