



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

**NCN: [2025] UKFTT 00258 (GRC)**

**Appeal Reference: FT/EA/2024/0411**

**Determined without a hearing on 19 February 2025**

**Before**

**JUDGE ANTHONY SNELSON  
TRIBUNAL MEMBER KATE GRIMLEY EVANS  
TRIBUNAL MEMBER EMMA YATES**

**Between**

**RICHARD DAVID WILLIAM LILLEY**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**DECISION**

The unanimous decision of the Tribunal is that:

- (1) The information sought by the Appellant's request, in so far as it has not been disclosed, was not held by the relevant public authority at the time of the request.
- (2) Accordingly, the appeal is dismissed.

**REASONS**

*Introduction*

1. The Appellant, to whom we will refer by name, is a resident of Fosdyke, a village in Lincolnshire.

2. On 16 January 2024 Mr Lilley wrote to Fosdyke Parish Council ('the Parish Council') requesting information under the Freedom of Information Act 2000 ('FOIA')<sup>1</sup> in the following terms:

**Internal audit reports for the following years, 22/23, 21/22 and 20/21**

3. The Parish Council responded on 19 February 2024, enclosing the report for 2022/23 and explaining that searches for the reports for the other two years had been unsuccessful save that one page of the 2020/21 (page 4 of 6) and a one-page Certificate of Exemption in respect of the year 2021/22 had been found (those pages were disclosed). Mr Lilley was assured that further searches would be carried out.
4. On 19 April 2024, the Parish Council wrote again to Mr Lilley stating that it had become clear that the reports for 2020/21 and 2021/22 had been lost and were irretrievable.
5. In the meantime, on 21 March 2024, Mr Lilley had complained to the Respondent ('the Commissioner') about the way in which the Parish Council had dealt with his requests. He challenged the assertion that the material could not be found and stated in any event that he believed that the Parish Council held more information than it had acknowledged. An investigation followed. The Parish Council's account was that, as a consequence of the serious illness from 2021 onwards of its long-standing clerk, standards of record-keeping had greatly deteriorated and items had been lost. The nature and extent of the searches (of paper records and a laptop) were explained. The Commissioner also established that members of the parish community (including Mr Lilley) had been invited to visit the Parish Council premises in May 2024 and see the records for themselves, but the invitation was declined. The account given by the Parish Council was consistent with that provided to the internal auditor who visited the Parish Council on 4 June 2024 and produced a report dated 16 June 2024.
6. In the course of the investigation a further page within the scope of the request was found and, pursuant to a direction of the Commissioner, disclosed to Mr Lilley.
7. By a Decision Notice dated 26 September 2024 ('the DN'), the Commissioner determined, on a balance of probabilities, that the Parish Council did not hold the disputed information.
8. By his notice of appeal dated 15 October 2024 Mr Lilley challenged the Commissioner's decision. He made a number of criticisms of the procedural management of the request by the Parish Council. He questioned the assertion that the missing items could not be found and contended that, if the documents were missing from the Parish Council's records, it was in a position to obtain

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<sup>1</sup> To which all section numbers mentioned below refer.

copies from 'the auditor'. Its failure (as he saw it) to procure copies by that means argued against its claim that the records were lost. On the strength of this (perceived) failure, he even suggested that the Parish Council might be resorting to criminality by breaching FOIA, s77.<sup>2</sup>

9. By a response dated 29 November 2024 the Commissioner resisted the appeal, essentially on the grounds set out in the DN.
10. The appeal came before us for consideration on the papers. Both parties had expressed themselves content with that procedure and we were satisfied that it was just and proportionate to decide the matter without a hearing.

### *The applicable law*

11. By FOIA s1(1) a person making a request for information to a public authority is entitled to be told in writing by the public authority whether it holds information of the description specified in the request and, if so, to have the information communicated to him/her.
12. For the purposes of FOIA, 'information' means information recorded in any form (s84).
13. Information is 'held' by a public authority if it is held by it otherwise than on behalf of another person, or it is held by another person on behalf of the authority (FOIA, s3(2)). Whether particular information is 'held' by a public authority is essentially a question of fact (*University of Newcastle upon Tyne v ICO and BUAV* [2011] UKUT 185 AAC, [41]).
14. Any question as to whether requested information is 'held' is to be decided on a balance of probabilities (*Bromley v Information Commissioner and Environment Agency* EA/2006/0072).
15. The appeal is brought pursuant to FOIA, s57. The Tribunal's powers in determining the appeal are delineated in s58 as follows:

**(1) If on an appeal under section 57 the Tribunal considers –**

- (a) that the notice against which the appeal is brought is not in accordance with the law; or**
- (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,**

**the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.**

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<sup>2</sup> That section makes it an offence for a person to alter, deface, block, destroy or conceal any record held by a public authority with the intention of preventing applicant from obtaining disclosure of some or all of the information requested.

**(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.**

*The rival cases*

16. Mr Lilley's case before us was consistent with his notice of appeal. He did not moderate his stance. Rather the reverse: he added a new allegation against the Parish Council of 'fabrication'.
17. The Commissioner's case was consistent with the DN. Proper searches appears to have been carried out. It seemed, on a balance of probabilities, that the disputed information was not held. In response to the argument that the missing material could be recovered from the auditor, the Commissioner noted that the question for the Tribunal was whether the disputed information was (at the time of the request) 'held' by it or by someone on its behalf. If copies were held by the auditor at all (as to which there was no evidence), there was no basis for saying that the auditor held them on behalf of the Council.

*Conclusions*

18. In our view, the appeal is misplaced. We have a number of reasons.
19. First, there is nothing inherently implausible in the Parish Council's response to the request.
20. Second, no inconsistency in the Parish Council's narrative was uncovered in the course of the Commissioner's investigation.
21. Third, the allegations or suggestions of skulduggery, and even criminality, on the part of the Parish Council strike us as wild and deplorable. Such things should not be alleged or suggested in the absence of cogent evidence. Here there is no evidence whatsoever. No supposed culprit is identified. No motive is proposed.
22. Fourth, Mr Lilley's argument that the Parish Council could source the missing documents through the auditor reveals a profound misunderstanding. The only question before the Tribunal is whether, at the time of the request, the disputed information was 'held' by the Parish Council or by a person 'on behalf of' the Parish Council. If a public authority does not 'hold' relevant information (directly or through a person acting on its behalf) at the time of the request, the fact (if it is a fact) that it may have a means of obtaining the information through a third party is irrelevant. We do not know if the auditor held the information at the time of the request. There is simply no evidence on which we could make such a finding. Still less, is there an evidential basis for a finding that, if it did hold the information, it did so 'on behalf of' the Parish Council. For what it is worth, our strong instinct would be to think that in such circumstances, the

auditor would hold the information for its own professional purposes and not in some sort of agency capacity on behalf of the Parish Council.

23. Fifth, it is telling that Mr Lilley and others of his mind turned down the invitation to visit the Parish Council premises. The reaction of the invitees could be interpreted as stemming from a fear of being confronted with a compelling case which they did not wish to have to accept.
24. Sixth, for all of these reasons, we entirely agree with the Commissioner that it is more likely than not that the information was not held at the time of the request, either by the Parish Council or by any other person on its behalf. The Commissioner's decision was in accordance with the law and there is no ground for interfering with it.

*Outcome*

25. The appeal is dismissed.

(Signed) Anthony Snelson  
Judge of the First-tier Tribunal

Dated: 25 February 2025

Decision given on date: 26 February 2025