



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2017/0207

Decided without a hearing

Promulgation Date 24th September 2018

Before

JUDGE DAVID THOMAS

Between

ARNOLD MARTYRES

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

NB Numbers in [square brackets] refer to the open bundle

1. Mr Arnold Martyres has appealed against the rejection by the Information Commissioner (the Commissioner) on 30 August 2017 of his complaint that Bury Parish Council (the Council) had wrongly failed to disclose certain information to him under section 1(1)(b) Freedom of Information Act 2000 (FOIA) and regulation

12(5)(1) of the Environmental Information Regulations 2014 (EIR) on the basis that it did not hold it.

2. The parties opted for paper determination of the appeal. I am satisfied that I can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).¹
3. Appeals are normally determined by a panel of three. However, under the Practice Statement on the composition of panels issued by the Senior President of Tribunals on 27 February 2015, an appeal may be determined by a judge sitting alone where the issue is whether information is held.

Factual background

4. Mr Martyres' requests appear to relate to longstanding family and property (including neighbour) disputes in Bury (sometimes referred to as Bury-cum-Hepmangrove) in Cambridgeshire. There have evidently been several court proceedings and planning disputes and the police have been involved. Mr Martyres himself alludes to *Bleak House* as an apposite literary analogy. It is not easy to discern the precise nature of the disputes from the papers but that is not necessary to determine the appeal.
5. Mr Martyres has made a number of other FOIA requests (of various public authorities, including the Council) for information which seems to be related in some way to the present request. Some he has taken to the Commissioner and the Tribunal. He asked that the present appeal be joined with a particular complaint to the Commissioner that the Council had wrongly rejected a further request for information. On 13 February 2018, the Registrar refused his application because the Commissioner had not yet made a decision in that case.² She has now done so, on 13 August 2018. She again decided that the Council did not hold the requested information, which encompassed the legal status of particular rights of way and the legal owners of two identified properties.

The requests

6. On 31 December 2016, Mr Martyres made a multipart request of the Council [55]. It is convenient to set out the requests in tabular form along with the Council's initial response on 16 January 2017 [60], its review dated 31 January 2017 [56], the Commissioner's decision notice (DN) [1] and Mr Martyres' Reply to the Commissioner's Response to his Notice of Appeal [33]. Mr Martyres asked for evidence beyond reasonable doubt that a number of statements were true. It follows that, if the Council does not hold information demonstrating that the

¹ SI 2009 No 1976

² FS50720692

statements are true (beyond reasonable doubt), the correct response is that the information is not held.

Item	Request	Initial Response	Review	DN	Reply
1	He was an owner or occupier of Hill Villa at any time	This is a subject access request under the Data Protection Act [1998] (DPA 1998) since it relates to Mr Martyres [on 6 January 2017, the Council informed Mr Martyres that it did not hold any documents relating to him]	The Council does not hold the requested information	Information not held. It is not the Council's function to hold information about property ownership or occupation. In any event, section 40(1) FOIA would apply	Information should have been on the full electoral roll. The response should have been that the Council held no record of Mr Martyres owning or occupying any property in Bury in 2016 or 2017
2	He was not a prospective buyer of 15 Hill Estate or Hall Farm Cottage at any time	Ditto	Ditto	Ditto	Ditto
3	[Named person (not Mr Martyres)] bought and moved into Hall Farm Cottage in 1996	This relates to another living individual: request refused under section 40 FOIA and regulation 13 of the EIR	Ditto	This is 'environmental information' within regulation 2(1) EIR as ownership of property affects land. Information not held. It does not relate to the Council's functions and there is no requirement for it to hold this sort of information	Agree EIR apply. Information held by the Council and Huntingdonshire DC. Also available on latter's website but not easily accessible. The Council does hold information about tenancy or property ownership beyond the electoral register, which holds details of owners and occupiers of property in Bury
4	[The same named person] was the landlord of the HMO [?house in multiple occupation] called Hall Farm Cottage from 2000 to 2008	Ditto	Ditto	Ditto	Ditto
5	[The same named person] moved out of Bury in 2000 and later relocated to Market Harborough and then to Lindal	Ditto	Ditto	Ditto with regard to information not being held	The Council does hold information about tenancy or property ownership beyond the electoral register, which holds details of owners and occupiers of property in Bury
6	[The same named person] travelled to and from [...] Europe without being stopped by any police force or	Ditto	Ditto	Information not held. Law enforcement – whether immigration, police	The Council has access to CRB checks and holds this information and publishes

