

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2012

Public Authority: Willington Parish Council
Address: PO Box 8108
Derby
DE1 0ZU

Decision (including any steps ordered)

1. The complainant requested information about the salary and employment details for the Parish Clerk. Willington Parish Council ('the Council') refused to comply with the request as it viewed the request to be vexatious, and cited section 14(1) of the FOIA as its grounds for refusal. The Commissioner's decision is that the request is vexatious within the meaning of section 14(1) and the Council was not obliged to comply with it. The Commissioner does not require any steps to be taken.

Request and response

2. On 10 March 2012, the complainant wrote to Council and requested information in the following terms:

"Willington Parish Council being a caring employer, who employs one employee, namely the Parish Council Clerk.

UNDER THE FREEDOM OF INFORMATION ACT.

Could you please tell me if the salary figure, paid to the employee, listed in the minutes of the monthly accounts, is paid gross or net?

UNDER THE FREEDOM OF INFORMATION ACT.

Could you please tell me if the Clerk to Willington Parish Council is hourly paid, and how many hours a week/month is she contracted to work, under the terms of her Contract of Employment?

UNDER THE FREEDOM OF INFORMATION ACT.

Could I please have a copy of the Willington Parish Council generic Contract of Employment?

UNDER THE FREEDOM OF INFORMATION ACT.

Could you please tell me what percentage of the payment made to H.M.R.C. for P.A.Y.E. purposes, is paid by W.P.C. and what percentage is paid by the employee, for Income Tax and N.I.C's purposes."

3. The Council responded on 27 March 2012 stating it considered the request to be vexatious and as such it was relying on section 14(1) of the FOIA. It referred the complainant to the Commissioner if he was dissatisfied with the response.

Scope of the case

4. The complainant contacted the Commissioner on 31 March 2012 to complain about the way his request for information had been handled.
5. The Commissioner considers that the scope of this case is to examine the Council's application of section 14(1) of FOIA to the complainant's request and to determine whether the Council has, or has not, correctly refused the request as vexatious.

Reasons for decision

Section 14 - Vexatious Requests

6. Section 14(1) of the FOIA states that, section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
7. In consideration of whether the request can correctly be refused as vexatious, the Commissioner will consider the context and history of the request. He will consider the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors, which may be helpful in reaching a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
 - 1) whether compliance would create a significant burden in terms of expense **and** distraction
 - 2) whether the request is designed to cause disruption or annoyance

- 3) whether the request has the effect of harassing the public authority or its staff
 - 4) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - 5) whether the request has any serious purpose or value
8. It is not necessary for all five factors to be engaged, however these are elements which are commonly encountered and the balance of these factors can be helpful in illustrating the reasons for any decision. The Council has given its position, in its submissions to the Commissioner, which takes these five factors into account. The analysis below will therefore use some of these factors as convenient headings, but the matter will also be considered 'in the round'.

Would compliance create a significant burden in terms of expense and distraction?

9. The Council advised that the complainant first came to its attention in July 2011 when it was copied in to 34 emails, which were also copied to Derbyshire County Council ('DCC') and South Derbyshire District Council ('SDDC'). The emails concerned a piece of land that the Council held a lease with DCC for, that the local public house had applied to lease from DCC. The complainant alleged that the leasing of the land to the public house was in contravention of the provisions of the Local Government Act 1972. He subsequently raised other concerns about the public house and its land; that it had cited too many picnic benches in contravention of its planning permission, that it was planning to remove a hedge in its car park and the impact this would have on a public footpath, and a planning application for development on its land.
10. The Council was unable to provide the Commissioner with copies of the original 34 emails it was copied in to by the complainant as it had to delete them due to the fact that its email account became "full" and it was unable to receive any "new" emails from recipients. However, the Council provided the Commissioner with copies of information requests and other correspondence it had received from the complainant between 21 July 2011 and the date of the request dated 10 March 2012, which is the subject of this notice.
11. The Council considers that the volume of correspondence and requests it has received from the complainant has created a significant burden and distraction on its resources. It advised that it only has one paid employee (the Clerk) and has limited funds which are negotiated with SDDC on an annual basis. The Council also advised that the complainant has attended many Council meetings since September 2011 where he has made representations and asked questions, primarily about the

piece of land in question. Later requests submitted by the complainant related to the Clerk (salary and employment details) and the Chairman of the Council (relating to a declaration of interest he made in connection with a donation made by the Council to an organisation who had requested funding). The Council's position is that dealing with the volume of contact from the complainant, both in writing and verbally has taken up a considerable amount of time, effort and cost on its part and diverted staff from other core functions.

