

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 July 2019

Public Authority: Kirby Muxloe Parish Council
Address: The Parish Office
Station Road
Kirby Muxloe
Leicestershire
LE9 2EN

Decision (including any steps ordered)

1. The complainant has asked Kirby Muxloe Parish Council for a copy of an audit report and briefing made to the Council about its data protection procedures. The requested information had been referred to by the Council in its correspondence with the complainant in the belief that audits had taken place during visits to the Council's Data Processor in 2017 and 2018.
2. The Commissioner has established that the Council does not hold the information which the complainant has asked for and therefore she has decided that the Council, in advising him of this fact, has complied with the provisions of section 1 of the FOIA.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. This decision notice concerns a request made by the complainant on 28 March 2018. The Council's failure to respond to the complainant's request led to the Commissioner's decision in case FS50759165 which was served on 7 December 2018.
5. The Commissioner's decision required the Council to respond to the complainant's request in accordance with the provisions of the Freedom of Information Act 2000 ("the FOIA").

6. The terms of the complainant's request of 28 March 2018 are:
"May I request a full copy of the councillors' audit report to which you refer, together with the briefing to the councillors concerned."
7. The Council made its response to the complainant on 7 January 2019. The Council advised the complainant that:
"Further to the Chairman's letters dated 15th February and 27th March 2018 whereby reference is made to auditing Data Protection and confirmation that the audit was undertaken, please be advised that this information is not held in a recorded form by Kirby Muxloe Parish Council"
8. The complainant has advised the Commissioner that he asked the Council to undertake an internal review of its response on 16 January 2019, and later the same day, the Council acknowledged its receipt of his request.
9. Later the same day, the complainant wrote to the Council to explain why he considered its response to be unsatisfactory.
10. On 21 January 2019, the Council responded to the complainant's request for internal review. The Council said, "Please be advised that all parties concerned have been contacted again in relation to the audit and as stated previously, conclude this information is not held in recorded for by Kirby Muxloe Parish Council."

Scope of the case

11. The complainant contacted the Commissioner on 10 January 2019 to complain about the way his request for information had been handled.
12. The complainant has advised the Commissioner that the Council has failed to address its responsibilities for audit of its data processor. He asserts that, the Council's in its previous correspondence, stated that it considers that an audit has been conducted. He complains that if this audit is not in recorded form and that the Council has nothing in writing, it must be questioned what sort of an audit it can possibly be? He therefore claims that, "surely it cannot be regarded as an 'audit' at all".
13. The Commissioner advised the complainant that the focus of her investigation would be to determine whether Kirby Muxloe Parish Council holds recorded information falling within the scope of the complainant's request of 28 March 2018.

Reasons for decision

Section 1 of the FOIA

14. 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.

15. The Commissioner has investigated whether the Council holds the information which the complainant has asked for.

16. To make a determination of that question, the Commissioner applies the civil test which requires her to consider the question in terms of ‘the balance of probabilities’: This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.

17. The Commissioner has investigated whether the Council holds recorded information falling within the scope of the complainant’s request. She has done this by asking the Council questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion/destruction of information which might be relevant to the complainant’s request.

18. The Council has assured the Commissioner that it has carried out detailed and thorough searches of its electronic files and manually held files for the information requested by the complainant. The Council says that it has undertaken these searches on three separate occasions.

19. The Council’s searches have confirmed its original response that the information the complainant seeks is not held. The Council asserts that it has “no tangible or physical records of a Data Protection Audit being carried out in 2017 and 2018”.

20. The Council’s Data Processing Company, AVG Solutions and Company, noted that two of the Council’s former members visited its offices by appointment in 2017 and in 2018 and carried out audits in relation to the “security of documents of a personal and confidential nature and the relative compliance in accordance with the ICO guidelines”.

21. The visits made by the two councillors led the Council to conclude that the audits had taken place and could be substantiated if the councillors had documented their visits. However, the searches carried out by the Council failed to yield any records of the councillors' visits.
22. The Council considers that the searches it carried out to locate records of the councillors' visits, were appropriate and the most likely methods of locating the information requested by the complainant.
23. The Council has advised the Commissioner that its searches were thorough and involved manual systematic checks of all of its files. The searches were undertaken to ascertain whether any documents relating to the complainant's request had been misfiled, misplaced or had become attached to unrelated files or other correspondence.
24. Searches of the Council's computer-based records allowed it to examine documents covering a seven year period. These searches failed to locate any information falling within the terms of the complainant's request.
25. In addition to its searches, the Council consulted with its present staff and councillors about the attendance of the two former councillors at the Council's Data Processing Company, the audits they made or the subsequent approval of audit documents for the years 2017 and 2018.
26. The Council has advised the Commissioner that its Data Processing Consultants have made enquiries of the two former councillors about their visits to the Data Processing Company and whether any official written documentation of their the audits was produced. Unfortunately these enquiries failed to yield any information which would meet the requirements of the complainant's request.
27. The Council is confident that its detailed and thorough searches would have located the required audit report if it was held. Its searches of the Council's electronic records used search terms relating to any matter, examination or consultation which had been heard by the full council or by individual councillors which concerned Freedom of Information, Subject Access request made under the Data Protection Act, previous decisions made by the Information Commissioner and the more than 270 items of correspondence it has received from the complainant, his wife and two of the complainant's associates.
28. The Council has advised the Commissioner that it does not use personal computers or laptop computers.
29. The Council has assured the Commissioner that its searches have substantiated its belief that the two former councillors did not file "a reportable document relative to the requirements of a full audit". The

Council is confident that, had the requested information been held, it most certainly would have been documented in its manual held records.

30. It is on that basis that the Council feels able to state with certainty, that no information was ever recorded relevant to the scope to the complainant's request and that no information has been deleted or destroyed at any time. The Council assures the Commissioner that it would not have been to its benefit to have deleted or destroyed the information.
31. The Council does not have a formal records management policy which relates to the retention and deletion of records falling within the scope of the complainant's request. All records of council business and stored securely and access to them is limited to key personnel.
32. The Council has advised the Commissioner that, although there is no set business purpose for it to hold the requested information, the Council accepts it is important for it to record its actions for the purpose of public scrutiny. To ensure that the Council is meeting its data protection obligations, its consultant data processor – AVG Solutions and Company - has now prepared a document for the Council entitled 'Data Protection Audit Guidance', which is dated May 2019. This document sets out the requirements of the Council's future audits of matters concerning data protection.
33. The Council has provided the Commissioner with a copy of its Data Protection Audit Guidance.
34. The Commissioner has considered the representations of the Council in respect of the complainant's request and complaint.
35. The Commissioner is content that the Council has carried out appropriate searches for information falling within the complainant's request. She accepts that, on the balance of probability, the Council does not hold a copy of a 'councillors' audit report' or a document relating to a briefing made by councillors who visited AVG Solutions and Company in 2017 and 2018.

Right of appeal

36. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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