

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

### **Decision notice**

**Date:** 9 November 2015

**Public Authority:** Chittlehamholt, Warkleigh & Satterleigh Parish Council

**Address:** c/o Ms J Gillanders  
Newlands Farm  
Chittlehamholt  
Umberleigh  
EX37 9PE

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

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1. The complainant has requested to view the original version of a balance sheet, a copy of which was initially sent to him as the final version of parish council accounts for 2013/2014 in September 2014. After further correspondence the council said that the original document signed had been destroyed. The complainant then requested the date on which it was destroyed and any documents associated with this however the council failed to answer this.
2. The Commissioner's decision is that on a balance of probabilities the council does not hold the original copy of the accounts which the complainant has asked to view. He has however decided that the council did not comply with the requirements of section 1(1)(a) as regards the second request for information, and that the council did not comply with the requirements of section 10(1) in regards to both requests for information.
3. The Commissioner does not require the public authority to take any steps.

### **Request and response**

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4. In September 2014 the complainant was provided with a copy of a balance sheet by the council (version b) following a request for information.

5. On 2 March 2015, the complainant wrote to the council and requested information in the following terms:

*"I wish to see the original of version B of the parish balance sheet which bears the original longhand certificate by [name redacted]. Please arrange for me to see this document within the next three days. Photo copies are not acceptable."*

6. The Commissioner understands that following further correspondence the council agreed a meeting with the complainant to seek to resolve long standing issues between the parties. This took place in May 2015. The complainant was not however provided with the opportunity to view the document at the meeting and he therefore persisted with requesting to view the original document.

7. The council subsequently wrote to the complainant on 4 June 2015 and informed the complainant that the document was not held. Following further correspondence it wrote to the complainant again on 17 June 2015 and confirmed that the original version of the document had been destroyed *'several months prior to our meeting with you in May and the action was in no way related to our meeting with you.'*

8. The complainant wrote back to the council on 18 June 2015 asking:

*"Further to your email of 7.03 pm yesterday, please state clearly the precise date upon which it is claimed that the original of version B of the annual balance sheet for 2013/14 (with [name redacted] audit certificate) was destroyed. Also please identify both the agenda item and the minute relating to this action if indeed it has taken place with the authority of the council. If no such authority was given please state what action will now be taken on this matter?"*

9. The council did not however respond to this part of the request.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 16 June 2015 to complain about the way his request for information had been handled. He argued that if the council no longer holds the original copy of the document then its destruction would be deliberate attempt to thwart his attempts to view the document, and that the Commissioner should investigate whether an offence had been committed under section 77 of the Act.

Section 77

11. The Commissioner wrote to the complainant and explained that a section 77 offence would have not been committed as a copy of the document had originally been disclosed to him by the council previously. The complainant would not have been entitled to receive the document even if it had not been destroyed as the information was already accessible to him. The complainant however suggested that the version provided to him in September was possibly an altered copy of the accounts and it was this reason he wished to view the original to verify whether that was the case.
12. The Commissioner notes that the complainant's request to view the original document was made on 2 March 2015. As outlined below, during the course of the Commissioner investigation, the council has suggested to the Commissioner that the original copy of the document was destroyed on or shortly after 10 March 2015. This date is after the request for information had been received. It said that it had destroyed the document on the basis that the auditors had written to it outlining that there were errors in the document, and therefore it destroyed the signed copy in order to prevent confusion.
13. Section 77 of the Act states that:

*"Where –*

*a request for information has been made to a public authority, and*

*under section 1 of this Act or section 7 of the Data Protection Act 1998, the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,*

*any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled."*
14. The council's stated date of destruction of the original document could therefore be suggestive of a deliberate act to prevent the complainant from being able to view the original document. Certainly the date which the council says it destroyed the document will further exacerbate the complainant's suspicions that the council did not wish him to see the original.
15. The complainant says that he has evidence from the internal auditors that the document provided to him by the council had been altered. The evidence is a copy of the auditor's copy of version b (which the

complainant has called version c), which he argues is different to the one he received from the council in September 2014. He provided this evidence to the Commissioner to consider.

