

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 17 July 2012

Public Authority: Long Sutton Parish Council
Address: 134 London Road
Long Sutton
Lincolnshire
PE12 9EE

Decision (including any steps ordered)

1. The complainant made two requests to Long Sutton Parish Council (the council) on 22 September 2011 and 27 October 2011 for information relating to the council's allotments and the number of burials in the parish cemetery. The council initially failed to respond to either of the complainant's requests. Following the Commissioner's involvement in the matter the council responded withholding the requested information under section 14 on the basis that the requests were vexatious.
2. The Commissioner finds that the council inappropriately applied section 14(1) as a reasonable public authority could not find either of the requests vexatious.. In addition to this, the Commissioner considers that the request dated 22 September 2011 is for environmental information, and accordingly he finds that the council could not rely on regulation 12(4)(b) as the request could not be considered manifestly unreasonable by a reasonable public authority. Due to the delay in issuing a refusal notice in respect of both requests, the Commissioner also finds that the council breached section 17(5) of the FOIA and regulation 14(2) of the EIR.
3. The Commissioner requires the council to reconsider the requests and either provide the requested information or issue a valid refusal notice which complies with section 17 of the FOIA or regulation 14 of the EIR as appropriate.

4. 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 22 September, the complainant wrote to the council and requested information in the following terms:

"Plans of allotments and other land owned or administered by the Parish Council"

6. On 27 October 2011 the complainant made a second request for the following information:

"The numbers of burials in Parish Cemeteries each year from 2001 to 2010. The numbers of Exclusive Rights of Burial issued each year from 2001 to 2010."

7. Following the intervention of the Commissioner, the council responded to both requests on 22 March 2012 stating that it had declined the requests as it deemed them to be vexatious. The reasons given were that the information was for personal use and dealing with the requests would cause unnecessary work for the clerk.
8. Following an internal review the council wrote to the complainant on 12 April 2012. It stated that the council had voted unanimously to uphold the original decision for the reasons given in the original response.

Scope of the case

9. The complainant initially contacted the Commissioner to complain about the lack of response to his two requests. The Commissioner wrote to the council about this matter, advising that it was obliged to respond to the requests. In the first instance, the council responded to the Commissioner explaining that it wished to rely on section 14 to withhold the requested information for both requests. The Commissioner advised that the response needed to be sent directly to the complainant. He also advised that based on the arguments the council had provided regarding their intended application of section 14, he would be unlikely to uphold such a response and provided his reasons for this. However, the council maintained its position and responded to the complainant accordingly. The council further upheld their response at internal review.

10. The complainant therefore complained to the Commissioner about the council's decision to refuse the requests on the basis that they deemed them to be vexatious.
11. The Commissioner has consequently considered the council's arguments in support of its decision to refuse the complainant's requests as vexatious under section 14(1) of the FOIA.
12. Due to the likelihood of information existing in relation to the request of 30 September 2011 falling within the definition of 'environmental information' in the EIR, the Commissioner has also considered whether the council were correct to apply the manifestly unreasonable exception at regulation 12(4)(b).

Reasons for decision

Section 14

13. Section 14 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".

14. Regulation 12(4)(b) of the EIR states that:

"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable"

15. The Commissioner's view is that it is permissible to refuse vexatious requests under regulation 12(4)(b) as manifestly unreasonable.
16. The Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
 - whether compliance would create a significant burden in terms of expense and distraction
 - whether the request is designed to cause disruption or annoyance
 - whether the request has the effect of harassing the public authority or its staff

- whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - whether the request has any serious purpose or value
17. The council has provided the Commissioner with the reasons why it has deemed the requests as vexatious along with some supporting evidence. However, the Commissioner notes that much of the evidence and many of the reasons given post-date both of the requests, and therefore cannot be considered in relation to the council's decision to refuse the requests as vexatious. To assist his analysis of the council's application of section 14 and regulation 12(4)(b), the Commissioner will, as far as possible, consider those arguments in the context of the five tests listed at the head of this section before making a decision based on the evidence as a whole.

Could the request fairly be seen as obsessive?

18. The complainant serves on two council committees, one for the council owned allotments and one for the new cemetery. The council is proposing to build a new cemetery in Long Sutton and one of the options being considered is to use land that is currently being used by the council for allotments.
19. The council has argued that the complainant is obsessive and his requests are part of his attempt to derail the new cemetery. Further to this it has said that every committee meeting relating to the cemetery attended by the complainant ends in disarray due to his behaviour and that the committee has not been able to make a decision about the matter in over a year.
20. The council has also explained that it is of the opinion that the complainant should not be on either committee as he has a declared interest due to his allotment tenancies. The council has explained that it sought advice about the complainant's position on the committee and was informed that whilst the council could not resolve that he does not take part in a committee, it would be inadvisable for him to do so as he would always have an interest so there would be little point in him being on such a committee.
21. The council has said that the complainant had made continuous requests at every meeting of the council and also at committee meetings since he was elected in May 2011. However, it has not provided any evidence of this other than to provide a copy of the minutes of the council meeting held on 28 July 2011 during which the complainant's request for a map of council owned land was discussed. The council resolved not to provide the information as there was no requirement for it at present and the

task would be too time consuming. There is no evidence of any other requests for information made by the complainant, either in writing to the council or in the available minutes of council meetings.

22. The council has provided a copy of a letter from the complainant to the clerk dated 24 March 2011 on the matter of allotments and has explained that this is to demonstrate the complainant's attitude. In particular it has suggested that the he changes the details he has previously provided which meant that it took almost two years to resolve the matter of allotment allocation.
23. Further to this, the council has said that during council meetings, whilst the complainant declares an interest in allotment matters, he refuses to leave the meetings when such matters are discussed. The council has explained that this is in breach of the Model Code of Conduct. In relation to this, the council has also advised that in 2008 the complainant was reprimanded by the Standards Committee for failing to declare and interest in allotment matters and subsequently failing to withdraw from the meeting.
24. It does not appear to the Commissioner that the complainant's requests are obsessive. The complainant has not had access to the requested information previously and the council has not provided any evidence of multiple or overlapping requests for the same or similar information. Whilst it is acknowledged that the complainant has a keen interest in allotment matters which may overstep council rules, this is not something the Commissioner would comment on other than to say that it does not go far enough to demonstrate obsession.

Is the request harassing the authority or causing distress to staff?

25. The council has argued that the complainant *"has a definite dislike of the clerk and continues to embarrass, harass and discredit her at every opportunity in public and in the press"*. It has provided the Commissioner with a local news article and a letter to support its position. The article is dated 4 March 2010 and is titled *"Councillor resigns over clerk issues.."*. It reports that the complainant *"could not work"* with the clerk and was frustrated by what he perceived to be a lack of speed in correspondence. Further to this, in a letter to the chairman of the council on 24 March 2010, the complainant states that he resigned from the council *"because the parish clerk was so obstructive and unhelpful"*.
26. As noted above, the complainant had resigned from his position as councillor, citing differences with the clerk as a reason for doing so. The Commissioner is aware that since his resignation, the complainant has been re-elected. The council has provided a copy of a letter it sent to

the solicitors of the clerk's former employer which stated that it was disappointed that the complainant was assisting them by providing his letter of resignation to them for use as evidence against the clerk in her employment tribunal.

27. Further to this the council provided a copy of a letter dated 7 November 2011 from a councillor of the council to the solicitors of the clerk's former employers. The Commissioner notes that the letter post-dates both requests, but it contains the councillor's recollection of the May 2011 council election in which the complainant visited his home and asked for support of his aim to "*have [clerk] off the council*". The councillor also states in his letter that the complainant has been critical of the clerk at every meeting.
28. The council has also provided the Commissioner with evidence that subsequent to the requests, the clerk has served a notice of intent of further action on the complainant in relation to harassment, libel and slander. The letters states that the clerk has written evidence that the complainant has sought to undermine her position as clerk since the elections in 2007. The Commissioner notes that the letter is dated 2 February 2012 and therefore post-dates the requests in this case. However, he acknowledges that it does demonstrate a difficult relationship which is ongoing.
29. The complainant has informed the Commissioner that he has "*a long term problem*" with the clerk. He has said that this is relating to problems he has experienced in accessing information which he maintains is relevant to assist him in his duties as parish councillor, particularly with regard to the committees he is on.
30. The Commissioner has also considered the language and tone of the complainant's requests to the council. Whilst it could be considered that there is an underlying tone of frustration at having to make FOI requests for information which he believes should be available in order to carry out his duties as councillor, this is directed at the council generally and there is no reference to the clerk in either request.
31. The Commissioner acknowledges that there is a somewhat fraught relationship between the complainant and the clerk. However, much of the evidence put forward by the council to demonstrate that the complainant's request is harassing to the council and the clerk post-dates the requests, and therefore cannot be considered in the application of section 14 or regulation 12(4)(b) in this case. Overall, the Commissioner's opinion is that the tone of the requests as well as the additional information provided would not be sufficient for a reasonably robust public official to consider the requests as harassing.

Would complying with the request impose a significant burden?

32. The council has stated that the requests would cause unnecessary work for the clerk including going through bank safety deposits and leases and manually going through burial records. It has said that the work is unnecessary because its only purpose would be *"to provide information to [the complainant] that he perceives but the council do not to be of use."* However, the council has not provided any evidence to suggest the level of burden this would cause.
33. The Commissioner considers it highly unlikely that it would be significantly burdensome for the council to provide the requested information. Further to this, if the likely burden was the council's only or main concern, it would be more appropriate to consider the cost of compliance alone under the relevant legislation if finding and extracting the relevant information would take longer than the appropriate limit.

Is the request designed to cause annoyance and disruption?

34. The council has explained that the complainant has made statements in the local media and at meetings which it suggests demonstrate that he intends to create mayhem at the council. It has provided the Commissioner with an article from the local press dated 16 December 2008 which quotes the complainant as saying that the council needs *"somebody to keep poking sticks and I have got one or two more things I want to poke sticks about."*
35. In addition to this, the council has argued that it strives to meet the complainant's requests, but he continually misleads everyone by changing the details he gives and the requirements of his requests then denies that he has done so. However, the council has not provided any evidence of this.
36. The Commissioner acknowledges that in the past the complainant has publically stated that he intends to 'poke sticks' at the council. However, the Commissioner has taken into account that this comment was reported in the local media some three years before the complainant made his requests. He has also considered that the requested information relates to the committees the complainant serves on as a councillor. It is therefore the Commissioner's view that there no evidence that the complainant intended to cause disruption or annoyance by making his requests.

Does the request lack any serious purpose or value?

37. The complainant has informed the Commissioner that the purpose of his requests is to obtain the information he maintains he needs in order to make informed decisions about the future of the allotments and the new

cemetery in relation to the committees he is on. He has explained that he has asked the council for this information informally but as it was not forthcoming, he resorted to making requests under the FOIA. The Commissioner recognises that the complainant maintains that the requested information will be of value to him and that it will be used in his work for the council.

38. The Commissioner has noted that subsequent to the complainant bringing his complaint to the Commissioner's Officer, the council resolved that members should not use outside bodies to circumvent council decisions. The council has stated that its position is that as a councillor, the complainant should abide by the council's decision and he is not entitled to use council correspondence for personal use. During the course of the investigation the Commissioner informed the council that the complainant has the right to make requests under the FOIA and that since the FOIA is applicant blind and disclosure would be to the wider world, it should not consider the complainant's position as councillor.
39. The Commissioner therefore considers that the complainant has a valid reason for making his requests under the FOIA and the EIR.

Summary

40. In considering all the arguments put forward by the council, the Commissioner acknowledges that the complainant has a difficult working relationship with the council, and particularly the clerk. However, he does not consider that this is sufficient for a reasonable public authority to consider the complainant's two requests for information to be vexatious or manifestly unreasonable. It appears that the council has failed to recognise that the FOIA and the EIR provide the public with access to official information, and has, to some extent, been blinded by its personal relationship with the complainant.
41. As the Commissioner has found that regulation 12(4)(b) is not engaged, he has not gone on to consider the public interest test required by regulation 12(1)(b) of the EIR.

Procedural findings

Section 17(5)

42. Section 17(5) requires that when a public authority considers a request is vexatious it should issue a notice saying so within 20 working days (subject to section 17(6) which is not relevant in relation to these particular requests).

43. The council failed to issue such a notice within the statutory time frame of 20 working days and was therefore in breach of section 17(5).

Regulation 14(2)

44. Regulation 14(2) of the EIR states that:

"The refusal shall be made as soon as possible and no later than 20 working days after the date of the request."

The Commissioner has found a breach of regulation 14(2) as the council did not provide a refusal notice to the complainant, citing the exception found at regulations 12(4)(b), within the statutory timeframe of 20 working days.

Right of appeal

45. 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

46. 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.
47. 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

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