

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2013

Public Authority: West Felton Parish Council
Address: Parish Office
Forton Bank
Montford Bridge
Shrewsbury
SY4 1ER

Decision (including any steps ordered)

1. The complainant made six different information requests between 30 June 2012 and 10 November 2012. West Felton Parish Council (council) refused to respond to the requests relying on section 14(1) of the FOIA as they deem the requests to be vexatious.
2. The Commissioner's decision is that the council is correct to rely on section 14(1) of the FOIA not to respond to the six requests. However, the Commissioner has found that the council has breached section 10 of the FOIA as they did not provide a response within the required timeframe.
3. The Commissioner does not require the council to take any steps.

Request and response

4. From 30 June 2012 to 10 November 2012 the complainant made the following six information requests:

30 June 2012

"As referred to in agenda item 10 b of yesterday's Parish Council meeting, a remittance of £1,344.00 to P & W Contracting (Burial ground work) was authorised for payment, whereas, in minute 060/12 b.. the price of the accepted quotation from that company amounted to £1,330.00. The situation was additionally confused by no indication having been given as to whether or not the VAT element was included in either or both figures. Moreover, that minute gives no indication as to whether or not

the requirement for three quotations to be submitted (as specified in Financial Regulation 11.1 I for a contract of this value) had been satisfied, no mention thereof having been included therein to any alternative quotations being obtained and considered. I shall be glad if you will inform me as to whether or not the requisite number of quotations were invited and/or submitted. I am not enquiring as to the amounts of any such quotations or the identities of the concerns submitting them. Unfortunately, I was unable to attend the meeting in question. Had I been able to do so, I would, no doubt, have asked that question at the time."

6 September 2012

"I am sending you this message on the assumption that you still hold the office of Parish Clerk. I am uncertain as to whether that is the true situation as, to date, I have not received the draft minutes of the August meeting of the Parish Council (that I was unable to attend), which presumably records the current situation in relation thereto. If that is not the case, perhaps the Chairman will pursue this enquiry please and, for that reason, I am copying him into this message (together with other members for their attention). The purpose of this message is to ascertain whether or not the requirement contained in Section 28(12) of the Localism Act 2011, relating to publicising the Parish Council's adoption of its current Code of Conduct, has been met. You will recall that, upon its formal adoption at its Extraordinary meeting held on 29th June 2011, by minute 099/12 b it was resolved to satisfy that requirement by including the decision in Shropshire Council's advertisement (at no expense). However, I have examined that advertisement and can find no trace of it having been done, for the purpose of complying with the statutory provision in question. It seems to include very tiny authorities, such as Montford Parish Council, but not West Felton. Should the statutory requirement have been met by another method, please inform me of the legitimate authority got doing so. I shall be glad if you will please inform me as to whether or not the Parish Council's decision, as referred to above, has indeed been implemented (together with information substantiation the situation) and, if not, why not? You may regard this message as being a formal request under the terms of the Freedom of Information Act 2000, Section 1."

6 September 2012

"On the same basis as referred to in my earlier message today, I shall be glad if you will please inform me as to whether or not the Parish Council's insurance cover included indemnity for its

members and officer(s) as referred to in paragraph 3 of NALC Legal Briefing L03-05, as updated on 23rd June 2012."

16 October 2012

"Please inform me as to the number of requests for information received by West Felton Parish Council (pursuant to the requirements of the above act) since 1st October 2011 and the number of such requests it has responded to during that same period of time."

25 October 2012

"As it is not published on the Parish Council's website (as required by statute), please arrange to provide me with a copy of its Register of Members' interests."

10 November 2012

"Please provide me with:-

- The minute number authorising awarding the contract referred to below to 'Rob Fardoe', and*
- A copy of the official order etc. sent to Mr. Fardoe in respect of the work in question, in accordance with the requirement of Financial Regulation 10.1.*

Please also inform me whether or not three estimates were obtained for the work, as referred to in Financial Regulation 11.1(i)."

5. The complainant contacted the council on the 19 September 2012 and 1 January 2013 to follow up on his information requests as no response had been received.

Scope of the case

6. The complainant contacted the Commissioner on 10 January 2013 to complain about the non-response to his information requests.
7. The Commissioner contacted the council asking it to provide a response to the complainant.
8. The council responded to the complainant on the 2 May 2013. It refused to provide the information stating that the complainant was vexatious.
9. Following the Commissioner's investigation, the council advised that it was relying on section 14 of FOIA, and that it now deemed the requests to be vexatious, not the requester.

10. The Commissioner has considered whether the council is correct to rely on section 14(1) of FOIA to refuse to respond to the requests.

Reasons for decision

11. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
12. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.
15. The council has broken down their arguments into set categories to demonstrate why they believe section 14(1) of the FOIA is engaged.

