

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2022

Public Authority: Kirby Muxloe Parish Council

Address: Parish Council Office
Station Road
Kirby Muxloe
Leicester
LE9 2EN

Decision

1. The complainant requested information from Kirby Muxloe Parish Council ("the Council"). The Commissioner's decision is that the Council does not hold information within the scope of questions 1 and 2 of the request. However, he finds that the Council incorrectly applied section 21 of the FOIA to question 3 of the request.
2. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to question 3 of the request which clearly confirms or denies whether the requested information is held. If the requested information is held, that information should either be disclosed, or the Council should provide an adequate refusal notice.
3. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

4. The complainant made the following information request to the Council on 8 April 2022 (numbering added by the Commissioner):

"I note that the approved minutes are now available on the website. However having been provided with a transcript of a recording of the Zoom meeting I observe that there appears to be a significant discrepancy in the minutes.

The discussion under item 6. To provide an update in relation to Kirby Muxloe Primary School purchasing a small proportion of Kirby Muxloe Recreation Ground Charity land records the proposal by [name redacted] in the following terms:

"Can I propose just going back a stage that we write to the objectors with the new valuation report attached and ask them if they are happy and they will not impede progress to selling this land to the school."

This proposal was then the subject of an amendment by [name redacted]:

"Could we ask them to answer within 28 days as well Mr Chairman"

which was then accepted by [name redacted] and the proposal was seconded by [name redacted] and passed unanimously.

I note that the valuation report has not been released by yourself as instructed by the Council, and that in the meeting it was indicated that the data processing company (sic) was doubtful as to whether this information should be released.

I trust you will agree that the integrity of local democracy does depend upon decisions made by authorities being truthfully recorded in the minutes.

(1) In the circumstances I would be grateful if you would firstly clarify on whose instructions the resolution to release the valuation report was omitted from these minutes.

(2) Secondly, please provide a copy of your notes of the meeting in relation to this item, and the original draft of the minutes.

(3) Thirdly, please now provide a copy of the valuation report as soon as possible pursuant to the decision of the parish council and instruction to you to release the same.

I look forward to hearing from you substantively in relation to each of these matters in any event within 20 working days.”

5. The final position of the Council was that it does not hold the information requested in question 1 and 2 of the request. The Council applied section 21 (information reasonably accessible by other means) of the FOIA to question 3.

Reasons for decision

6. This reasoning covers whether the Council is correct when it states that it does not hold information within the scope of question 1 and 2 of the request. It also covers whether the Council is correct to apply section 21 of the FOIA to question 3 of the request.
7. The position of the Council is that it does not hold the information requested in question 1. Specifically, it stated that no instructions were given to omit information from the minutes of the Kirby Muxloe Recreation Ground charity meeting by any individual at the Council.
8. The Council also stated that it does not hold the original meeting notes or a draft copy of the meeting minutes as requested in question 2 of the request. It explained that once the Council has approved meeting minutes, any notes from the meeting or draft minutes are disposed of. Therefore, as the minutes for the Kirby Muxloe Recreation Ground charity meeting were approved by the Council some time ago the requested information is not held.
9. The Council refused to provide the information requested in question 3 of the request citing section 21 of the FOIA. It stated that the requested information is held by Kirby Muxloe Primary School and therefore, the information is reasonably accessible to the complainant by other means.
10. The Commissioner accepts the Council's reasoning as to why it should not be expected to hold the information requested in questions 1 and 2 of the request. On this basis, the Commissioner's conclusion is that on the balance of probabilities the information requested in questions 1 and 2 of the request is not held by the Council.
11. However, with regards to question 3 of the request, the Commissioner's decision is that the Council has incorrectly applied section 21 to the request. The Commissioner does not consider the requested information

to be reasonably accessible to the complainant by other means as the Council does not know whether the complainant would be able to access the requested information from the School.

12. The Commissioner requires the Council to provide the complainant with a fresh response to question 3 of the request which confirms or denies whether the requested information is held. If the requested information is held, that information should either be disclosed to the complainant or an adequate refusal notice should be provided.

Right of appeal

13. 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

14. 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.
15. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF