

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 May 2015

Public Authority: Mellis Parish Council

Address: mellisparishcouncil@gmail.com

Decision (including any steps ordered)

1. The complainant has requested meeting recordings made on a recording device. Mellis Parish Council (the council) determined that although the recordings were made by the clerk of the council, it did not hold these recordings for the purposes of the FOIA.
2. The Commissioner's decision is that the recordings were made by the clerk for personal reasons and therefore the council does not hold the recordings for the purposes of the FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 16 November 2014, the complainant wrote to the council and requested information in the following terms:

"Re: Audio recording of Mellis Parish Council meeting, 13th November 2014

Is the recording going to be accessible for listening on the Parish Council website?

If not, can you kindly arrange for me to have a copy of the recording?

I am happy to pay the cost of the recording's audio file media, which I assume would be a CD or DVD."

5. The council responded on the 18 November 2014. It stated that audio recordings of council meetings are not available to members of the

public. It explained that a recently introduced regulation confirms that if a member of the public or press wishes to record a meeting, the council may not object to it. It provided the complainant with a link to these regulations¹.

6. On the 26 November 2014, the complainant requested an internal review as he was not satisfied with the council's response. He asked it to state the reasons or regulations preventing him from receiving a copy and to provide specific or legislative documentary references supporting its position.
7. The council provided its internal review response on the 26 November 2014. It stated that the information is not available as the recording was made by an individual not the council.
8. The complainant wrote to the council again on the 13 February 2015 asking the council to comply with his request and provide a copy of the recordings. He stated that the chairman has informed him that the recordings had been made by the parish clerk.
9. The council responded on the same day. It advised that to date, the council has not discussed or agreed to record its meetings. The recordings have been made by a private individual without prior arrangement from council members. The council confirmed it has no power to force a private individual to provide a copy of the recordings.

Scope of the case

10. The complainant contacted the Commissioner on the 20 February 2015 as he was not satisfied with the council's response.
11. The clerk has confirmed to the Commissioner during his initial investigations that she did make the recordings, but this was for personal reasons and not in her capacity as clerk or for council use.
12. The Commissioner considers the scope of the case is to determine whether or not the meeting recordings are held by the council.

¹ <https://www.gov.uk/government/news/press-freedom-boosted-by-new-right-to-report>

Reasons for decision

Section 1 of the FOIA

13. Section 1 of the FOIA provides a general right of access to recorded information that is held by public authorities. When a request for information is made, a public authority must confirm whether it holds information of the specified nature in the request and if it does, it must provide it to the request unless a valid exemption exists under the FOIA for not doing so.
14. For the purposes of the FOIA, information is held by a public authority if-
 - a) It is held by the authority, otherwise on behalf of another person,
or
 - b) It is held by another person on behalf of the authority.
15. As explained in the Commissioner's published guidance², each case needs to be reviewed individually to determine whether a public authority holds information for its own purposes. There are various factors that will assist in determining whether the public authority holds the information for the purposes of the FOIA. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.
16. Factors that would indicate the information is not held by a public authority include:
 - the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or

² <https://ico.org.uk/media/for-organisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>

- the authority in merely providing storage facilities, whether physical or electronically.
17. The clerk has explained to the Commissioner in a telephone conversation that she made the recordings using her own personal device and that it was not made for the purpose of council business. She has informed the Commissioner that the council has never instructed or required that she makes a recording of meetings on behalf of the council. She has also confirmed that she has not used these recordings to assist with any council functions such as aiding in minute taking. She has stated that she made the recordings for personal reasons, not for council reasons.
 18. The Clerk has explained her reasoning's to the Commissioner as to why she has made recordings of council meetings in a personal capacity. The Commissioner on hearing these explanations is satisfied that the recordings were made in her personal capacity and not for or on behalf of the council or as part of her duties as clerk.
 19. The reasons for the recordings being made are personal to the clerk and the Commissioner has chosen not to state the reasons in the decision notice but has considered them carefully and determined that the recordings, although made by the Clerk of the council, were not made for or on behalf of the council or as part of her duties as clerk. He has therefore determined that the information is not held by the council. The information is held by the individual, as a member of the public, so the information is not subject to the FOIA.

Right of appeal

20. 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

21. 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.
22. 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
Group Manager
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