¹ GIA/3037/2011

²

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

Vexatious when viewed in context

16. The council has stated that it does not regard the content of any of the six requests to be vexatious in isolation, but when viewed in context they do become so. The council has stated that the complainant is rarely satisfied with any response from the council and is of the opinion that the complainant will continue to submit further requests.
17. The council states that the complainant, who up until recently has served on the council, has an expert knowledge of local government law and has for the last 10 years, conducted an "*intensive campaign of over-zealous scrutiny*" of all the aspects of the council's administration. This has taken the form of hundreds of letters and emails to a long succession of the council's clerks and councillors, making countless queries, criticisms, requests for information and numerous formal complaints.
18. The council advised that even if the complainant is not intending to be malicious with the amount of correspondence he is sending. The volume of correspondence is creating a detrimental effect on the council by creating intolerable working conditions for the clerk which has repeatedly forced a succession of them to prematurely resign from the post and this in turn is creating a confusing lack of clerical continuity.
19. The council has provided the Commissioner with 2 resignation letters from previous clerks to support its points. The council advised it was the burden placed on them by the complainant that forced these resignations to happen. The Clerk that resigned last year does not mention any names but statements in the resignation letter included;

"...nor did I ever think that one person could make me feel so inadequate and unable to carry out my role without constantly doubting my ability to such an extent that it started to affect my home life and cause stress and anxiety..."

"For anyone to expect a person to learn every rule, regulation, case study and standing order that may have an effect on a decision the council makes in such a short time is completely unreasonable... especially within the contracted 9hrs a week."
20. The Commissioner considers these statements are very much relatable to the email correspondence that was provided to him from the council, between the clerk at the time and the complainant.
21. The other correspondence which states a previous clerk's resignation reasons in 2008 clearly identifies the complainant as the reason to why he resigned as clerk. With statements such as;

"countless technical objections to our procedures and practices over the last six years have created hours of unpaid overtime and stressful working conditions for our Clerks"

"In normal circumstances I would have been pleased to continue as West Felton Parish Clerk for several years yet, but as long as [named complainant] and [named councillor] remain on West Felton Parish Council, for the sake of my health I simply dare not continue in this post for much longer."

22. The council also included a testimony from the now temporary clerk made to Shropshire Council's Standards Committee in 2009 which speaks of when he was the clerk in 2007 and 2008 and that the complainant sent him 210 emails which contained "hundreds of objections to almost every aspect of my work."
23. The temporary acting clerk is at present being shielded from the complainant by the council, where an agreement of him acting as temporary clerk was not to have to deal with the complainant's correspondence. This was outlined in minutes sent to the Commissioner accompanying the clerk's contract.
24. The council advised that the "tipping point" came last year when the new clerk was forced out of her job due to the sheer volume of the correspondence from the complainant. The Commissioner notes that the complainant was a councillor at the time of the clerk's appointment and that he was included in email correspondence from the clerk which speaks of her inexperience.
25. The council has stated that the complainant has challenged the validity of the now acting clerk's appointment, claiming he has no authority to act as the clerk. The council provided an email from the complainant to the clerk concluding;

"it appears to me your purported appointment as "WFPC's temporary Acting Clerk, Proper Officer and Responsible Financial Officer" at that meeting was invalid and you have no authority or status to act in that capacity."

Unjustified persistence of the requester

26. The council states that the complainant has cost the council £600 in audit fees, but the auditors have never found there to be any fraud or dishonesty. The council has supplied the Commissioner with an external audit report from 2011 and an internal audit report from June 2013. Other than the audits finding there to be no wrong doing at the council, the only thing of note was in the internal audit reporting on the concern to the large turnover of clerks.

"In the last three year's reports I have stated that there was an important issue which I felt needed addressing by the council. That was the councils' inability to retain any meaningful length of time the services of a clerk... from the minutes of the Parish Council it appeared that the new clerk was having problems with the number of e-mails received, and the work entailed therein."

27. Although the report post-dates the council's application of section 14(1), it does identify part of the council's reasoning for having to apply section 14(1); to protect the clerk from burdensome correspondence.
28. The council argues that this demonstrates that the council is subject to an unjustified persistence of the complainant's attempts at obtaining "technical perfection" from the council, and this is at the expense of public money and council resources.
29. The complainant makes mention to that he is the only qualified person within the council. He also states that the clerk is not professionally qualified. The complainant has also advised the Commissioner that the Parish Council's spokesperson is *invariably inexperienced and unqualified.*" and that the council has *"become accustomed to not having any of its members or officers appropriately academically qualified (as I am)."*
30. The complainant has stated about the chairman dealing with FOI requests: *"...it is not appropriate for requests of this nature to be dealt with by an elected member, as not only is it unlawful, but he is not experienced or trained in undertaking that task. In my opinion, it is unlikely that, as such, he will not process them effectively and dispassionately."*

Disproportionate burden

31. The council states that between 2002 and 2008 the complainant had written 297 letters and emails to the council and that this rate of correspondence has continued to date. The Commissioner has not seen all of this correspondence and realises that the complainant was a councillor at the council, so is unable to determine the types of correspondence or the amount of FOI requests made within this. However from a memo made to Shropshire Council's Standards Committee dated 20 November 2008 the council breaks down the letters as follows:
 - a) 47 letters to former clerk [named clerk]
 - b) 16 letters to the next clerk [named clerk] who resigned after 9 months

- c) 210 emails to the current clerk [named clerk] since 1st January 2007
 - d) 2 extensive Internal Audits of [named clerk's] work
 - e) 6 reports about [named clerk's] work
 - f) 16 formal Standards Board complaint's against 8 Parish councillors.
32. The council states that this has placed a disproportionate burden upon clerks, chairmen and councillors, who have had to spend hundreds of hours of unpaid work dealing with these complaints.
33. The Commissioner considers that the council is a small parish council that has one paid staff member, who is the temporary acting clerk, employed on a 9 hour per week contract. The level of correspondence that has been received from the complainant over the years, albeit that not all were information requests, does seem to be excessive. This is particularly the case when considering that for this time, the complainant was a councillor and so he would be aware of the small size and limited resources of the council and that there may be other avenues for him to get the information requested.

Risk to the council

34. The council states that the requests and complaints to the council are so oppressive in terms of resources and time that this is posing as a real threat to the council's existence, as at the moment they are relying on a temporary acting clerk, and struggle to keep the post permanently filled. The council states that without a clerk, it will be hard to see how the council will continue to operate.
35. The council has highlighted the impact from a previous decision notice [FS50459426] between the council and the complainant in which the council were found to have breached section 10 of FOIA in not providing a response to the complainant. When a response was subsequently sent to the complainant, he was not satisfied that the council had complied with the decision notice steps, but the officer at the ICO advised that the request had now been responded to within the requirements of the FOIA and the correct steps had been taken by the council. The council advises this is further evidence that the complainant will not be satisfied with any response it provides.
36. In addition the Commissioner has to consider the impact that the requests are having on the council. The turnover of clerks that was cause for concern in an internal audit, and referenced in the supplied resignation letter of a former clerk. The Commissioner considers this is a

strong concern for the council when it comes to being able to carry out its functions and the fact that there is a high turnover of clerk's being reported in a audit does show that there is a burden being placed on the council and this in turn would be causing a detrimental effect on the council's ability to function in its other duties to the public. There also seems to be no point to which the complainant will be satisfied and that continuous requests would be made to the council.

37. Serious purpose of requests

38. The Commissioner recognises the complainant's reasons for making the requests as being legitimate, in terms of ensuring the council are conducting the correct processes and that it is transparent and open about how it conducts its business.
39. The complainant has advised the Commissioner of reasons to why he has made the requests for information in which he states it is his "Duty to Uphold the Law". He has also stated that he cannot "condone unlawful or improper practices by an authority of which I was an elected member". It seems to the Commissioner that, the complainant does not consider that the council is conducting its duties in accordance with other regulations and this is the main reason for the information requests. He also does not consider that many, if any, of the council members are sufficiently trained or qualified to undertake their duties.
40. The Commissioner also recognises that the complainant has grounds for dissatisfaction at the council's response times to providing a response to his requests. This will be addressed at paragraph 43 below.

Commissioner's conclusion

41. The Commissioner has concluded that although the complainant is not satisfied with the way the council is run, the internal audit of 2013 and external audit of 2011 do not support his concerns. The level of burden being placed on the council to conform to the complainant's standards is disproportionate and from the information provided shows that the complainant's standard will never be met by the council, and this will result in further requests that show to have no end. This is a small parish council employing a parish clerk for 9 hours per week. The Commissioner is satisfied that a disproportionate burden is being placed on the council in terms of time and resources to deal with the requests and therefore considers that the council are correct to rely on section 14(1) of the FOIA, to not respond to the six requests.
42. The Commissioner feels it is appropriate to advise the council that even though these requests have been found to be vexatious that any future

request/s from the complainant will still need to be addressed according to the procedure as set out in the FOIA.

Section 10

43. Section 10 of the FOIA states that a public authority must respond to a request promptly or "not later than the twentieth working day following the date of receipt".
44. The Commissioner has found that none of the complainant's six requests were responded to by the council within this specified timeframe and therefore the Commissioner's decision is that the council has breached section 10 of the FOIA.

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

Andrew White
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