16. Having considered this evidence however the Commissioner has been unable to identify the changes which the complainant considers identify that alterations have taken place. He considers that the 2 documents look identical, albeit that there are insignificant and very minor differences in marks which may be explained by the copying process. Davisons, the internal auditors', stamp is partially missing from the copy provided to the complainant by the council, and the stamp includes signed, dated section at the bottom of the document. All of the figures cited within the documents match perfectly however and the document otherwise appears to the Commissioner to be a perfect duplicate.
17. Given this the Commissioner has found no evidence to corroborate the complainant's suspicion that the document was altered. As the figures held within the document are the same, it is also difficult to understand why altering the document in the way which is suggested would be of any use to the council in any way. The incorrect version of the accounts held in version b is the same as that disclosed to the complainant by the auditors in version c. Both the council and the auditors have accepted that version b contained errors and it has now been superseded.
18. The Commissioner is not satisfied therefore that there is evidence suggesting of any deliberate alteration of the document which was provided to the complainant in September. Nor is there convincing evidence that the destruction of the original copy of version b was carried out with a deliberate intention of preventing the complainant from obtaining that information – the complainant effectively already holds that information. The Commissioner has therefore been provided with no significant evidence suggesting that an offence took place under section 77 as regards the requests for this document.
19. The Commissioner has however considered the date of the destruction of the document further in the 'Other Matters' section below.

#### Section 50

20. The Commissioner confirmed to the complainant that although there were no grounds to undertake a section 77 investigation, there was a case to answer under section 50 of the Act given that the council had failed to respond to his secondary request asking for the date that the document had been destroyed. He also notes that the complainant considers that the original copy of the document may still be held by the council.

21. The Commissioner considers therefore that the scope of the complaint is
- a) whether the original copy of version b is still held, and
  - b) if the council has responded in accordance with requirements of the Act to the secondary request information; the date when the original copy of version b of the balance sheet was destroyed, and any documents associated with this.

## **Reasons for decision**

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### Section 1(1)

22. Section 1(1) of the Act requires 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."*

23. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

### Is a copy of the original document still held

24. The Commissioner wrote to the authority and asked it to confirm what searches it had carried out to determine whether the information was still held or not.
25. The council responded stating that it had not carried out a search as it was sure that the original copy of the document had been destroyed. It said that it is only a very small parish council, and so it could be sure that the original copy is no longer held. It confirmed however that councillors may possibly still hold copies of version b, however they will only be copies. The complainant had already received a copy however

his request was to view the original, and the council no longer holds this.

26. The Commissioner asked the council to confirm when the original copy was destroyed. The council said that it holds no record of the date when the document was destroyed, however it said that it would have been within a couple of days of having received a letter from its internal auditors, Davisons, with regard to errors in version b of the balance sheet. This letter was received by the council on 10 March 2015, and so the council considered that the document was likely to have been destroyed on the weekend following receipt of that letter. It said that it had destroyed the document in order to avoid confusion.
27. As noted above, a copy of this document had already been provided to the complainant in September. The council could therefore have applied section 21 of the Act as the information he had requested was easily available to the complainant by other means. The request to view the original document could be argued to be question of format (relating to the application of section 11). This is however negated by the fact that the original document was destroyed and is no longer held.
28. The Commissioner is satisfied that in terms of the initial request, the council's response of 17 June 2015 correctly confirmed that it no longer holds a copy of the original document as required by section 1(1)(a) of the Act. The Commissioner notes however that this response took in excess of 20 working days. He has therefore considered this further in the section relating to section 10 below.
29. As regards the second part of the request the council also eventually confirmed to the Commissioner that it does not hold the date when the original copy of the document was destroyed, but provided an educated guess as to when that would have been.
30. The council did not however inform the complainant of this, but only informed the Commissioner when he specifically asked this as part of his investigation. The Commissioner therefore considers that the council did not comply with section 1(1)(a) in this respect. Section 1(1)(a) of the Act requires an authority to confirm whether the requested information is held or not, unless an exemption under part II of the Act applies. In the event the council simply did not respond to this secondary request.

#### Section 10

31. The complainant made his request to view the original copy of the document on 2 March 2015. The council did not respond confirming whether it held a copy of the document until 17 June 2015. This falls outside of the period of 20 working days required by section 10(1) of the

Act. The Commissioner's decision is therefore that the council did not comply with section 10(1) of the Act in this respect.

32. As regards the complainant's second request, the complainant made this on 18 June 2015. The council has failed to respond to the complainant indicating that it does not hold the date upon which the document was destroyed, although it has confirmed this to the Commissioner. Again this period falls outside of the 20 working days required by set by section 10(1) of the Act. The Commissioner therefore considers that the council did not comply with section 10(1) of the Act in this respect also.
33. For its part the council has acknowledged that it may not have met the timescales required by section 10(1) of the Act in responding to the complainant. It has highlighted however that the complainant's emails have been frequent and numerous and as a small parish council this has led to delays in responding to the complainant's requests.

## Other matters

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(a) Although the Commissioner has found that the council did not breach section 77 in destroying its copy of the original document, the Commissioner nevertheless recognises that the destruction took place after the council had received a request to view the original document, and before the council had confirmed whether the document was held.

(b) Section 1(4) of the Act states:

*"The information—*

*(a) in respect of which the applicant is to be informed under subsection (1)(a), or*

*(b) which is to be communicated under subsection (1)(b),*

*is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."*

(c) The Commissioner notes therefore that the council was entitled to destroy the information in spite of having received the request if its destruction would have been carried out *"regardless of the receipt of the request"* within 20 working days.



- (d) The council argues that it destroyed the document after receiving notification from Davisons that the balance sheet was incorrect. The complainant provided the Commissioner with a copy of the Davisons letter, which is dated 26 February 2015. The council said that it received the letter on 10 March 2015.
- (e) The council argue that it destroyed its original signed copy as it did not wish to cause confusion, presumably by mistaking this document with the amended/corrected version which would need to be created. The council said however that copies of that document are likely to still be held by councillors. The council did not record when the document was destroyed.
- (f) The Commissioner is satisfied on the face of it that the letter of Davisons informing the council that the audited accounts sheet contained errors may have been a legitimate reason to destroy the signed copy. The complainant however argues that the clerk had no legal right to destroy the document without council authorisation to do so. This is not a matter which the Commissioner can take into account however. It is a procedural issue which the complainant would need to raise with the council.
- (g) The complainant also argues that there is no retention or deletion policy held by the council. If this is so then the Commissioner would strongly suggest that the council takes steps to rectify this and considers that this is good practice for all public authorities. A retention and deletion policy would clearly have established whether the council was correct to have destroyed the document after the information request had been received. Having said this, the Commissioner notes that the council confirmed that it was still likely to hold a copy of the document. It is therefore questionable whether a record of the original documents destruction would have been necessary if copies were still retained by the council.
- (h) As a request to view the original document had already been received, and given the past history of requests and questions about the accounts received from the complainant the Commissioner considers that it might have been a sensible precaution to consider granting the request prior to destroying it, or at the least, recording the date and the reasons for destroying it at that time, and highlighting any authority which was needed to do so if that was necessary. A retention and deletion policy is likely to have addressed this.
- (i) The Commissioner has not been convinced that there was a deliberate intention to withhold the information from the complainant. He had already received a copy of this document and



no evidence has been provided to the Commissioner which would suggest that there was a significant benefit to the council in destroying the original copy to prevent the complainant from viewing it.

## Right of appeal

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34. 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)

35. 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.
36. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**