

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2020

Public Authority: Great Wakering Parish Council
Address: Little Wakering Hall Lane,
Great Wakering
Essex
SS3 0HH

Decision (including any steps ordered)

1. The complainant has requested from Great Wakering Parish Council ("the Council"), information in relation to complaints made about the local burial ground.
2. The Commissioner's decision is that the Council does not hold the requested information. However, by failing to confirm this to the complainant within the statutory time period of 20 working days, the Council breached section 10(1) of the FOIA.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Background to the complaint

4. From the information provided by both the complainant and the Council, the Commissioner has been provided with the background to this complaint.
5. The Commissioner understands that the correspondence between both parties began in the summer of 2018.

6. During the summer of 2019, the Council has explained that it began to take action in respect of certain works in parts of the graveyard, including fencing, lighting, gardening tools and other objects being placed within the site, that, it states, were against the rules and usage of the burial ground.
7. The Council placed signs within the graveyard, advising that the unauthorised items needed to be removed.
8. The complainant has explained that they found these signs offensive and believed that they were aimed at them and their family.
9. The Council stated that it had received complaints from other users of the burial ground. The complainant disputed that complaints had been made.

Request and response

10. On 15 June 2019, the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information Act, please provide me with the following:

As specifically referenced in your notice placed at the St Nicholas Church Parish Burial ground opposite Plots A22 and A23 on 10 June 2019, I require specific details of all alleged complaints along with dates and times they were logged with Great Wakering Parish Council."

11. The Council responded on 3 July 2019. It stated the following:

"With regard to your request for information on details of complaints regarding the Parish Council Burial Ground under Sections 41(1)a and (b) of the Freedom of Information Act 2000, to disclose the information would constitute a breach of confidence which could be actionable by person(s) concerned."

12. The complainant contacted the Council again on the same date, advising that they were unhappy with the response and requesting that the Council provided redacted copies of the alleged complaints.
13. On 12 July 2019, the complainant wrote to the Council again, advising that they were waiting on a formal response to their complaint. They explained that the Clerk and Council Chairman had given verbal confirmation of the Council's position regarding their request but wanted this in writing.

14. The Council responded on 15 July 2019, providing its internal review, in which it advised that its position remained the same; that is, that the complaints had been provided in confidence and were exempt from disclosure.
15. Following the Council's internal review of 15 July 2019, the complainant contacted the Council on 16 July 2019, stating that "*...In a proper response to my request under the Freedom of Information Act, you are obliged to you [sic] confirm or deny that the information exists.*"
16. The Council responded on 18 July 2019, advising that Section 41(2) of the FOIA provides an exclusion from the duty to confirm or deny whether the information was held.
17. On 25 July 2019, the complainant requested a further review. They also provided evidence that the Council had already stated that complaints had been received.
18. The Council responded the following day, advising the complainant that, if they were not satisfied with the response, they could bring the complaint to the Commissioner.

Scope of the case

19. The complainant contacted the Commissioner on 9 September 2019, to complain about the way his request for information had been handled.
20. During the Commissioner's investigation, she asked the Council to provide a more detailed response to demonstrate that section 41(2) of the FOIA had been applied correctly.
21. After consideration, the Council informed the complainant and the Commissioner on 6 February 2020, that it was changing its position. It advised that the information was not held in a recorded format. The complainant remains dissatisfied with the Council's handling of their request.
22. The Commissioner considers that the scope of the case is to determine, on the balance of probabilities, if the Council is correct when it says it does not hold the requested information. She has also considered the Council's compliance with the procedural aspects of the FOIA.

Reasons for decision

Section 1 - general right of access

23. Section 1(1) of the FOIA states 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."*

What information is held?

24. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
25. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
26. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held, on the civil standard of probability.
27. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Council held any information within the scope of the revised request of 3 July 2019 for redacted copies of complaints about the activities in the graveyard.
28. During the course of her investigation, the Commissioner asked the Council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how the Council established whether or not it held any information within the scope of the request.
29. The Council stated it was believed that no information was held, in any recorded form, but records were still searched.
30. The Council confirmed that it carried out searches using keywords, subject area and off-site records. It also advised that meeting minutes,

and correspondence received in both email and hard copy were checked, along with the recycling bin. The Council noted that telephone calls are not recorded or noted.

31. The Council has stated to the Commissioner that the complaints that had been made had been made verbally and as such, there was no record of them. It also advised that no records had been deleted/destroyed.
32. The Council is aware that its earlier response, citing section 41 of the FOIA, was confusing. The Commissioner understands that the Council may have been exercising caution in seeking neither to confirm nor deny whether the information was held.
33. The Commissioner also considers that it is clear that there has been a breakdown of trust between the Council and the complainant, due to the above circumstances.
34. The Commissioner considers that, based on the information provided, the Council carried out adequate and appropriately-targeted searches.
35. She has determined that, on the balance of probabilities, no recorded information within the scope of the request is held in recorded form.

Procedural requirements

36. As previously stated, section 1(1)(a) of the FOIA states that a public authority has a duty to confirm whether or not it holds the information that has been requested, unless certain specific circumstances apply.
37. Section 10(1) of the FOIA states that a public authority must comply with the requirements of section 1(1)(a) promptly, and in any event, within 20 working days.
38. In this case, the complainant considers that the Council has been contradictory in its responses.
39. The Council initially considered that it could rely on section 41(2) to refuse to confirm or deny whether the information was held, but, after engaging with the Commissioner, it changed its position and advised the complainant that the information was not held in recorded form.
40. The Commissioner is satisfied in this case that, since the Council did not confirm that the requested information was not held until 6 February 2020, it breached the requirements of section 10(1).
41. She considers that the Council's initial response to the complainant was confusing and not clear. However, since she is satisfied that the

information is not held, she does not require the Council to take any steps.

Right of appeal

42. 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

43. 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.
44. 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
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