

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 July 2016

**Public Authority:** Hemingbrough Parish Council  
**Address:** 7 Carr Close  
Hemingbrough  
Selby  
North Yorkshire  
YO8 6YU

#### Decision (including any steps ordered)

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1. The complainant has requested audio recordings of Hemingbrough Parish Council meetings. The Commissioner's decision is that Hemingbrough Parish Council breached section 1(1)(a) and 1(1)(b) of the FOIA by not informing the complainant that the requested information was held and not communicating the requested information to the complainant. However, as the requested information has since been destroyed, the Commissioner cannot order any steps requiring Hemingbrough Parish Council to comply with section 1 of the FOIA in this case. Therefore he requires no further action to be taken in respect of this request.

#### Request and response

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2. On 25 May 2015, the complainant wrote to Hemingbrough Parish Council ('the council') and requested information in the following terms:

"Can you email me the audio recording you made for all the meetings last Thursday please?"

I would also like all the recordings made of all the meetings that you have recorded, when it is convenient please, I will provide some USB sticks for those if it is easier, just let me know how you would prefer to do it."

3. The council informed the complainant on 9 June 2015 that his request would be raised at the next council meeting.
4. Following the next council meeting, on 26 June 2015 the complainant asked whether the council was in a position to respond to the requests and asked whether the audio recording of the June meeting could be added to the request.
5. The council responded on 26 June 2015. It said that the request is unreasonable and invited the complainant to submit the request in a more specific format. It also said that there will be a fee incurred in line with its Freedom of Information policy which would need to be paid in advance of receipt of the information.
6. On 9 July 2015 the complainant expressed dissatisfaction with the response. He also clarified that he has requested all the information the council hold in the form of audio recordings and that the period the council has been recording meetings commenced in August 2014 and continues to the current date.
7. Following a complaint made to the Commissioner, the Commissioner wrote to the council on 22 January 2016 requesting it to either arrange for an internal review of the request to be carried out or for the council to provide a proper response to the request in accordance with section 17 of the FOIA.
8. The council wrote to the complainant on 9 February 2016 stating that following a resolution to rescind Standing Order No.71 and agreement to adopt Effective Management of Recordings (Local Council and Parish Meetings) at the council meeting of 16 July 2015, the requested information is no longer held.
9. The Commissioner is aware that there has been additional exchanges of correspondence between the council and the complainant and Selby District Council regarding this request. However, for clarity, only correspondence which is most relevant to this particular complaint is detailed above.

### **Scope of the case**

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10. The complainant initially wrote to the Commissioner on 12 January 2016 to complain about the way his request for information had been handled. He said that the council incorrectly withheld information and failed to comply with the Commissioner's guidelines in dealing with the request. Following the council's correspondence of 9 February 2016, the complainant wrote to the Commissioner on 15 February 2016 stating

that he does not find the council's review of his request as an acceptable outcome or a reasonable way for a local authority to act with respect to legitimate requests for information.

11. During the investigation of this case, the council informed the Commissioner that the recordings were kept until the completion of the Hemingbrough Parish Council / Hagg Lane Green investigation and following receipt of the findings at the 21 January 2016 council meeting it was resolved to draw a line under the entire investigation to enable the Parish Council to move forward.
12. The Commissioner cannot order any steps to provide a copy of the tapes as the information has now been destroyed. However, he has considered the council's handling of his request under the FOIA and whether it breached section 1 of the FOIA.

## Reasons for decision

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### Section 1

13. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
14. 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. He 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. He 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, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
15. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. The Commissioner also enquired as to when the information was destroyed, whether a record of its destruction exists, and what the council's records management policy says about such records. In addition, he enquired whether there is any legal requirement or business need for the council to hold the information.

