

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 April 2020

Public Authority: Dalton Piercy Parish Council

Address: daltonpiercyclerk@gmail.com

Decision (including any steps ordered)

1. The complainant has requested information with regards to a complaint made about him. The council responded that some information is not held, some information is available on its website and that some information has previously been provided.
2. The Commissioner's decision is that the council holds no further information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 27 April 2019 the complainant made the following request to the council:

"I request my public right of access information under the freedom of information act 2000: 1 The DPPC policy/ procedure regarding the DPPC investigation of residents complaints about other residents. Re the Processing of Personal Data: 1 Any data relating to me, or who I can be identified from , including correspondence. 2 the process of how this information is fairly and lawfully processed. 3 How long has this information been kept and how is it kept."

5. The council confirmed receipt of the request on the 28 April 2019. Then following several pieces of correspondence between the complainant and the council, the complainant made a refined request on the 29 May 2019.

6. The complainant complained to the Commissioner on 30 July 2019 that the council has not provided the information requested.

7. On 5 September 2019, the complainant wrote further to the council in relation to his 29 May 2019 request refining it by stating specifically what he required. This being:

"1. I require all correspondence DPPC has sent about myself to [name redacted].

2. I require minutes of the meeting/s where the council had the resolution to instruct the clerk to write to [name redacted] about me. (and there reasons for doing this.)

3. I require minutes of the meeting where the clerk informed the council of this complaint.

4. I require minutes of the meeting where the council had the resolution to instruct the clerk to inform me of the complaint , issue instructions regarding the rules and to with hold the complainants identity.

5. I require the policy DPPC followed regarding the investigation of [name redacted] complaint against me: To clarify- The procedure DPPC followed regarding the investigation of residents complaints about other residents (initially asked for on the 27th April 2019).

8. The council responded on the 16 September 2019 to each of the five parts of the request.

9. For part 1, the council advised that it has not sent any correspondence to [name redacted] about the complainant or his wife.

10. For parts 2 and 4 of the request, the council stated that no information is held.

11. For part 3 of the request, the council stated all minutes are available on its website and provided the website link.

12. For part 5 of the request, the council advised that it sent a copy of the complaints procedure earlier in the year and it is also available on its website.

13. The council carried out an internal review on the 31 October 2019 concluding that it was satisfied with the handling of the request and upheld its original response.

Scope of the case

14. The complainant contacted the Commissioner further to complain about the response received to his request as he considers that further information is held.
15. The Commissioner has advised the complainant that part 1 of his request is a request for his own personal data, and so she is unable to investigate that part of the request under the FOIA, and consequently this decision notice, as any complaint with regards to a requestors own personal data has to be considered separately under the General Data Protection Regulations (the GDPR).
16. The Commissioner notes that information, if held, to points 2 to 4 of the request could also be all or in part personal data of the requestor. However without viewing the information, it is not possible to determine. Therefore the Commissioner considers that she needs to determine whether any information is held before she can consider if it falls within the remit of the FOIA.
17. The Commissioner therefore considers the scope of the case is to determine whether the council holds any further information to parts 2 to 5 of the complainant's refined request of 5 September 2019.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

18. Section 1 of 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 within the scope of the request, and if so, to have that information communicated to him.
19. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

20. With regards to part 5 of the request, the council states it's complaint's procedure¹ is available on it's website.
21. The Commissioner asked the council whether any other policies or procedures are held that it may have followed with regards to the investigation of residents' complaints about other residents?
22. It has told the Commissioner that the council does not investigate complaints from a resident about another resident, as this would be a civil matter.
23. The council says, however, that it is duty bound to act upon any person breaking the rules laid out in its Village Green Policy² and any person who should be complying with the Allotment Rules and Regulations³. All these documents are readily available on its website.
24. The complainant has stated that for parts 2 and 4 of the request, the council would have had to instruct the clerk in these matters and so there should be a record of the instruction.
25. The council has told the Commissioner that there was no instruction because responding or acting on these types of issues is part of the clerk's job remit. It advised that the information cannot be found in the minutes because there was no instruction from the council.
26. The council states that the relevant minutes to part 3 of the complainant's request are the 3 May and 13 June 2019 minutes which it says have previously been provided to the complainant.
27. The Commissioner sees that parts 2 to 4 of the request are specifically asking for information held within council minutes and so there is a very specific area that needs to be searched - that being the minutes of the council. The council makes its minutes available on its website. It has

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<https://daltonpiercy.org/dalton%20piercy%20parish%20council/policies%20and%20standing%20orders.html>

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<https://daltonpiercy.org/dalton%20piercy%20parish%20council/policies%20and%20standing%20orders.html>

³ <https://daltonpiercy.org/the%20allotments.html>

also provided the minutes it considers relevant to the request, as advised in the above paragraph.

28. It is therefore difficult to see where else the council would search for 'minutes' if these are published on its website and available to all to view.
29. The Commissioner has viewed the minutes on the council website which run from April 2017, every month, to January. There does not appear to be any missing months.
30. Whether the council should be recording the information that has been requested by the complainant, is not for the Commissioner to decide. Even if the council are supposed to have minuted records of the requested information, but have not, it is outside the Commissioner's remit to require the council to record it. The Commissioner's remit is to determine whether the requested information is held, not whether it should be held.
31. The council has told the Commissioner that no information has been deleted or destroyed and that there is nothing else held with the scope of the request at parts 2 to 5.
32. On review of the above, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold any further information within the scope of the request other than what is publicly available on its website.

Right of appeal

33. 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

34. 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.
35. 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

Andrew White
Group Manager
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