

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

### **Decision notice**

**Date:** 15 January 2018

**Public Authority:** Mid Sussex District Council

**Address:** Oaklands  
Oaklands Road  
Haywards Heath  
West Sussex  
RH16 1SS

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

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1. The complainant has requested information which relates to the number of complaints recorded by Mid Sussex District Council made about a named councillor.
2. The Commissioner has decided that Mid Sussex District Council has complied with section 1 of the FOIA by providing the complainant with details of the recorded information it holds relevant to his request.
3. The Commissioner requires the public authority to take no further action in this matter.

#### **Request and response**

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4. On 14 April 2017, the complainant wrote to Mid Sussex District Council and requested information in the following terms:  
  
"How many complaints of misconduct have been made against [a named councillor] of Worth Parish Council in the last five years? How many of those complaints have been upheld? How many of the complaints been referred to the Standards Sub-Committee or other oversight body?"
5. The Council responded to the complainant's request on 8 May 2017, by advising him that it only holds records going back as far as 2013. During the period covered by the Council's records, the Council holds records of 10 complaints. None of the complaints had been upheld and 6 of the complaints had been referred to the Standards Sub-Committee. In all of

the cases submitted to the Sub-Committee, the Sub-Committee were satisfied that there was a potential breach of the Members Code of Conduct, but none of these complaints was subject to a full investigation "given the complaints did not relate to current Worth Parish Council business".

6. On 10 May 2017, the complainant asked the Council to conduct an internal review. The Complainant stated that:

"It is known that following a number of complaints that [a named councillor] had made false declarations of his disclosable interests he was ordered to submit corrected and accurate declarations. It is, therefore, inaccurate to declare that none of the complaints were upheld. If the District Solicitor has chosen to make a false response to this request, the question must be asked: "Why has he made a false and dishonest response to this FOI request?""

7. On 8 June 2017, the complainant wrote to the Council to complain about its failure to respond to his request for internal review and to request that this is now carried out.
8. On 14 June 2017, the Council wrote to the complainant and advised him that its response had been reviewed and found to be factually accurate.
9. The Council explained that it follows a two-stage procedure in instances where it receives complaints about a councillor's misconduct and it outlined the two criteria which must be met before a full investigation takes place prior to being reviewed by a Hearing Sub-Committee. At that hearing, a decision is then made to determine whether a breach of code of conduct had taken place.
10. The Council clarified that the 6 instances which were referred to in its initial response, and which were reviewed by the Standard's Sub-Committee, all were found to contain a possible breach of code of conduct. None of the 6 instances were found to be of sufficient relevance to the business of Worth Parish Council for a full investigation to be conducted. Therefore, it was correct to state that none of the complaints of the alleged misconduct of [a named councillor] were upheld, as none of these complaints led to a full investigation which could have resulted in the Hearing Sub-Committee finding a breach of code of conduct.
11. On 17 July 2017, the complainant submitted a second request for information to the Council. He asked:

"On how many occasions has [a named councillor] of Worth Parish Council been instructed to submit a corrected declaration of his interests to replace an inaccurate one displayed on the Worth Parish Council website?"

12. The Council acknowledged the complainant's request on 19 July 2017 and asked him to confirm that his request is in relation to a Standards complaint and not for any other reason. The Council advised the complainant that it can only respond with reference to such complaints and that for any other reasons it would have to ask Worth Parish Council what has happened with reference to the declarations on its website.
13. The complainant clarified his request with the Council later the same day, confirming that, "it is for an appropriate reason in relations to a standards matter".
14. The Council responded to the complainant's request on 7 August 2017, informing him that, "From the standards papers that we hold, we have identified 7 occasions when [a named councillor] has been asked to correct his declaration of interests form, following a code of conduct complaint from yourself".

### **Scope of the case**

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15. The complainant contacted the Commissioner on 8 August 2017 to complain about the way his request for information had been handled.
16. In respect of his first request, the complainant informed the Commissioner that he had submitted a request to Mid Sussex District Council and that the information provided was demonstrably incorrect. The complainant informed the Commissioner that:

"I have filed a number of complaints about [a named councillor] as a result of inaccurate Declaration of Interest forms files by him and displayed on the Worth Parish Council website. To the best of my knowledge, on each occasion my complaint has been found to be valid and a new declaration has been made. In response to one such complaint, however, I became aware that the councillor had made what I consider to be a false and defamatory statement about me, and this comment was passed, without question or verification, to the Standards Sub-Committee by Mid Sussex District Council. I have asked for the comment to be withdrawn, but this has not been done. [...] My FOI request was in relation to this matter."

17. In addition to the above, the complainant referred the Commissioner to the Council's internal review response of 14 June 2017. He says that the Council replied with an explanation that only detailed the procedures applied when a complaint was passed to the Standards Sub-Committee. It did not address the issue of where a complaint was dealt with at a lower level, which is what had happened in respect of a number of complaints which he had submitted.

18. The complainant stated his belief that:

"... if [a named councillor] has been required to correct his declaration of interest form on 7 occasions following complaints that his form was inaccurate or untruthful, Mid Sussex District Council was wrong to state, on 8 May 2017, that none of the complaints of misconduct made against him had been upheld. It is difficult to view the making of a false or inaccurate declaration as anything other than misconduct."