	immigration officer in the United Kingdom			investigations or court statements – is not a function of a parish council	information about crime on its website. The information is also held on the internet in <i>Offender Locator</i> which uses information from the National Sex Offenders Registry
7	Since his arrival in the United Kingdom [the same named person] was on the radar of Cambridgeshire County Council, Cambridgeshire Constabulary, Huntingdonshire District Council and a significant number of law enforcement agencies	Ditto	Ditto	Ditto	Ditto
8	In 2008/9 [the same named person and a second named person] have proved, on the balance of probabilities, to a Judge at Cambridge County Court that the owner of Hill Villa had by Deed of Gift donated Hill Villa to Mr Martyres in 1996. Does the Council hold the Witness Statements of [these two named persons] that were filed with Cambridge County Court; if not why not?	Ditto	Ditto	Ditto	Ditto
9	The late [third named person], the former owner of Hall Farm was the sole tenant of the Field forming part of the premises of Hill Villa	No data held on the deceased person	Ditto	As with items 3 and 4	As with items 3 and 4
10	The current Trustees of the Field forming part of the premises of Hill Villa have received the yearly rent from the sole tenant of the Field from 1989 to 2016	No data held – the Council suggests Mr Martyres contacts Huntingdonshire District Council	Ditto	Information not held – the Council does not hold information relating to the payment of council tax, property tenancy or law enforcement	The Council has data sharing agreements with Huntingdonshire DC, Cambridgeshire Constabulary and other data controllers

				activities	
11	The current tenant(s) have insured and paid Council Tax for the Field	Ditto	Ditto	Ditto	Ditto
12	Some Owners/Occupiers of Hill Estate and Hall Farm Cottage have been Fly Tipping and encroaching on the premises of Hill Villa and the Field	Ditto	Ditto	Ditto	Ditto

The Commissioner's investigation

7. As part of her investigation, the Commissioner asked the Council a number of questions [63]. For example, what information about property details or home ownership did it hold?; what information did it hold about the movement of individuals who had left the parish?; what information about registered sex offenders did it hold?; what information about payment of council tax did it hold?; what searches did the Council carry out and why might they have borne fruit?; and was any relevant information held at one time but subsequently deleted or destroyed? The Council replied on 7 July 2017 [71] (see further below).
8. I am satisfied that the Commissioner carried out a thorough investigation.

The Grounds of Appeal

9. In his **Grounds of Appeal [12]**, Mr Martyres related some of the history. He also said that he had now learnt that most if not all the data he sought was publicly available but not easily accessible from planning and planning enforcement files, the internet, local authority archives, old copies of the *Hunts Post* held on microfiche by Ramsey Rural Museum Archives and Huntingdon Library. Huntingdonshire DC and the Council held and could easily access the information but neither had complied with their duty to provide him with help and assistance under section 16 FOIA. In addition, Huntingdonshire DC and the Council held copies of highly inaccurate electoral roll registers of the parish, including the wrong names of the tenants for Hill Villa and Nos 15 and 18 Hill Estate. The Council held inaccurate records of parish planning and enforcement files and of Hill Villa under a particular planning application. Two firms of solicitors had also provided information by letters dated 5 September 2017.
10. Mr Martyres asked for an order requiring the Commissioner herself to require the Council to explain why: it had failed to register as data controller for over a decade and to comply with section 16 FOIA; why it was not aware that the person named in requests 3 to 8 was a registered child sex offender and lived next to a school bus stop; it failed to keep records of planning and planning enforcement

files (including one specified application in particular); Mr Martyres was wrongly served with a council tax bill for £925.48 in 2016 despite his never being on the Electoral Roll as an owner or occupier of any property in the parish.

11. Neither the Commissioner nor the Tribunal has the power to make such orders, with the exception of a finding under section 16 FOIA.
12. Mr Martyres does not particularise what information he has now obtained or therefore what information (if any) remains outstanding. However, his ability to obtain this information indicates that the Council may have been entitled to rely on the exemption in section 21 FOIA (information accessible by other means) had it held it.

