

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 September 2014

Public Authority: West Felton Parish Council

Address: Parish Office
Forton Bank
Montford Bridge
Shrewsbury
SY4 1ER

Decision (including any steps ordered)

1. The complainant has requested information relating to an agenda for a meeting held by West Felton Parish Council (the "Council"). The Council refused to comply with the request for information as it deemed the request to be vexatious in accordance with section 14 of the FOIA.
2. The Commissioner's decision is that the request is vexatious and that the Council had correctly applied section 14 of the FOIA to refuse the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 27 February 2014, the complainant wrote to the Council and requested information in the following terms:

"I refer to item 3.2 of the agenda for this evening's Parish Council meeting (i.e. "Training Session-2 by [named individual] 17 Feb' 14: consider Session-3 and the points raised in Session-2??"). In relation thereto, please provide me with the following information:-

The subjects covered at those training sessions and copies of any background papers circulated in connection therewith.

Names of the members who attended each of the training sessions.

Confirmation that the tuition cost involved amounted to £80 per session and information as to any other incidental expenditure incurred in connection therewith (e.g. the use of accommodation and any other related cost).

The above information falls within Class 1 ("Who we are and what we do"), Class 2 ("What we spend and how we spend it") and Class 4 "How we make decisions") of the Parish Council's 'Publication Scheme' made under Section 19 of the Freedom of Information Act 2000.

Please provide the requested information by e-mail message, if possible, or otherwise by hard copies."

5. The Council responded on 27 February 2014. It stated that the request when taken into consideration with others received from the complainant is deemed to be vexatious under section 14 of the FOIA and therefore the request for information was refused.

Scope of the case

6. The complainant contacted the Commissioner on 27 February 2014 to complain about the way his request for information had been handled.
7. The scope of this case has been to consider whether the request is vexatious and whether the Council is correct to rely on section 14 of the FOIA to refuse the request for information.

Reasons for decision

Section 14 – vexatious requests

8. Section 14(1) of the FOIA states that a public authority may refuse a request if it is vexatious. The FOIA does not define the term, but it was discussed before the Upper Tribunal in the case of Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013).
9. In this case the Upper Tribunal defined a vexatious request as one that is "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.

10. In making his decision the Commissioner has obtained submissions from both the complainant and the Council to understand the circumstances surrounding the request in order to reach a decision on whether the request is vexatious. The Commissioner will consider their arguments where appropriate.
11. The complainant argued that his request is straight forward and relates to background documents referred to in the agenda items in question. He added that *"such agenda is a public document referred to in the Parish Council's 'Publication Scheme'."*
12. The complainant also argued the Council's citing of section 14 of the FOIA to his request. He is of the view that his request is unlikely to cause *"an unjustified or disproportionate level of disruption, irritation or distress"*. He maintained in his submissions to the Commissioner that it requests production of information readily available to the Council.
13. The complainant cited the Commissioner's previous guidance on vexatious requests which states that:

"You should be aware that you cannot use section 14 to refuse any request for information that should be published under your publication scheme. You will need to provide this information, or direct the requester to where it is available..."
14. However, the Commissioner's current guidance does not concur with this statement. This states that the Commissioner would generally expect information contained in a publication scheme to be provided but if the request meets the criteria for a vexatious request it can be refused.
15. The request was made after the current guidance was issued so the Commissioner will base his decision in accordance with this, rather than the previous guidance.
16. The information requested by the complainant is supporting documents for a Council meeting. The Commissioner's guidance¹ on supporting information for meetings and agendas states that as a general rule a public authority should disclose:

"any background documents which are referred to in the agenda or minutes, or were circulated in preparation for the meeting. These are considered part of the agenda."

In most circumstances the Commissioner would therefore expect the information relevant to the complainant's request to be provided.

17. The complainant stated to the Commissioner that as the information requested is not reasonably accessible to him by other means the Council relied on section 14 of the FOIA to refuse to comply with his request and not section 21 of the FOIA.
18. The complainant argued that his request is relating to extensions of items of business included in the agenda and referred to therein. Therefore, he is of the view that the request cannot be considered to be vexatious and that the Council had no ground for serving a refusal notice in such circumstances.
19. Having reviewed the complainant's correspondence the Commissioner has noted that much of it is concerned with the proper running of the Council. The complainant argued to the Commissioner that the Council had refused "all" his requests for information. He further argued that the Council has a history of breaching the requirements of the FOIA, despite having had several decision notices served upon it by the Commissioner, upholding complaints against it.
20. The Council explained to the Commissioner that the action taken in this case was appropriate. It argued that section 14(1) of the FOIA is appropriate in that these continuing complaints have over a long period of time caused a disproportionate and unjustified level of disruption, irritation and distress. The Council added that there is a myriad of background information that has been supplied to the ICO in relation to previous complaints from the complainant.
21. The Chairman of the Council explained that the complainant continues to harass him and the Parish Clerk for any number of documents. He added that most of which only related to specific meetings and are for the information of Councillors.
22. The Council informed the Commissioner that in further requests from the complainant (case reference: FS50542607 and FS50544855) he did not specifically refer to the FOIA, as he had done on other occasions. Therefore, the Council thought that it was not necessary for the Council to take any formal action. However, the Council were advised by the Information Commissioner's Office (the "ICO") to submit further refusal notices to the complainant.

23. The Council stated that the complainant had dropped the reference to the FOIA from "*his endless requests*" and it believes the complainant is aware that he will receive the Council's agreed response.
24. The Council noted to the Commissioner that from its files, there have been a large number of cases raised by the complainant and the Chairman was of the opinion that the ICO is content with the way the Council had addressed these requests.
25. The Commissioner notes that the complainant is rarely satisfied with any response from the Council and continues to submit correspondence. He accepts that it is therefore understandable that the Council believes that there will be no end to the requests and correspondence.

The Commissioner's conclusion

26. The Commissioner has considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request. He considers there is in effect a balancing exercise to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.
27. The Commissioner has considered both the Council's arguments and the complainant's position regarding the information request. The Commissioner has concluded that the request is a continuation of the complainant's previous correspondence, which is seen as being so voluminous it represents a burden to the Council.
28. This correspondence has also impacted upon the Council in other ways, specifically in relation to the harassment focussed on its Parish Clerk. Also, the fact that the Council's members of staff have resigned or asked to reduce their duties in order to avoid interaction with the complainant.
29. The Council is a small parish Council employing a Parish Clerk for less than ten hours per week. The level of burden being placed on the Council to conform to the complainant's standards is disproportionate.
30. Taking into account the context and background to the request, the Commissioner considers that the complainant's persistence in terms of communication has reached the stage where it could reasonably be described as obsessive. This in turn has led to the requests posing a significant burden on the council's limited resources and has diverted it from other business.

31. The Commissioner is satisfied that the request in question is similar to previous requests that the complainant has submitted to the Council.
32. The Commissioner considers the volume and the repeated nature of the request along with previous requests, which demonstrates an unwarranted interference with the Council's functions. Therefore, the Commissioner's decision is that the request is vexatious and the Council is correct to rely on section 14 of the FOIA to refuse the request for information.

¹http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/minutesandagendas.pdf

Right of appeal

33. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

34. 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.
35. 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

Rachael Cragg
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