16. The council informed the Commissioner that no written record is kept of the destruction of the recordings. In response to whether copies of the recordings could have been made and held in other locations it said that anyone attending a council meeting is permitted to record the meeting so it is possible that other recordings have been made but the council is unable to provide specific details. The council also said that the recycle bin is emptied on a regular basis and has been emptied since the recordings were deleted but no written record is kept of when that occurred.
17. In relation to whether there is any business need for the information to be held, the council explained that the meetings are recorded and held on a dictaphone to aid the clerk in the production of the minutes and are then deleted from the dictaphone immediately after the minutes of that recorded meeting have been approved as a true record by the council at the very next meeting. It also confirmed that there are no statutory requirements to retain the recordings.
18. A copy of the minutes of the council's meeting of 16 July 2015 and a document entitled 'Rescind Standing Order No. 71 and agree to adopt the Effective Management of Recording (Local Council and Parish Meetings)' was provided to the Commissioner. The Commissioner notes that the council unanimously agreed that Standing Order No.71 would be rescinded and the Effective Management of Recording (Local Council and Parish Meetings) would be adopted. Paragraph 16 of 'The Effective Management of Recording (Local Council and Parish Meetings)' states the following:

"Where a Parish Council proposes to record all of its own meetings, it will resolve how long such recordings will be kept and how members of the public may obtain copies. The Parish Council will include the availability of such recordings within its Publication Scheme. Hemingbrough Parish council will delete all recordings taken at a meeting of the council immediately after the minutes of that recorded meeting have been approved as a true record by the Parish council at the very next meeting."
19. The Commissioner has considered the matter and is mindful of the fact that the council does not have a formal record of when the information was destroyed. However, he understands that the recordings were essentially only made as an aide memoire to assist to clerk rather than being created in order to form part of the official or formal record of the meetings. He also accepts that as the information was recorded on a dictaphone, the information would not be located elsewhere within the council and there would be no back-up copies.

20. The Commissioner is satisfied that on the balance of probabilities the council no longer holds the requested information. He is satisfied that the information has been destroyed in accordance with the council's policy for this type of information and that there is no evidence available to suggest that this information should be held or could be held elsewhere within the council.
21. However, it is clear to the Commissioner that the requested recordings were deleted after the receipt of the requests in this case. When the initial response to the requests was provided the information did exist but the complainant did not have it communicated to him. It is also clear that the council's policy regarding the deletion of recordings ('The Effective Management of Recording (Local Council and Parish Meetings)') was adopted after the requests in this case were made.
22. The Commissioner has therefore decided that the council breached section 1(1)(a) of the FOIA, as it did not specifically inform the complainant that the requested information was held, and 1(1)(b) of the FOIA, as it did not provide the information. However, the Commissioner cannot require any further action to be taken in respect of this request, as the requested information has now been destroyed.

## Other matters

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23. The council's policy is that all audio recordings of meetings be deleted after the minutes of the meeting are approved. The Commissioner would like to make it clear to the council that, as a matter of good practice, a public authority should keep all requested information for at least six months to allow for appeals to the Information Commissioner. Further information can be found in the following guidance:

<https://ico.org.uk/media/for-organisations/documents/1160/retention-and-destruction-of-requested-information.pdf>

24. The guidance refers to section 46 Code of Practice<sup>3</sup> and states that;

"Paragraph 12.3 of the section 46 Code states that where information is known to be the subject of a request for information, destruction should be delayed until all relevant complaint and appeal provisions have been exhausted. This will include internal reviews, any complaint made to the Information Commissioner, and any appeals from decision notices. The refusal notice should set out the time limit for requesting an internal review; the Commissioner would then expect complaints to be made within two months of the internal review decision; and, following the issuing of a decision notice, there are rights of appeal to the Information Rights Tribunal and then to the courts. Given the

various time limits involved, it is recommended that a public authority retain the requested information for a period of at least six months from the date of the last communication about the request, or related appeals, to allow for the appeal process."

25. The Commissioner considers that the receipt of the requests should have caused the council to delay the deletion of the audio recordings. As well as breaching section 1 of the FOIA the council has not followed best practice, as set out in the section 46 Code, and should endeavour to do so in future.

## Right of appeal

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26. 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)

27. 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.
28. 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**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**