19. The complainant asserted that the Council, "was wrong to restrict its review of the complaint to restrict its response to the procedure following a decision to refer the complaint to the Standards Sub-Committee" and he queried the fact that Council's records only go back to 2013.

20. In view of the issues raised by the complainant, the Commissioner decided her investigation should be focussed on the information held by the Council at the time it received the complainant's request and whether the Council's responses to that request satisfies its duty under Section 1 of the FOIA, to provide the complainant with recorded information relevant to the terms of his requests.

## **Reasons for decision**

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21. Section 1 of the FOIA states that

"(1) 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.

22. The Council has advised the Commissioner that it did not restrict its response to the complainant's request to instances where complaints about [a named councillor] were progressed to the Standards Sub-Committee. It has re-stated that there were 10 complaints in total and 6 of these were referred to a sub-committee. The remaining complaints were dealt with by immediate contact with Worth Parish Council to get the declaration checked and amended as necessary.

23. The Council explained the procedure it follows when it receives a complaint about a Councillor: When a complaint is received it is referred by the Council's Monitoring Officer to an independent person to decide

whether or not the report needs to be considered by a Standards Sub-Committee or whether it can be dealt with by more immediate action. Some matters raised by the complainant were dealt with on this basis given that they complaints were mostly about the same issue.

24. On receipt, the complaint is copied to the member concerned in order to provide him with the opportunity to comment on that complaint. The Councillor in question made his comments and these were included with the papers that went to the sub-committee.
25. The papers are sent only to members of the sub-committee on the basis that they are required to decide whether there is a potential breach of the Members Code of Conduct, and if there is a potential breach, whether it is in the public interest for the complaint to be investigated at public expense. The response from [a named councillor] was not circulated wider.
26. On the basis of the information before it, an Assessment Sub-Committee decides whether there appears to be a potential breach of the Members Code of Conduct. Where there is no potential breach that is the end of the process.
27. In cases where the Assessment Sub-Committee think there has been a potential breach of the Code of Conduct, it has to decide whether it is in the public interest for that breach to be investigated. A hearing sub-committee will then decide whether there has in fact been a breach of the Code of Conduct based on the investigators report and what they get from the further public hearing.
28. None of the complaints were investigated because they had no impact on Worth Parish Council given they did not relate to Council business
29. The Council has informed the Commissioner that information relating to complaints is retained for a minimum of 3 years. This is because the information may include personal material covered by the Data Protection Act. The Council's records policy does not specifically cover Members Code of Conduct material but the Council's Monitoring officer considers that 3 years is an appropriate length of time to keep the material.
30. The Council's Monitoring Officer informed the Commissioner that she searched her own paper-based files and her electronic files for any information relating to the terms of the complainant's request. The Officer advised the Commissioner that the Deputy Monitoring Officer had no dealings with any complaints raised by the complainant against [a named councillor].

*The Commissioner's decision*

31. The Commissioner agrees with the Council that the issue in question here is one of interpretation of the Council's response, rather than the information it has disclosed to the complainant: At the heart of the matter, the difference between the complainant and the Council is the definition of when a complaint has been upheld.
32. To make matters clear, the Council has advised the Commissioner that it considers a complaint is upheld when it has been fully investigated, a written report has been prepared by an independent investigator, and when that report has gone before the Hearing Sub-Committee to determine whether, on the evidence presented, there has been a breach of the Code of Conduct.
33. The Council stressed that no investigation was authorised in respect of any of the complaints made by the complainant. This is because, while his complaints do concern potential breaches of the Members Code of Conduct and have required, on some occasions, to have the Declaration of Interests Form to be corrected, the nature of the complaints does not relate to the business of Worth Parish Council.
34. In a different Freedom of Information request, the complainant asked to see the response made by [a named councillor] to the Council's Monitoring Officer following the Council's receipt of a complaint against him. That request was refused and was not referred to the Information Commissioner. The complainant subsequently made a subject access request which included the information he has asked for. The complainant's subject access request resulted in the Council's disclosure of his personal data under the provisions of section 7 of the Data Protection Act.
35. The Council's position was, and remains, that any "false or defamatory statement" made by [a named councillor] would be a matter for a court to decide.
36. That said, the Council accepts that it is possible for a "false and dishonest" statement to be a breach of the Members Code of Conduct
37. The Commissioner has considered the documents provided by the complainant in support of his complaint and she has considered these alongside the representation made by the Council following her enquiry.
38. The Commissioner has no reason to dispute the information which the Council has disclosed to the complainant. On the balance of probability the disclosed information is likely to accurately reflect the recorded information held by the Council and therefore the Commissioner must find that the Council has satisfied the duty to provide recorded information under section 1 of the FOIA.

39. It is clear to the Commissioner that the complainant has made a number of complaints about [a named councillor] and on several occasions these complaints have been found to be sufficiently valid to require the councillor to amend/correct is declaration of interests. Whether or not the complainant's complaints are considered as being 'upheld'; that is a matter for the Council to decide – it is not something which falls within the ambit of the Commissioner role.

### **Other matters**

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40. The Council has provided the Commissioner with a clear explanation of its complaint's handling procedure, to the extent that the Commissioner is satisfied that its internal review was properly focussed on the information it held and the terms of the complainant's request.

## Right of appeal

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41. 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)

42. 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.
43. 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**