

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 March 2019

**Public Authority:** Heskin Parish Council

**Address:** [heskinparishcouncil@gmail.com](mailto:heskinparishcouncil@gmail.com)

#### Decision (including any steps ordered)

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1. The complainant has requested information about all occasions between 15 August 2015 and 16 August 2018 when Heskin Parish Council ("the Council"), its employees or Councillors have breached or not fully complied with legislation. Additionally, the complainant has requested information regarding the Parish Clerk's qualifications.
2. The Commissioner's decision is that on the balance of probabilities the Council does not hold any further requested information than has already been provided.
3. The Commissioner requires no further action to be taken by the Council.

#### Request and response

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4. On 16 August 2018, the complainant wrote to the Council and requested information in the following terms:

*"In order to understand the standard of governance and general competency with which the Parish Council's business is administered I would like to know all of the occasions in the past 2 years (for the avoidance of doubt 15<sup>th</sup> August 2016 to 16<sup>th</sup> August 2018) that the Parish Council as a body corporate, its employees or Councillors have, by act or omission, breached or not fully complied with legislation or similar regulation.*

*...Allied to the question above, but as a separate request as provided for by the Freedom of Information Act 2000 I should like to know if the Clerk to Heskin Parish Council, who I assume has responsibility for the matters that I have raised above, holds any professional qualifications relevant to his role. Such might be the ICLA or CiLCA offered by the SLCC, or similar."*

5. The Council responded on 8 September 2018. It referred to some specific events that had occurred, which it considered may have been breaches of legislation. With regard to the Clerk's qualifications, it stated that no information was held.
6. Following an internal review the Council wrote to the complainant on 8 October 2018. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner 29 October 2018 to complain about the way his request for information had been handled. He says that he believes that the Council has not fully disclosed all instances where it has not fully complied with legislation or similar regulation.
8. The complainant has provided examples of occasions that he states the Council has not complied with legislation and/or regulations.
9. The Council has answered the complainant's request in general terms but its position is that it does not hold any further recorded information.
10. Although the complainant originally requested evidence of the Clerk's qualifications, he had since advised that this is a different matter and accepts that the Council does not hold this information.
11. The following analysis covers whether the Council breached section 1 of the FOIA.

### **Reasons for decision**

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#### **Section 1 - General right of access to information held by public authorities**

12. Section 1(1) of the FOIA states:

*"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."*

13. In this case, the complainant considered that the Council would hold further information regarding breaches of legislation and may hold information about the Clerk's qualifications.
14. He considers that the Council failed to provide him with a "full and complete reply" to his request.
15. The Council's position is that it does not hold any recorded information relevant to the request and that it has responded in full.
16. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
17. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She 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 is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

#### The complainant's position

18. The complainant has informed the Commissioner that he believes that the Council has not fully disclosed all the instances when it, or its employees have breached, or not fully complied with legislation, or similar regulations.

#### The Council's position

19. The Council has explained to the Commissioner that it has searched for information which may be relevant to the complainant's request but has

been unable to locate anything other than information which has already been provided.

20. The Council has also advised that there is no recorded information held regarding the Clerk's qualifications.
21. The Commissioner asked the Council to describe what searches it carried out to attempt to locate any held information.
22. The Council advised that all meeting minutes had been scrutinised for relevant information.
23. The Council also explained that all Councillors, including the Clerk, carried out searches for information on their computers. No relevant information was identified.

*The Commissioner's conclusion*

24. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraphs 16 and 17, above, the Commissioner is required to make a finding on the balance of probabilities.
25. The Commissioner would note that the FOIA only provides applicants with the right to request *recorded* information that is held by a public authority. In this instance, the Commissioner is of the view that it would be relatively straight forward to identify instances where "*breached or not fully complied with legislation or similar regulation*" as indeed has been the case. There are likely to have been matters that have been reported and the relevant authorities engaged to assess the level of non-compliance. If the expectation is that the council should 'guess' or speculate what a regulatory body might have concluded on any given action, then the Act is insufficiently equipped to require a response.
26. The Commissioner is satisfied that the Council has provided a detailed explanation of its position. She is satisfied that it has carried out adequate and appropriately-targeted searches for further information. The Commissioner is aware that some information has already been provided to the complainant from previous FOIA requests.
27. The Commissioner is satisfied in this case that the Council has demonstrated that it has reasonable grounds for considering that it does not hold any further information falling within the scope of the request, and therefore that it has complied with the requirements of section 1 of the FOIA in this case.

## **Other matters**

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The Commissioner notes that the Council's initial response did not clearly state what recorded information falling within the scope of the request was held, and explain whether this information could be provided to the complainant, or whether any information was being withheld and if so, under what exemption. The Council was also initially reluctant to engage with the Commissioner regarding its obligations to respond in accordance with the FOIA. The Commissioner is aware that the Council may have considered that it could respond under the normal course of business; however, she would remind the Council of its obligations when responding to requests for information under the FOIA in future.

## Right of appeal

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28. 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)

29. 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.
30. 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**