Discussion

Is some of the information environmental information within regulation 2(1) EIR?

13. The Commissioner decided that the information requested by items 3, 4 and 9 constituted 'environmental information' within regulation 2(1) of the EIR because it relates to property ownership, an activity which affects land. (In fact, item 9 relates to a tenancy).
14. The definition of 'environmental information' is very wide but, in my judgment, it would not normally extend to information about property ownership or occupation. In *BEIS v Information Commissioner and Henney*,³ the Court of Appeal looked for a sufficient connection between the information requested and the environment. There is no such connection between the identity of owners/occupiers and the environment in the present case.
15. In fact, however, resolution of the issue whether the information requested by these three items is held is essentially the same whether they are governed by FOIA or the EIR. Under section 1(1)(b) FOIA, a public authority is obliged to disclose requested information which it holds, unless (broadly speaking) an exemption applies. Section 3(2) then explains that an authority holds information held on its behalf by a third party. Regulation 5(1) of the EIR similarly requires public authorities to disclose environmental information which they hold. Regulation 12(4)(b) says that the time information must be held is when the request is received. The tests under the two regimes are very similar.

Did the Council hold the information around the time of the request?

16. This is a question of fact. The issue is whether the Council *did* hold some or all of the requested information (directly or via a third party holding information on its behalf) around the time of the request, not whether it *should* have held it nor whether it could *obtain* it. I have to make that assessment on the balance of

³ [2017] EWCA Civ 844

probabilities in all the circumstances. Self-evidently, a public authority cannot disclose information it does not hold.

17. It is nevertheless instructive to consider whether an authority should hold information because that can aid assessment of whether it does hold it. It is a reasonable assumption, absent evidence to the contrary, that a public authority holds information of the sort it requires to carry out its functions. Equally, whilst it is possible for a public authority to hold information it does not need to carry out those functions, there would need to be good reason to believe that it did hold it.
18. It is therefore important to understand the functions or parish councils such as the Council. The Local Government Association helpfully sets out the powers and duties of parish councils on its website: ⁴

'Parish councils have a variety of powers and duties, all of which impact directly on the community.

The following are all under the remit of local councils:

- Allotments
- Burial Grounds, Cemeteries, Churchyards and Crematoria
- Bus Shelters
- Bye-laws – the power to make bye-laws concerning: baths and washhouses (swimming pools), cycle parks, mortuaries and pleasure grounds
- Clocks – public clocks can be provided and must be maintained
- Community Centres, Conference Centres, Halls, Public Buildings
- Drainage – of ditches and ponds
- Entertainment and the Arts
- Footpaths
- General Spending – parish councils can spend a limited amount of money on anything they deem of benefit to the community that is not covered by the other specific responsibilities described in this list
- Gifts – parish councils may accept gifts
- Highways – lighting, parking places, right to enter into discussions about new roads and road widening, consent of parish council required for diversion or discontinuation of highway, traffic signs and other notices, tree planting and verge maintenance
- Land – acquisition and sale of
- Legal proceedings – power to prosecute and defend any legal proceedings in the interests of the community, power to take part in any public enquiry
- Litter - provision of litter-bins and support for any anti-litter campaigns
- Planning – parish councils must be notified of, and display for residents, any planning applications for the area. Any comments submitted to the planning authority by the parish council must be taken into account
- Postal and Telecommunication Facilities – power to pay a public telecommunications operator any loss sustained in providing services in that area

⁴ <https://www.localgov.co.uk/Parish-council-responsibilities/29135>

- *Public conveniences – provision and maintenance of public toilets*
- *Recreation – provision of recreation grounds, public walkways, pleasure grounds, open spaces, village greens, gymnasiums, playing fields, holiday camps and boating ponds*
- *Rights of Way – footpath and bridleway maintenance*
- *Seats (public)*
- *Signs – danger signs, place names and bus stops signs*
- *Tourism – financial contributions to any local tourist organisations allowed*
- *Traffic Calming*
- *War Memorials*
- *Water Supply – power to utilise stream, well or spring water and to provide facilities for general use'*

(The reference to acquisition and sale of land is by parish councils: they have the power to acquire and sell land).

19. In this context, I consider the various items of information requested by Mr Martyres:

- **Item 1:** the Council might be expected to hold this information on the Electoral Register. The Register holds information about occupation of premises rather than ownership. The request was: 'Please provide me with evidence to prove, beyond any reasonable doubt, that ...Arnold Martyres was an owner or occupier of Hill Villa at any time'. The Council says that it does not hold such information. It appears from its email of 7 July 2017 to the Commissioner to have searched the Register. One might have expected the Register, if it went back far enough, to show whether Mr Martyres had ever been an occupier of Hill Villa. The answer may be that the Register held by the Council around the time of the request does not reveal that he was an occupier for the period covered, in which case the response that it does not hold information establishing the veracity of the statement is correct. In any event, I have no reason to doubt the Council's assertion that it does not hold the information

In fact, whether the Council holds the information is academic because the exemption in section 40(1) would apply to any held information: 'Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject'. The requested information constitutes Mr Martyres' 'personal data' (as then defined in section 1 DPA 1998). Section 40(1) is an absolute exemption, such that the public interest test does not have to be carried out.

It appears from his Grounds of Appeal that Mr Martyres has asked for this information to challenge a council tax bill he has received. The Council is not the council tax authority and Mr Martyres would be better advised directing his concerns to the authority, Huntingdonshire DC

- **Item 2:** there is no reason for the Council to hold information about whether someone has ever been a prospective buyer of particular property. In any event, section 40(1) would apply to any information which was held

- **Item 3:** the request asks for confirmation that a named person (not Mr Martyres) bought and moved into a particular property in 1996. That information might be included in the Electoral Register but the Council says it is not, presumably because it is relatively old. Again, I have no reason to doubt what the Council says. The fact is that it does not hold information showing that the named person bought and moved into the relevant property in 1996
- **Item 4:** there is no reason for the Council to hold information about who has been landlord of particular property (even if they are also an occupier).
- **Item 5:** there is no reason for the Council to hold information about the relocation of residents out of the parish
- **Item 6:** again, there is no reason for the Council to hold this information
- **Item 7:** once again, there is no conceivable reason for the Council to hold this information
- **Item 8:** the Council says that it does not hold the witness statements referred to. There is no reason for it to do so
- **Item 9:** there is no reason for the Council to hold information about tenancies of land adjoined to a house and it says it does not
- **Item 10:** there is no reason for the Council to hold information about payment of rent
- **Item 11:** there is no reason for the Council to hold information about insurance of particular property. It is not a council tax authority
- **Item 12:** the Council might hold information about fly-tipping but it says that it does not hold the requested information. I have no reason to disbelieve it

20. In its email to the Commissioner on 7 July 2017, the Council explained that the only information within the scope of the request it might in principle hold was on the Electoral Register. However, its position, after conducting appropriate searches, is that the Register does not contain information proving the veracity of the various statements Mr Martyres made in his request. I accept that the Council has no motive falsely to deny that it holds relevant information on the Register (or elsewhere) and find that it does not. Whether he believes it should hold some of the information is immaterial.

21. Mr Martyres says that the Council could access much of the information which he has requested, including via data sharing agreements with other bodies. Indeed, a considerable amount is publicly available, he now asserts, but not easily accessible to a member of the public (but would be for the Council). As explained above, public authorities only have to disclose information which they hold (within the meaning of section 3(2) FOIA). The fact that they might be able to access information which they could then pass onto a requester is irrelevant if the

information is not held on its behalf (as I find it is not). The duty imposed by section 16(1) FOIA to provide reasonable advice and assistance to requesters does not extend to obtaining information so that it can be disclosed, as Mr Martyres argues.

22. I also find that the Council has otherwise complied with its duty under section 16(1). It signposted Mr Martyres to Huntingdonshire DC in relation to requests 10-12. There is nothing further it could reasonably be expected to have done in relation to the other requests.

Conclusion

23. For these reasons, the appeal is dismissed.

24. It seems to me that Mr Martyres may be abusing FOIA in his pursuit of various longstanding grievances. The Council is a small authority with limited resources which it is having to expend disproportionately in dealing with his requests. Should Mr Martyres make further requests on related matters, it may wish to consider whether they are vexatious within section 14(1) FOIA or represent repeated requests within section 14(2). The application of section 14(1) or (2) would, of course, have to be considered on their merits in the context of the further requests.

Signed

Judge of the First-tier Tribunal
Date: 18 September 2018