

Subject matter: FOIA 2000

Whether information held s.1

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal in part and substitutes the following decision notice in place of the decision notice dated 26 September 2013.

SUBSTITUTED DECISION NOTICE

Dated: 2 April 2014

Public authority: GORING PARISH COUNCIL

Address of Public authority: OLD JUBILEE FIRE STATION
RED CROSS ROAD
GORING
READING RG8 9HG

Name of Complainant: MR BERNARD CLUCAS

The Substituted Decision

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal in part and substitutes the following decision notice in place of the decision notice dated 26 September 2013.

- (a) Goring Parish Council breached s.1 of the Freedom of Information Act 2000 in that the Council did not state whether or not it held the requested information in relation to requests (1), (3), and (5).
- (b) Goring Parish Council breached s.10 of the Freedom of Information Act 2000 in that the Council did not advise Mr Clucas of the above (whether information was or was not held) within 20 working days of his request.

Action Required **None**

Robin Callender Smith
Judge
2 April 2014

REASONS FOR DECISION

Introduction

1. Mr Bernard Clucas (the Appellant) asked Goring Parish Council about a “not for publication minute” arising from a council meeting on 5 March 2012. The Council explained that it did not hold the requested information. Mr Clucas was not satisfied with that response and he complained to the Information Commissioner.

The request for information

2. On 8 February 2013 the Appellant wrote to the Council requesting the following information:

Background

This information request concerns the 'not for publication' minute of the council meeting on 5 March 2012, minute number 12/177.2.

Information Required

1. Identity of the person responsible for taking notes or minutes of that part of the meeting.
 2. Copy of the notes taken.
 3. Identities of the originator, proposer and seconder of item (3) adopted at the meeting.
 4. Text of the original motion for item (3).
 5. Identities of proposers and seconds of any amendments to the motion for item (3) and text of the amendment proposed.
3. On 18 February 2013 the Council responded stating (Council's response underlined):
 1. Identity of the person responsible for taking note's or minutes of that part of the meeting.

This is not a request covered by the Freedom of Information Act.

2. Copy of the notes taken.

No longer available.

3. Identities of the originator, proposer and second•9r of item (3) adopted at the meeting.

This is not a request covered by the Freedom of Information Act.

4. Text of the original motion for item (3).

No longer available.

5. Identities of proposers and seconders of any amendments to the motion for item (3) and text of the amendment proposed.

The first part is not a request covered by the Freedom of Information Act and no written records exist of any proposed amendment.

6. On 25 February 2013 the Appellant wrote to the Council complaining that the response “does not comply with the requirements of the law and needs to be reviewed”.

7. On 12 March 2013 the Council advised the Appellant that it was satisfied with its previous response. On 28 March 2013, the Appellant complained to the Information Commissioner.

The complaint to the Information Commissioner

8. On 15 August 2013, as requested by the Information Commissioner, the Council wrote to the Appellant. The Council gave further explanation in its letter about questions 1, 3 and 5 of the request, specifically:

(1) In the absence of the Clerk, Councillors agreed a summary of the proceedings which was given to the Clerk to incorporate into the official minutes. This summary is exactly the same as the minute and was destroyed once the minutes were agreed.

(3) See 1 above. The Council has no record of the proposer and seconder

(5) Once again the answer is as 3 above.

9. The Council also provided the Information Commissioner with some further information about each request. The Council confirmed that it did not hold any of the information requested by the Appellant.
10. Having considered the Council's explanations about why it did not hold the requested information, the Information Commissioner recorded in his Decision Notice his conclusions that at the time of the request, on the balance of probabilities, the Council did not hold such information.

The appeal to the Tribunal

11. The Appellant did not challenge the Information Commissioner's finding that the Council did not, on the balance of probabilities, hold the information requested. He states, however, that the Information Commissioner should have found – in respect of requests (1), (3) and (5) – that the Council failed to comply with s.1, 10 and 17 of FOIA.
12. In his reply dated 25 November 2013 to the Information Commissioner's Response to the Appeal dated 15 November he welcomes the suggestion that the Decision Notice is amended to include breaches of s.1 and s.10 FOIA and that no further action should be ordered.

Conclusion and remedy

13. The Tribunal notes that the Appellant, in respect of s.17 FOIA, states the following:

.... The Information Commissioner says there is no requirement to issue a 'refusal notice' if the information is not held.... I contend that when the Council said "This is not a request covered by the Freedom of Information Act" it was relying on a claim that the information was exempt information. In doing so it engaged the second criterion of section 17 (1) FOIA. Having made that statement it was obliged to comply with the subsections (b) and (c) of section 17 (1) FOIA, by specifying the exemption in question and stating why the exemption applies. Since it failed to do so the Council breached section 17 FOIA at that time. It was established some months later that, on the balance of probability, the information was no longer held, but

that is not relevant. Consequently I continue to ask the Tribunal to include breach of section 17 FOIA in any amendment it makes to the DN.

14. The Tribunal declines to find there was a breach of s.17 FOIA.

15. That section requires a public authority to issue a refusal notice in certain limited circumstances. If information is not held there is no requirement to issue a 'refusal notice'.

16. On that basis the Tribunal finds that the suggested substituted decision notice covers all the matters relevant to this appeal.

17. Our decision is unanimous.

18. There is no order as to costs.

Robin Callender Smith
Judge
2 April 2014