

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 2023

Public Authority: Chapel-en-le-Frith Parish Council
Town Hall
Market Street
Chapel-en-le-Frith
High Peak
SK23 0HP

Decision

1. The requester posed a 20-point request for information contained in emails between named councillors and third parties. Chapel-en-le-Frith Parish Council (the Council) advised that the three councillors concerned had confirmed that they do not hold any information in scope of the request.
2. The Commissioner's decision is that he is satisfied on the balance of probabilities that the Council does not hold information in scope of the request.
3. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

4. The complainant made the following information request to the Council on 7 May 2023:

"The exact information required under this part of the Freedom of Information request is set out in the paragraphs numbered 1 to 13 below. The period for which information is requested is from 1st February 2020 to 24th April 2023:

1. All email correspondence sent by (name redacted) from the email address (redacted) to (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.
2. All email correspondence sent by (name redacted) from the email address (redacted) which was forwarded from others to (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.
3. All email correspondence received by (name redacted) using the email address (redacted) sent by (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.
4. All email correspondence sent by (name redacted) from the email address (redacted) to (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.
5. All email correspondence received by (name redacted) using the email address (redacted) sent by (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.
6. All email correspondence sent by (name redacted) using the email address (redacted) to (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.
7. All email correspondence received by (name redacted) using the email address (redacted) sent by (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.
8. All email correspondence sent by (name redacted) using the email address (redacted) to (name redacted) solicitors (name redacted) using the email address (redacted) and including those sent to the

solicitor dealing with their action (name redacted) email address (redacted). Any attachments to such emails should also be provided.

9. All email correspondence received by (name redacted) using the email address (redacted) from (name redacted) solicitors (redacted) using the email address (redacted) and including those sent to the solicitor dealing with their action (name redacted) email address (redacted). Any attachments to such emails should also be provided.

10. All email correspondence sent by (name redacted) from the email address (redacted) to (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.

11. All email correspondence received by (name redacted) using the email address (redacted) sent by (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.

12. All email correspondence sent by (name redacted) using the email address (redacted) to (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.

13. All email correspondence received by (name redacted) using the email address (redacted) sent by (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.

It is noted that (name redacted) altered his Parish Council email contact address from (redacted) to a Derbyshire County Council email address which is (redacted) and this was supplied by him for Chapel en le frith Parish Council business sometime after the May 2021 elections. Therefore, please supply the following information requested in the paragraphs numbered 14 to 20 below under this part of the Freedom of Information request. The period for which information is requested is from 20th May 2021 to 24th April 2023:

14. All email correspondence sent by (name redacted) from the email address (redacted) to (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.

15. All email correspondence sent by (name redacted) from the email address (redacted) which were forwarded from others to (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.

16. All email correspondence received by (name redacted) using the email address (redacted) sent by (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.

17. All email correspondence sent by (name redacted) using the email address (redacted) to (name redacted) solicitors (name redacted) using the email address (redacted) and including those sent to the solicitor dealing with their action (name redacted) email address (redacted). Any attachments to such emails should also be provided.

18. All email correspondence received by (name redacted) using the email address (redacted) from (name redacted) solicitors (redacted) using the email address (redacted) and including those sent to the solicitor dealing with their action (name redacted) email address (redacted). Any attachments to such emails should also be provided.

19. All email correspondence sent by (name redacted) from the email address (redacted) to (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.

20. All email correspondence received by (name redacted) using the email address (redacted) sent by (name redacted) using the email address (redacted). Any attachments to such emails should also be provided.

I understand that the three councillors from which information is requested are legally still Chapel en le Frith councillors at the date this request is made. I also understand from the Information Commissioner that it is a criminal offence to delete any requested information."

5. The Council responded on 1 June 2023, stating the councillors involved had confirmed they did not hold any information in scope of the request.
6. At internal review on 8 June 2023, the Council stated that: "as the councillors involved do not hold information on behalf of the Parish Council and do not have parish council email addresses the request is not subject to the FOIA, there is therefore no information that should be disclosed under the Freedom of Information Act 2000/Environmental Regulations Protection Act 1990."

Reasons for decision

Section 1(1): General right of access to information

7. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any procedural sections or exemptions that may apply. A public authority is not obliged under the Act to create new information in order to answer a request.
8. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-Tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
9. In the circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, the Council holds (or held at the time of the request) recorded information that falls within the scope of the request.
10. The Council advised that the three councillors in question had been requested to supply information in scope of the request, however, their responses suggest no information was held which would be subject to FOIA.
11. The Commissioner has decided, on the balance of probabilities, that the Council did not hold any relevant information in scope of the request. The Council's responses seem to focus on the complainant and what it considers a 'minor squabble' nevertheless it is legally obliged to deal appropriately with all requests for information it receives. If it believes a request is a 'waste of their time' it should consider applying an appropriate exemption or exception, such as section 14 (burden).

Other matters

12. The Commissioner acknowledges that parish councils are, by nature, small organisations with limited resources. However, he is concerned about how the Locum Clerk has responded to his enquiries and apparent lack of understanding of their obligations under the legislation.

13. Therefore, the Commissioner recommends that the Council refers to his website for guidance when dealing with future requests and ensures it responds to his enquiries in a professional and courteous manner.

Right of appeal

14. 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

15. 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.
16. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF