

Freedom of Information Act 2000

Decision notice

Date: 16 December 2013

Public Authority: Bramshott and Liphook Parish Council
Address: The Parish Office
Haskell Centre
Midhurst Road
Liphook
Hampshire
GU30 7TN

Decision (including any steps ordered)

1. The complainant requested information relating to the processes Bramshott and Liphook Parish Council (the Council) undertook which brought about his dismissal. The Commissioner's decision is that the Council has correctly refused the request under section 14 of the Freedom of Information Act 2000 (the Act) as the request is vexatious. No further action is required.

Request and response

2. On 30 October 2012, the complainant wrote to the Council and requested information in the following terms:

"1. A copy of Terms and Reference for the investigation undertaken by the Accounts and Annual Return Working Party of the Finance & Policy Committee between 5th May and 14th September 2011, the name of the members, their roles and responsibilities in the investigation, the Council's procedure at the time under which the investigation was conducted, and a copy of the agenda item and formal minutes of the Council or Committee which proposed and recorded those decisions.

2. A copy of the agenda item and formal minutes of the properly constituted formal meeting of the Council or Committee which proposed and recorded the decision to permit and Bramshott & Liphook Parish Councillor, to make any audio or digital recordings of discussions or conversations that took place in the Haskell Centre or environs between

5th May and 14th September 2011, other than those recordings of properly constituted formal meetings of the Council or Committees as set out in the Parish Council's Standing Orders.

3. A copy of the agenda item and formal minutes of the properly constituted formal meeting of the Council or Committee which proposed and recorded the decision to appoint, and the formal letter of appointments for:

- a. SW19 Lawyers and any Legal Counsel.*
- b. Mr Simon Armstrong.*
- c. Mrs Karen Hill in respect of an investigation.*
- d. Ms J Homan in respect of a disciplinary hearing."*

3. The Council responded on 26 November 2012. It stated that it considered the request to be vexatious.
4. Following an internal review the Council wrote to the complainant on 12 March 2013. It stated that parts of the information requested were already available on the Council's website, or could be obtained through paying a fee to the Council.
5. The Council did not confirm in its internal review whether or not it considered the request to be vexatious. At the start of his investigation the Commissioner asked whether this was still the case, and on 14 August 2013 the Council confirmed that it still considered the request to be vexatious.

Scope of the case

6. The complainant contacted the Commissioner on 9 April 2013 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation the Council also applied section 31(3) (neither confirm nor deny information is held relating to law enforcement) to some of the information requested.
8. The Commissioner considers the scope of the case to be whether the request is vexatious and whether part of the withheld information is exempt under section 31(3).

Reasons for decision

Section 14 – vexatious requests

9. Section 14(1) of the Act states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

10. The Commissioner's guidance on the subject of vexatious requests¹ shows that they have a wide definition, which takes into account the various circumstances and context in which the request was made. There are a number of definitions for vexatious requests, which are largely the same in meaning but have different phrasing. In the case of *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC)*, the Upper Tribunal concluded that it would use the definition from the case of *Lee v Information Commissioner and King's College Cambridge EA/2012/0015, 0049 and 0085*:

"Having regard to the common usage of the term "vexatious" in legal parlance, we understand it to connote manifestly unjustified, inappropriate or improper use of a formal procedure."

11. The Commissioner considers this definition to be reasonable, and in making this decision has used this definition. To reach his decision the Commissioner has considered both the content of the request itself and the context in which it was made.

1

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

Reasons for disclosing the requested information

12. In his submissions to the Commissioner, the complainant stated that he was prompted to send in his request after the Council issued a press release about the dismissal of the then Town Clerk (the complainant).
13. The complainant argued that the press release, which appeared in a local newspaper and was placed on the Council's website, gave "confusing and contradictory" statements which raised "grave doubts in [his] mind over the governance issues in this respect".
14. Having reviewed the summary of events provided by both the Council and the complainant, and having examined the press release, the Commissioner recognises that the complainant may have a legitimately held view that the press release contains statements which could be interpreted as not accurately representing the processes undertaken by the Council in the disciplinary process. This would support the argument that the request has value and that there would be some public interest in greater detail of the processes undertaken being disclosed, in order to validate information which is already in the public domain.

Reasons for withholding the requested information

15. The Council explained to the Commissioner that the complainant had been sending in information requests for "many years" using the rights afforded to him under both the Act and the Data Protection Act 1998. The request of 30 October 2012 was the third that the Council had received inside a single month. During the complainant's disciplinary process he also obtained a large amount of information relating to his dismissal, although some was withheld as it was the subject of legal privilege. The Commissioner considers that this shows the complainant is continuing to pursue a matter in which he has already been provided with the information which is directly relevant to his employment dispute to date.
16. The Commissioner has considered the extent to which requests under the Act are an effective or legitimate means for the complainant to seek access to information about the employment dispute. Where other procedures are available for an individual to obtain information about a dispute, the Commissioner is mindful that this may affect the extent to which the impact of a request on a public authority can be justified. If the complainant has an issue with the disciplinary process then the appropriate route to resolve the core matters of his dispute is to appeal to an employment tribunal, something he has not done. To instead continue to bring up this issue by making requests to the Council is considered by the Commissioner to be evidence of a grievance and a clear indication of the request being an improper use of a formal

procedure. This adds weight to the argument that the request is vexatious and that the Council need not comply with it.

17. The request clearly relates to the Council's disciplinary process which resulted in the complainant being dismissed. Whilst the Commissioner considers the Council's press release could be misleading – although not in any regard close to being either defamatory or libellous to the complainant – it is also noted that the request does not specifically refer to the statements that the complainant identified to the Commissioner as being misleading. Instead, they relate to very specific information relating to the disciplinary process. Whilst this information would increase the public's knowledge of what occurred and accepts this as a possible motive for the complainant's request, the Commissioner considers it more likely that the complainant is intending to engage with the Council further on a matter it considers had been resolved, but which the complainant wishes to carry on with.
18. In its submissions the Council stated that dealing with the complainant is both expensive and burdensome. The Council only has 10 members of staff and the volunteered time of its Councillors, so to handle the disciplinary process it brought in specialist human resources and legal advice to ensure that the disciplinary process was properly followed. This has been an expensive process for a Parish Council to undertake. Further, the Council has argued that the Clerk and various Councillors have spent a disproportionate amount of time on this subject and now that the complainant has been dismissed it is considered to be an unwarranted burden to go over the matter again through the complainant's information requests, especially given that the complainant has not made an appeal through the appropriate channel to an employment tribunal.
19. The Commissioner's view is that this is reasonable, and particularly significant given the size and available resources of the Council. He also considers it relevant to note that the requests have been submitted by the complainant as an attempt to further what is essentially a personal grievance rather than a matter of wider public interest, albeit that there is clearly some legitimate interest among members of the local community. It is clear that with reduced public spending there is a greater focus on public resources. Both the First-Tier and Upper Tribunal have made it clear to stress the importance of protecting resources against unwarranted requests, and the Commissioner considers that this is applicable in this case. The complainant has already been through a long and expensive disciplinary process; it is inappropriate to use information requests to try and pursue the matter further when the employment tribunal provides the appropriate avenue for furthering his concerns.

Commissioner's decision

20. When making his decision the Commissioner has been mindful of the amount of information about the disciplinary process that is in the public domain. It is evident from a local community website that there is local interest in knowing more about the dismissal of the complainant and the issues surrounding it. This shows that the press release has not completely satisfied all of the public's demand for information about this subject and would add weight to the argument that more should be disclosed.
21. However, the Commissioner's view is that this request is clearly an extension of the complainant's grievance against the Council for the way in which he was dismissed. He notes this is a personal grievance pursued by the complainant about the outcome of a disciplinary process, rather than a matter of wider public interest. It is evident that the disciplinary process has not been exhausted as there has been no appeal to an employment tribunal, and therefore to pursue this through information requests is an unwarranted use of the Act when other formal processes are available for him to pursue. Further, the Commissioner considers that whilst the disciplinary process has been a necessary burden, it is still one that has impacted upon the resources of the Council and to further continue this matter through information requests is an unjustified use of the rights granted under the Act.
22. Having considered the evidence presented the Commissioner's decision is that the request is vexatious, and that the Council is correct to refuse to provide any further response to this request.
23. As the Commissioner has decided that the request is vexatious he has not gone on to consider the Council's application of section 31.

Other matters

24. Section 17(7) of the Act states that when refusing a request a public authority must provide particulars for its complaints procedure and also the applicant's rights under section 50 of the Act, which allows the applicant to appeal to the Commissioner. The Council did not do this in its refusal notice and so has breached section 17(7). The Commissioner asks that the Council takes greater steps in future to ensure that details of both its internal complaints procedure and contact information for the Commissioner are provided in its refusal notices.

25. The Secretary of States guidance for internal reviews is provided under the section 45 code of practice.² It states that an internal review should provide a re-evaluation of the case and make it clear whether the original decision is upheld, as well as providing details of how to make an appeal against the decision to the Commissioner. The Council did not include either of these important points, and the Commissioner asks that the Council ensures these points are followed in future internal reviews.

² <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

Right of appeal

26. 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: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

27. 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.
28. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF