

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 17 August 2021

Public Authority: Debden Parish Council

Address: pcclerk@debden.org

Decision (including any steps ordered)

1. The complainant has requested information from Debden Parish Council about agreements to change the location of a village hall.
2. The council provided some information in response to the request, but stated that some information is not held. During the course of the investigation the council provided further information but maintained that the remainder is not held.
3. The Commissioner's decision is that, on the balance of probabilities, Debden Parish Council does not hold any further information in scope of the request. However due to its failure to provide information within 20 working days, it breached regulation 5(2) of the EIR.
4. The Commissioner does not require any steps.

Request and response

5. On 25 February 2020, the complainant requested information from Debden Parish Council ('the council') in the following terms, numbering added by the ICO:

[1] "I am therefore making a formal Freedom of Information Request for evidence that the changes of the location for the New Village Hall were discussed at a meeting convened among all four parties, agreed upon and recorded in Minutes."

6. The council requested clarification of "the four parties" on 26 February 2020. The complainant responded on 4 March 2020 and provided clarification.

7. The complainant requested an internal review on 15 April 2020 due to not receiving a response to the request.

8. The council responded on 16 April 2020, it stated:

"If you are addressing the Parish Council, I can direct you to the relevant agendas and minutes published on the Parish Council website, or copies made available to you by the Clerk. If however, you are addressing your request to the Recreation Ground Trust or Village Hall Trust, as previously stated they are not subject to the FOI act."

9. The complainant raised two further requests on 1 May 2020:

[2] "In addition, that the decision to submit a planning application for a replacement sport pavilion, much larger than the existing one, to be sited to the left hand side of the proposed new village hall was also discussed at a meeting convened among all four parties, agreed upon and recorded in Minutes"

[3] I would also add that evidence should be made available that the above changes were agreed to be in the best interests of the RGT and approved by the PC as appropriate for the village as a whole"

10. The council responded on 1 June 2020 and stated that the Recreational Ground Trust is not subject to FOIA.

11. On 10 August 2020 the complainant submitted the following request, stating that having done some research, this request was more specific:

[4] "Minutes of the meeting held in June 2019 between the PC, VHT and NVHG on "the agreed way forward with the new village hall plan in

respect of the plan to replace the Pavilion". This was reported in the PC Minutes of the 3rd July 2019 as having taken place (item 19/054) but the date of the meeting was not reported.

[5] Minutes/report of a meeting that took place between 7th August 2019 and 6th November 2019 at which the PC/RGT having had sight of the proposed new location for the New Village Hall and replacement pavilion agreed that the new proposal was in the best interests of the RGT.

[6] Copy of the submission to the Charities Commission explaining how the new revised location from that agreed on the Order issued by the CC in January 2019 was in the best interests of the RGT. The Charities Commission have confirmed that such communication exists.

[7] Copy of the revised Trust Deeds of the Recreation Ground Trust and confirmation that the Parish Council status as Sole Trustee of the Recreation Ground Trust."

12. The council responded on 10 August 2020. It stated that no information is held in respect of [4] and [5], however it did not respond to [6]. The council provided information in scope of [7], being the Trust Deeds and associated resolution and minutes.
13. The complainant requested an internal review on 4 September 2020 on the grounds that there is evidence which demonstrates that the information exists in answer to [4], [5] and [6].
14. The council responded on 9 September 2020 and stated that it had provided a complete response and that the matter was now closed.
15. During the course of the investigation, on 18 May 2021, the council provided further information in scope of the request. In respect of [3], it provided a copy of the "Mediation Agreement" in which some interested parties agreed the site of the new village hall. In respect of [6], it provided a copy of the submission to the Charities Commission.
16. In terms of the response given to [6], a number of attachments and related emails appeared to be missing. Following further discussion with the Commissioner, the council provided the complainant with copies of these emails and attachments on 4 June 2021.

Scope of the case

17. The complainant contacted the Commissioner on the 10 September 2020 to complain about the way the requests for information had been handled. Specifically that the council should hold information in scope of [3], and that the council is withholding information in scope of [4], [5] and [6].
18. Following the release of further information during the course of the investigation, the complainant confirmed that they remained dissatisfied with the council's position that all the requested information had been provided.
19. The Commissioner will therefore determine, whether on the balance of probabilities, the council holds any further information within the scope of questions [3], [4], [5] and [6].

Reasons for decision

Regulation 5(1) – Duty to make environmental information available on request

20. Regulation 5(1) of the EIR states that: "*a public authority that holds environmental information shall make it available on request.*" This is subject to any exceptions that may apply.
21. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not 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.
22. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner applies in this case.
23. In discussing the application of the balance of probabilities test, the Tribunal stated that, "*We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it*

decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed." The Commissioner has therefore taken the above factors into account in determining whether or not further information is held, on the balance of probabilities.

The complainant's view

24. The complainant states that the changes agreed with the Charities Commission to swap some land which will enable the change of location for the village hall are not in the best interests of the village. The complainant states that there is a lack of transparency regarding how the agreement has been made with the Charities Commission.
25. In terms of [3], the complainant disputes that the Mediation Agreement demonstrates that the changes were agreed to be "*in the best interests*" and approved "*to be appropriate for the village*". The complainant's position is that the council should hold information in this respect.
26. In regard to [4] and [5] the complainant states that the minutes of the council record that the meetings took place, therefore minutes of those meetings should exist.
27. Regarding [6], the complainant states that the information provided by the council shows that the Charities Commission asked a number of questions requiring a response before agreement to the change would be given. The complainant argues that the email from the Charities Commission, dated 7 October 2020, indicates that they were still to be persuaded that the changes effected by the Recreation Ground Trust, and the Village Hall Trust were in the best interests of both Trusts.
28. The complainant states: "*If the Parish Council did not answer those questions, how was the Charities Commission persuaded that the new location was in the best interest of the Trust and renewed the Order for the land exchange.*"

The council's response

29. In regard to [3], the council states that a mediation was held involving the council, Debden Recreation Ground Trust, the New Village Hall Group, Uttlesford District Council and the Ministry of Defence (MOD) in order to help the village reach a compromise on the site of the village

hall. The Mediation Agreement, which has been disclosed, is the only information held which is within the scope of [3].

30. In regard to [4] and [5], the council states that whilst there were meetings between the council and Debden Recreation Ground Trust during the periods detailed, it had found no reference made in the minutes of any of these meetings to the agreement to site the new village hall as approved in the Mediation Agreement.
31. The council stated that meetings may have been held by an informal group formed of representatives of the council, the Debden Recreation Ground Trust and interested parties in the village. However the council does not hold records of these meetings.
32. In regard to [3], [4] and [5], the council confirmed that it had searched all of the records held for the period in question. It advised that the minutes of the council would be the only permanent record of meetings held by the council and the Debden Recreation Ground Trust.
33. In regard to [6] the council states that the disclosures provided to the complainant explain how the revised location was agreed with the Charities Commission, and that it holds no further information on the matter. The council referred the Commissioner to an email exchange dated 5 March 2020.
34. The Commissioner put to the council that a number of questions raised by the Charities Commission appear to be unanswered. The council responded "*the Charities Commission was satisfied with our position and actions and, as a result, granted an order authorising the land exchange.*"
35. The council stated that the council records consist of hard copy signed and approved minutes of Parish Council meetings, and that these were all checked for any information in scope of the request. Other information provided came from a search of email correspondence with the Charities Commission, including correspondence between the chair of Debden Recreation Ground and the Charities Commission. The searches included information held on personal computers used by key officials.
36. The council confirmed that no information relevant to the scope of the request had been deleted, and that there were no statutory nor business reasons for holding any further information.

Conclusion

37. In coming to a conclusion, the Commissioner has considered the complainant's view and the council's responses.
38. The Commissioner considers that question [3] is quite subjective in its nature, the complainant asks for information that the council "*should*" hold. Whilst the Commissioner is sympathetic to the complainant's view that the decisions made by the council should be transparent, the EIR do not stipulate what information should be held. Only that if information is held in recorded form that provides answers, then this should be provided.
39. The correspondence made available to the complainant in relation to [6] does appear to indicate that the Charities Commission had further questions to be answered before agreeing to the swap of land. However the Commissioner notes that the date of the latest email from the Charities Commission to the council raising questions is 7 October 2020. Any information held by the council, which was created after the request date, being 10 August 2020, is outside of the scope of the request and therefore not within the remit of this investigation.
40. During the course of the investigation the council indicated that they considered the requests were made in order to thwart the efforts of the council and might be used to campaign to the Charities Commission to withdraw the agreement. Early in the investigation the council also stated that it would not answer questions relating to whether the change was in the best interests of the Recreation Ground Trust, or provide correspondence it had with the Charity Commission, stating these are matter for that Trust, being an entirely separate legal entity from the Parish Council. Following further discussion, however, the council latterly responded to the Commissioner on the full scope of the request.
41. The Commissioner considers that the council's responses to the complainant and the difficulties she experienced in obtaining answers during the investigation do appear to indicate a lack of willingness by the council to be transparent on the matter. Furthermore, the absence of minutes of key meetings indicate poor record keeping and is concerning, however this is not an issue upon which the Commissioner can make an EIR decision.
42. In conclusion, however, the Commissioner finds that the council have provided an explanation of the records held and the searches undertaken with regard to this request. In the absence of any firm evidence to the contrary, the Commissioner has decided that, on the balance of probabilities, the council has provided all the information it holds within the scope of the request.

43. She has therefore concluded that the council has complied with regulation 5(1) of the EIR.

Procedural matters

Regulation 5(2) – time limits

44. Regulation 5(2) requires that requested information must be made available promptly, and in any event no later than 20 working days after the date of receipt of the request. Where no information is held, regulation 14(2) requires a refusal notice to be issued within that time.
45. The requests were made on 1 May 2020 and 10 August 2020 and the council provided the initial responses within the time limit. However the council changed its responses during the course of the investigation to provide information in scope of the requests on 18 May 2021 and 4 June 2021 which is 10 to 12 months outside of the 20 day time limit.
46. The Commissioner therefore concludes that the council failed to respond within the statutory time limit and thus breached regulation 5(2) of the EIR.
47. As the responses have been provided, no further steps are required.

Other matters

48. During the course of this investigation the Commissioner has observed a number of areas of concern:
- a. The requests for information have not been treated as applicant and motive blind.
 - b. The council's initial responses did not address the full scope of the requests.
 - c. The council excluded the parish clerk from answering the investigation. Whilst the Commissioner can not determine the reason for doing this, there were subsequently delays and issues with the quality of the responses to her investigation requiring several iterations of questions.
 - d. The council's responses appear to indicate poor record keeping.
49. Whilst not forming part of this decision notice, the Commissioner recommends that the council reviews its procedures. Regard should be given to the Codes of Practice issued under sections 45 and 46 of the

Freedom of Information Act 2000 and the associated guidance¹ that the Commissioner has made available.

50. The council must also ensure that it provides a full response to any future information requests. Where it holds information within the scope of a request that it does not believe it would be appropriate to disclose, it must issue a refusal notice. Guidance on the valid grounds for refusing an information request, and on all aspects of handling an information request, is available to the council on the Commissioner's website.

¹ [Freedom of information and Environmental Information Regulations | ICO](#)

Right of appeal

51. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

52. 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.
53. 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

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