12. The complainant has referred to a particular information request that he submitted to the Council on 3 November 2011 for letters between the Council and a local public house about the removal of a hedge ('the 3 November 2011 request'). The Council initially responded advising that no letters had been sent and only emails were exchanged. The Council added that the information had "been incorporated into the minutes. No further information is available". However, the complainant pressed the Council for further information on the issue, including raising it at a Council meeting on 8 November 2011. He was provided with copies of the emails in question on 18 November 2011. The complainant alleges that the volume and frequency of his correspondence was largely down to the Council's initial response stating that "no further information" was held, when he was subsequently provided with information that the Council held at the time of his request. The complainant subsequently made a complaint to the Council about the Clerk in relation to her handling of this request.
13. The Commissioner notes that, in addition to the 34 emails which the complainant copied to the Council in July 2011, between 21 July 2011 and 10 March 2011, the complainant contacted the Council on at least 56 occasions by email. This comprises a mixture of information requests (some of which were repeated on a number of occasions), and other correspondence. On one particular day, the complainant sent 15 emails to the Council, comprising 4 information requests (3 of which were repeated requests), and 11 other emails/requests for clarification of information contained within minutes of meetings.
14. The Commissioner notes the complainant's comments about the 3 November 2011 request and accepts that the Council's handling of this request did, to an extent, result in further communications from the complainant. The request was for "letters" between the parties and the Council stated that no letters were held. However, it went on to state that emails had been exchanged, but maintained that all relevant information had been incorporated into the minutes of the meeting and "no further information" was held. It is clear that the Council held copies of emails relevant to the request as it provided them to the complainant on 18 November 2011. The Commissioner notes that the information was provided within the 20 working days as provided by section 10 of

the FOIA, but accepts that the Council's statement that "no further information" was held was incorrect. He also accepts that this response lead to additional contacts from the complainant, including the submission of a complaint about the conduct of the Clerk. However, the Commissioner also notes that following the initial response to this request from the Council at 8:26 on 3 November 2012, the complainant sent a total of 9 further emails to the Council between 9:59 and 20:05 about its response that no further information was held. Some of these emails query a lack of response to earlier emails, and others refer to the complainant making a complaint about the Clerk. The Council's view is that the complainant's emails on 3 November 2011 became increasingly aggressive when a response was not sent to him within a couple of hours.

15. The Commissioner considers that compliance with the individual request in this case, in isolation, may not have been too burdensome, however, when taken in context, the Commissioner is satisfied that the request formed part of a collective burden of correspondence that the Council had handled for around 9 months. He also accepts that the distraction from its other duties had been substantial, particular in view of the size of the Council and the number of paid employees (one). Although the Commissioner accepts that, to a certain extent the volume of correspondence from the complainant was influenced by its handling of the 3 November 2011 request, the Commissioner does not accept that this factor alone explains the volume and frequency of correspondence the Council received from the complainant. Even if correspondence which it could be argued resulted from the Council's handling of this particular request was not taken into account, the Commissioner is satisfied that the Council has demonstrated that it has spent a disproportionate amount of time dealing with requests and queries brought by the complainant and this imposed a burden on the limited resources of a small Parish Council.

Whether the request is designed to cause disruption or annoyance

16. The Council contends that the complainant has been abusive and his emails have been aggressive in tone. The Council also considers the complainant has demonstrated aggressive behaviour at Council meetings.
17. As this factor relates to the requester's intention, it can be difficult to prove. Cases where this is a strong argument are therefore likely to be rare. However, if a requester explicitly states that they want to cause maximum inconvenience, the request will almost certainly be vexatious.
18. Having considered the representations evidence by the Council, and the background, context and subject matter of the request, the

Commissioner is not satisfied that there is any real evidence to support the argument that the complainant intended to cause disruption and annoyance to the Council and its staff. In the Commissioner's view there is insufficient evidence to comment on the intention of the complainant. He notes that the Council's arguments refer primarily to the complainant's behaviour which is considered later in this notice. Accordingly, he does not attribute any weight to this argument.

Whether the request has the effect of harassing the public authority or its staff

19. The Council has argued that the volume and frequency of correspondence has had the effect of harassing the organisation. It is also of the view that the contact from the complainant has become increasingly hostile and aggressive, both in terms of the content and the fact that he chased for responses to queries and requests within a few hours of sending them to the Council.
20. Due to the distress and worry caused by the volume, frequency and tone of the complainant's contacts, the Clerk formally raised the matter with the Council as her employer. The Council discussed the matter at its meeting on 13 December 2011 and it was agreed that the Council would write to the complainant advising him he would need to send all future correspondence (via email and post) to the Chairman of the Council and not the Clerk. In this letter (16 December 2011), the Council also advised the complainant that any future correspondence would be disregarded if it was deemed to be of a threatening nature, contained personal abuse or considered to be persistent and/or vexatious. The letter also advised that failure to adhere to the instructions about future contact would result in further action being taken by the Council.
21. Despite being advised that all contact must be addressed to the Chairman, the complainant sent a further communication (a new request for information) to the Clerk on 12 January 2012. As a result, the Council contacted the complainant on the same day to remind him of the restricted contact procedures it had implemented on 16 December 2011. The Council informed the complainant that further contact addressed to the Clerk would result in further action, and that further action would involve contacting the Police.
22. The complainant continued to correspond with the Council. He queried the redaction of personal details from a copy of a letter which was provided to him in response to his request of 12 January 2012. He made a further information request about this subject matter on 15 January 2012 and the request for information which is the subject of this notice. He also sent a number of queries about these new requests and

correspondence following receipt of the outcome of his complaint about the Clerk.

23. As a result of continued contact from the complainant, on 13 March 2012, the Council officially reported the complainant to the Police for harassment and intimidating behaviour. The Police asked the Council if they would be prepared to visit the complainant accompanied by the Police to discuss the matter, with a view to considering whether to issue a Police Information Notice which the Police may issue whether there are allegations of harassment. Members of the Council were concerned at the prospect of visiting the complainant's home, so as a result the Police visited the complainant unaccompanied. The Council and the Commissioner are unaware of the exact outcome of this visit, or whether any formal action was taken by the Police. The complainant confirmed to the Commissioner that he did receive a visit from the Police and he explained the concerns he has surrounding matters associated with the Council. The complainant advised the Commissioner that the meeting was amicable and when the officers left they confirmed that they would also be visiting the Chairman of the Council. The Police also advised the complainant that they had been in contact with the District Council who had advised that he did not see the need for police involvement.
24. On 6 November 2011 the complainant submitted a complaint to the Council about the conduct of the Clerk, and specifically in relation to her handling of the 3 November 2011 request, the way that the minutes of Council meetings were recorded by the Clerk, and the fact that emails he sent to the Council on 26 August 2011 were "blocked". In his complaint, the complainant stated that:
- "A clerk to a Parish Council should have integrity, credibility and impartiality, and should not be judgmental. In my dealing with the Clerk of Willington Parish Council I have not found these attributes".
25. The Council considered the complaint at its meeting on 10 January 2012. It considered four main issues;
- the recording of minutes
 - the blocking of emails
 - the information request of 6 November 2011
 - Postscript notes

The Council wrote to the complainant on 12 January 2012 to advise of the outcome of his complaint. The Council rejected the first two issues and advised that it had no comment on the second two issues. The Council also advised that the action it had agreed to take as a

result of the complaint was that it would revise its complaints procedure, it would adopt a vexatious policy and that it would adopt an inspection of documents policy.

26. The complainant was extremely dissatisfied with the outcome of his complaint. He wrote an open letter to the Chairman and members of the Council on 9 February 2012. In this letter he stated that the four issues which the Council had considered did not have any relevance to his complaint, stating that his "actual complaint was that the Clerk lied to me [in relation his request for information of 3 November 2011]". The complainant alleged that the Council's complaint process was biased against him and that if he had received a fair hearing by an independent committee his complaint would have been upheld. He referred in particular to a statement which the Chairman had made in front of members of the Council that its own complaints process was biased in favour of complaints. He also referred to the Council's letter of 16 December 2011 advising him of the restricted contact process which had been introduced as it referred to his "harassment of the Parish Council Clerk". The complainant believes that the contents of this letter had been mentioned to Council members who considered his complaint against the Clerk, which he felt added further weight to his argument that the complaints hearing was biased against him.
27. The Council has referred to particular comments in communications from the complainants that it considers to have had the effect of harassing and causing distress to its staff, including a reference to Council members as "idiots" in reference to a meeting the complainant attended and a particular Councillor being referred to as "ginger-haired" on 9 February 2012. The Council has also referred to other comments which the complainant made, particular about the Clerk and the Chairman. Some examples of these are below:

"If you do not like my questions and you take them personally then you should not be doing the job of clerk"

"the minutes should be written up in the way that the meeting is conducted and what peoples say, not whether you like what they say, it is not your job to be judgmental, stick to the facts and not what you perceive to be the facts"

"I would presume that as the Clerk you have integrity, credibility and impartiality. Please exercise all these attributes when you answer my emails"

"You are obviously not the main person on WPC and I appreciate that whoever you are getting in touch with about my complaint is giving you some bad advice by telling you to ignore me. I am certainly not a person

to be ignored. [name redacted] will vouch for that, ask him, if you choose to keep ignoring me then you will leave me no option but to make our correspondence known to the people of Willington, through the notice boards and the internet"

"she [the Clerk] should stick to the facts and record them in a truthful and impartial manner....A clerk to a Parish Council should have integrity, credibility and impartiality and should not be judgmental. In my dealings with the Clerk of Willington Parish Council I have not found these attributes"

"If I was deliberately misled/lied to by the Clerk to WPC, then I think that she should resign or be dismissed. If the Clerk was being badly advised by you [the Chairman] and you told her to withhold information from me/tell me an untruth, then I think that you should resign"

"I am saying that your complaints procedure is biased against me"

"I think it is common knowledge that I am not a fan of yours [the Chairman], I don't like your attitude at Council meetings but hey! Its Christmas. Feliz Navidad"

"I'll only cause you to be frustrated or worried when I am not told the truth and I will always have sufficient grounds for complaint **but I'll never win** but I will always be there...in my opinion at the moment the only thing that happens, if the Chairman does not like the question, he just ignores it or lots of words come out but he does not actually say anything of meaning....if I had had a fair hearing against your Clerk by an independent hearing I would have won hands down, because my complaint was that she told me lies, and she did [read the emails]"

28. The Council's main contact address was the home address of the Clerk. The Council advised that, as a result of the contact and behaviour of the complainant in this case, it has taken the decision to use a PO Box address as the main postal contact for future enquiries, at a cost of over £200.00.
29. The Council also contends that the complainant has been aggressive and hostile at Council meetings, and was asked to leave a meeting on 17 April 2012 as he became aggressive. The complainant refutes that he has been abusive at Council meetings, with the exception of one meeting where he admits that he called the owner of the public house involved in the land dispute a liar. The complainant confirmed that he was asked to leave a Council meeting, but contends that this was because the Chairman did not like what he was saying. He provided the Commissioner with a copy of the statement he was reading out at the meeting in question which was primarily about freedom of speech. The

statement included the following reference, which is the point at which the Council asked the complainant to stop:

"However, seeing that this is England, and not Syria or North Korea, and as far as know still a democratic country, I will not allow you to suppress my right to Freedom of Speech, as you are trying to suppress my rights under the FOI Act, by threatening me with the police just because you do not like the questions I ask, and challenge you for answers".

Whilst it appears that the complainant was unable to read out the whole of the statement he had prepared, the Commissioner notes that it also contains offensive comments about the Chairman, referring to him as patronising, condescending, supercilious and that he has a persecution complex. The complainant disputes that he was asked to leave the meeting and claims that he left of his own accord.

30. In terms of the volume and frequency of contact, the complainant alleges that this was primarily because of the way the Council handled the 3 November 2012 request, referred to earlier in this notice. In terms of the content of his communications, the complainant cannot see any problems with the tone of his emails, and states that "I am a very persistent person when I am being deliberately misled, and this may come across as being abrupt".
31. Given the circumstances of the request and the history of contact between the parties, the Commissioner considers that the effect of the request is likely to harass the Council.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

32. As well as corresponding with the Council via email about matters associated with the public house and the specific piece of land, the complainant also attended Council meetings where he repeated his concerns about the piece of land in question. There are differing accounts of the complainant's behaviour at those meetings. The Council advise that the complainant was asked to leave a meeting on 17 April 2012 and the complainant alleges that he left of his own accord.
33. It is clear that the complainant has submitted a large volume of correspondence to the Council about the particular piece of land, some of which was copied to the Council, and some directed to the Council. Following provision of information relevant to the 3 November 2011 request the Council advise that the complainant transferred his attention to the Clerk and Chairman of the Council. As mentioned earlier in this notice, he submitted a complaint about the conduct of the Clerk, and information requests about a donation request submitted to the Council

by a local community group, and a declaration of interest made by the Chairman in relation to the group. The Council disclosed a redacted copy of a letter from the community group in relation to a request made by the complainant, withholding some personal details under section 40 of the FOIA, namely the contact details of the individual. The complainant disputed the redactions made to this letter, alleging that the information had been withheld as the Chairman had "something to hide" and that he was "going to an awful lot of trouble to hush this up". The complainant also said that in his opinion "you do not have to be a rocket scientist to see why you have done this, but you should not be allowed to get away with it. I think you should do the honourable thing and resign".

34. The Council drew the Commissioner's attention to the fact that some information about the Clerk's salary, namely payments made to her and payments made to HMRC in respect of her salary was already readily accessible to the requester. The complainant has acknowledged that this information is available as he provided the Commissioner with a copy of a letter he sent to the Chairman of the Council dated 30 March 2012 (three days after the date of the refusal notice. In this letter the complainant raised a number of queries, including:

- the differing amounts paid to the Clerk each month, which suggested that she was hourly paid
- a salary payment made at the beginning of November 2011 in respect of the salary for November 2011. If the Clerk was hourly paid, how could the Council know at the beginning of the month how many hours she would work in the month.
- The figures contained in the minutes represent the actual payments made to the Clerk and not her gross salary
- Who authorises any overtime worked by the Clerk and whether she completes time sheets for the hours worked.

The Council's position is that requesting further clarification regarding the Clerk's salary and employment is evidence of the complainant's obsessive focus on criticising the Clerk.

Whether the request has any serious purpose or value

35. The only argument that the Council has submitted in terms of the request having any serious purpose of value is that the original matter on which the complainant corresponded with the Council concerned a particular piece of land. However, when the Council advised him that it had no real role to play in the matter, the complainant then focussed his attention on the Clerk and the Chairman.

36. The complainant argues that his request of 10 March 2012 does have a serious purpose as it relates to expenditure of public money. As a Council tax payer and parishioner of Willington, he feels that the Council should be transparent about salary payments made to its employees.

The Commissioner's conclusion

37. The Commissioner is not satisfied that the complainant's request was designed to cause annoyance or has no serious purpose or value. However, it is clear to the Commissioner that dealing with the complainant's requests and correspondence has placed a considerable burden on the Council to the extent that staff have been working on administering the requests or responding to the complainant's communications for nine months, at times on an almost daily basis. Furthermore, this burden has not been confined to the company's Clerk of the Council. Due to restricted contact procedures the Council implemented on 16 December 2011, the Chairman became involved in responding to requests and correspondence. The Commissioner accepts that the burden of dealing with the correspondence has caused a distraction to the Council's core duties, particularly in view of the size of the public authority in that it has only one paid member of staff.
38. The Commissioner has some sympathy with the complainant's argument that he has been forced to persistently make requests and contact the Council because of its failings in responding to his requests properly. The Commissioner is aware that the responses to some of the requests have not always been satisfactory and would accept that this case is one which is finely balanced. However, taking all the circumstances into account the Commissioner's view is that the complainant's request can be seen as the continuation of a pattern of behaviour that is obsessive. The requests initially focussed on a particular piece of land, and subsequently his attention changed to specific individuals. The complainant often does not accept the responses he has received and asks to be told who has cleared the response or who is responsible for the accuracy of the information. This would point to the obsessive nature of the request.
39. The Commissioner has also taken into account the fact that the complainant has repeated some of his requests to the Council, both in writing and verbally at Council meetings.
40. Whilst clearly frustrated at the failure to secure information to which he feels he is entitled this has taken the form of very demanding communications which at times, as the Council has highlighted, takes an abrasive, accusatory or condescending tone. The effect of this coupled with the volume of the communications could, the Commissioner considers, reasonably lead to employees of the Council feeling harassed.

41. The Commissioner is aware that the complainant has alleged that information had been disclosed to him in response to a request after he had previously been advised that the information was not held. The Commissioner would point out that whilst it would appear that emails were subsequently disclosed after he had been informed they were not held, he does not consider there is sufficient evidence to suggest that this oversight was a deliberate attempt by the Council to mislead the complainant or conceal the existence of the information. The emails in question were ultimately disclosed within the time for compliance under section 10 of the FOIA.
42. Whilst acknowledging that the case is finely balanced the Commissioner is of the view that when viewed in the context of the complainant's previous requests and communications with the Council the request has imposed a significant burden, has at times had the effect of harassing the Council and can be seen as obsessive. For these reasons the Commissioner has decided that the request of 10 March 2012 can be fairly characterised as vexatious and therefore section 14(1) is engaged.

Other matters

43. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Internal review process

44. The Section 45 Code of Practice outlines the best practice for public authorities handling requests for information. Section VI provides guidance for public authorities in respect of its complaints procedure. It states:

"Each public authority should have a procedure in place for dealing with complaints both in relation to its handling of requests for information.
45. Although the Commissioner notes that the Council has a general complainants procedure, it does not have a specific internal review procedure for dealing with complaints about its handling of requests. Whilst the Commissioner is mindful of the demands placed on small first-tier councils, he recommends that, if practical, the Council implements a complaints procedure as outlined in the Section 45 Code of Practice, or utilises its general complaints procedure as a mechanism for dealing with complaints about its handling of requests under the FOIA, and refer to any complaints procedure in future refusal notices it may issue.

Right of appeal

46. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

47. 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.
48. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF