

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 10 September 2014

**Public Authority:** Brandon and Bretford Parish Council

**Address:** 16 Easenhall Road  
Harborough Magna  
Rugby  
CV23 0HU

### **Decision (including any steps ordered)**

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1. The complainants have requested information about burial procedures and associated processes undertaken by Brandon and Bretford Parish Council (BBPC). BBPC has considered the requests as vexatious and applied FOIA section 14.
2. The Commissioner's decision is that Brandon and Bretford Parish Council has correctly applied section 14 to the requests. He notes however that section 14 was applied to some of the requests outside the statutory time limit of 20 working days and therefore BBPC has breached section 17(5) of the FOIA. He does not require any steps to be taken.

### **Background**

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3. The background to this case is particularly sensitive. The complainants were delivered of a premature baby over 34 years ago; the infant passed away within hours of birth. Some years later the complainants were made aware that the health authority involved had retained some of the deceased infant's tissue for examination. The complainants wished to have the tissue interred with the remains of their deceased child. Their efforts to proceed with this process stalled when it became apparent that the Register of Burials was incorrect as it named the deceased as the father rather than the infant. This error was subsequently rectified in 2006 by a statutory declaration. The complainants did not accept this amended position and have since tried to establish whether or not the burial plot relating to their deceased child contains those remains or not.

4. The requests to Brandon and Bretford Parish Council have been made in conjunction with requests to Wolston Parish Council and to Wolston, Brandon and Bretford Joint Burial Committee. The requests are linked by their nature and by the close relationship between all three public authorities. Wolston Parish Council and Brandon and Bretford Parish Council delegate burial functions to Wolston, Brandon and Bretford Joint Burial Committee. The complaints to the Commissioner in respect of all three public authorities have been handled by the same solicitor. The Decision Notice in respect of Wolston Parish Council is being issued under reference FS50529145 and the Decision Notice in respect of Wolston Brandon and Bretford Joint Burial Committee is being issued under reference FS50535571.

### **Request and response**

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5. The complainants submitted 11 requests for information to BBPC between 20 January and 4 April 2014. The requests were for information about BBPC's structures, legal arrangements and statutory responsibilities (and related matters) in connection with / which stem from their concerns outlined at paragraph 3. The annex to this notice reproduces the wording of the requests submitted by the complainants to the Commissioner for consideration.
6. BBPC had responded to some of the requests but not others. During the course of the Commissioner's investigation BBPC applied section 14 of FOIA to all of the requests. BBPC advised the complainants accordingly.
7. BBPC does not have an internal review mechanism for decisions under the FOIA.

### **Scope of the case**

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8. The complainants contacted the Commissioner on 14 March 2014, 23 March 2014, 28 March 2014, 3 April 2014, 18 April 2014 and 6 May 2014 to complain about the way their requests for information had been handled.
9. The Commissioner considers the scope of his investigation is to determine whether BBPC has correctly applied section 14 to the requests.

## Reasons for decision

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10. Section 14(1) 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.
11. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. 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.
12. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
13. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:  
  
*"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).
14. 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.
15. 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 requests<sup>2</sup>. 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 a case will need to be

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<sup>1</sup> GIA/3037/2011

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

considered in reaching a judgement as to whether a request is vexatious.

16. The FOIA is generally considered to be applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made or any evidence the applicant has imparted about the purpose behind their request. In this case, the request is made against a backdrop of other correspondence to all three public authorities.
17. The complainants have been corresponding with one or more of the three public authorities involved since 2006. Their correspondence has always related to the same topic which is covered in the background section.
18. Initially, BBPC responded to the first two requests made by the complainants. These requests were limited and very specific; the request dated 20 January 2014 asked for details of BBPC's principle authority and Wolston Brandon and Bretford Joint Burial Committee's principle authority. The response by BBPC provided details of its principle authority and advised that in respect of the request as it related to WBBJBC, the complainants would need to contact that authority. The request dated 24 January 2014 requested details about Wolston Brandon and Bretford Joint Burial Committee's auditors. The response advised the complainants to address their request to the Joint Burial Committee.
19. The remaining requests detailed in this decision notice were not responded to until, during the course of his investigation, the Commissioner requested that a response be issued. BBPC advised the complainants that it was applying section 14 to all requests as it deemed them vexatious.
20. The Commissioner accepts that it is unusual for a public authority to apply section 14 to requests following only two previous, straightforward requests. However, the context of this case is unique and the Commissioner accepts that BBPC was correct to consider the background to the correspondence between the complainants and the other public authorities involved in order to consider the application of section 14.
21. The Commissioner notes too that the complaints to his office covered those requests which were not acknowledged and those to which a response had been issued. Given the very specific nature of the first two requests and the replies from BBPC, the fact that a complaint was lodged regarding them would undoubtedly suggest that no response, irrespective of its content, would be satisfactory. Therefore, in these particular circumstances – and, in particular taking into account the

points in paragraph 17 - the Commissioner accepts that BBPC was entitled to consider the application of section 14 FOIA in respect of the unanswered requests and retrospectively with regard to the first two requests.

### **Harassment to the public authority**

22. In support of its application of section 14 BBPC has provided the Commissioner with a submission detailing that it employs a clerk to deal with administrative issues; the clerk is paid for 3 hours work each week to complete Parish Council work. Any additional letters and meetings take up a large proportion of time which should be dedicated to other work. Although it is not possible to put an exact figure on the additional costs, the clerk asserts that that there will have been extra cost to BBPC in relation to the complainants' requests.
23. The volume of requests and other letters received from the complainants in a relatively short time meant that the clerk could not complete other tasks related to the day to day running of the Parish Council. The clerk estimated that she would spend perhaps an extra hour each week in order to ensure that she met all the demands of her role. This time was unpaid.
24. The clerk to BBPC acknowledges that unlike her colleagues at Wolston Parish Council and Wolston, Brandon and Bretford Joint Burial Committee, she has not received the same amount of correspondence from the complainants and has not been as involved historically with this situation. However, BBPC asserts that this does not detract from the distress caused.
25. The volume of correspondence received over a short period of time, seventeen letters over a period of three months, created a feeling of worry for the clerk who stated that she felt as if the complainants treated her as though she were lying when she provided them with responses. She stated that she started to feel that the letters had become intimidating to the point that she dreaded picking up the post as all of the complainants' letters were easily recognisable from the envelopes.
26. The clerk further asserted that the worry stemmed from the feeling that she could not provide the complainants with the answer they wanted nor could she do anything to stop the barrage of letters.
27. The prevailing situation of continual requests, their nature and the adverse effect they were having on the clerk, coupled with the relevant backdrop of historical and continued correspondence received by the

other public authorities, meant that BBPC took the decision to apply section 14 to the requests.

### **Purpose and value of the request**

28. When assessing whether a request, or the impact of dealing with it, is justified or proportionate, it is helpful to assess the purpose and value of the request. The Commissioner has considered the case thoroughly in respect of this request, its background, purpose or value and impact on BBPC.
29. The lengthy correspondence and requests under the FOIA were prompted as a result of the discovery of a clerical error. The burial certificate which had been issued following the infant's death recorded the name of the deceased as the father when in fact he was the person registering the burial. The records show that the father was granted the exclusive right of burial and that he had paid the burial fee of £25. He could not therefore be the deceased. Once identified, the error was rectified by a statutory declaration dated 17 June 2006. On 12 July 2006, a meeting of the Burial Committee authorised the amendment to the Register of Burials. Solicitors acting on behalf of the three public authorities have explained that the original Statutory Declaration with exhibits was sent to the complainants on 13 July 2006, the day after the records were corrected. A copy of the Statutory Declaration and the resolution dated 12 July 2006 was sent to the complainants again on 4 March 2014 in response to a request made to Wolston, Brandon and Bretford Joint Burial Committee. Writing to the complainants on 5 August 2011, the solicitors for the three public authorities expressed regret for the clerical error and any ensuing distress on behalf of Wolston Parish Council and Wolston, Brandon and Bretford Joint Burial Committee.
30. The Commissioner is satisfied that concerns expressed initially by the complainants have been addressed as fully as is possible by the public authorities involved and that being the case, it is difficult to identify the purpose and value of the subsequent requests to Brandon and Bretford Parish Council other than to satisfy a personal agenda on behalf of the complainants.
31. The Commissioner is in no doubt that the particular circumstances of this case mean that as far as the complainants are concerned, the requests have a serious value and purpose. They naturally have a strong interest in the matters they are pursuing information about. However, the Commissioner also acknowledges that there is only a limited public interest in the matters pursued by the complainants, which essentially relate to their private dispute with the public authority. Indeed, during the course of his investigation, the complainants have talked at length

on the telephone about their circumstances with a member of the Commissioner's staff. The Commissioner notes that, whilst their particular circumstances are deserving of a sympathetic and compassionate approach, his role is solely to make an objective analysis of the requests and responses to determine if the FOIA has been correctly applied by BBPC.

32. It is clear to the Commissioner that the volume of requests submitted by the complainants in a three month period will create a burden on the authority's resources, particularly given it is a Parish Council and has limited resources. This view is strengthened by the arguments provided by BBPC about the impact upon the workload of the clerk. However, the question for the Commissioner to consider here is whether the purpose and value of the requests justify the impact upon the authority.
33. The burden on the public authority has been key, and although the volume of communication and impact on BBPC has not been as significant as the other two public authorities, the Commissioner accepts that it has detracted from other areas of work and has caused significant harassment, annoyance and stress to the public authority and more specifically, to the clerk.
34. The Commissioner has considered the purpose and value of the requests; taking into account all the circumstances of the case, he finds that they lack serious purpose of value and their effect is to harass and annoy the public authority.
35. BBPC is a small public authority which, the Commissioner accepts, cannot reasonably accommodate the burden on resources presented by the volume of requests received. Whilst smaller public authorities are, like larger authorities, bound by the Freedom of Information Act, it is important to remember that the impact of any significant resource issue will be determined by the limited resources available and consequently, the threshold for determining requests as vexatious may be different than in the case of a larger public authority.

### **Context and history**

36. BBPC was first contacted on 20 January 2014 when the complainants made a request for information. It is unclear why the complainants initiated correspondence with BBPC at this point, having been in correspondence with the other public authorities for a number of years. Although BBPC has only received FOI requests, the history and context relating to the other public authorities coupled with the requests submitted to BBPC is entirely relevant in this case. The Commissioner notes that the underlying issue is the question over remains in a particular plot of land. The question has arisen because of an administrative error which has been rectified by a statutory declaration.

During the course of the Commissioner's investigation, the complainants have continued to write to the public authority. The Commissioner is satisfied that the history and context of the complainants' dealings with BBPC, Wolston Parish Council and Wolston Brandon and Bretford Joint Burial Committee mean that their continued use of the FOIA has become unjustified and an abuse of the Freedom of Information legislation.

37. In considering this case, the Commissioner has taken account of the background, the nature and volume of requests, the significant impact felt personally by the clerk to BBPC and the impact on BBPC's day to day running. In conclusion he finds that FOIA section 14(1) is engaged.

### **Other matters**

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38. The Commissioner notes that in failing to reply to the requests under section 14(1) within the statutory time limit of 20 days, BBPC has breached section 17(5) of the Act. BBPC has acknowledged this shortcoming and has identified that a lack of experience in dealing with FOI requests led to this situation. The Commissioner does not require any further steps to be taken by BBPC other than to note the statutory time limits for a response to any future requests made under the FOIA.



## Right of appeal

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39. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex**

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### **Requests to Brandon and Bretford Parish Council**

**1. On 20 January 2014 the complainants requested information of the following description:**

*"WE WRITE MAKING A FREEDOM OF INFORMATION REQUEST UNDER FREEDOM OF INFORMATION LEGISLATION RE PRINCIPLE AUTHORITIES.*

*PLEASE SUPPLY OURSELVES WITH INFORMATION AS TO WHOM BRANDON AND BRETTFORD PARISH COUNCIL'S PRINCIPLE AUTHORITY IS.*

*PLEASE SUPPLY OURSELVES WITH INFORMATION AS TO WHOM WOLSTON, BRANDON AND BRETTFORD JOINT BURIAL COMMITTEE'S PRINCIPLE AUTHORITY IS"*

**2. On 24 January 2014 the complainants requested information of the following description:**

*"WE WRITE MAKING A FREEDOM OF INFORMATION REQUEST UNDER FREEDOM OF INFORMATION LEGISLATION RE WOLSTON, BRANDON AND BRETTFORD JOINT BURIAL COMMITTEE'S AUDITOR.*

*PLEASE SUPPLY OURSELVES WITH INFORMATION AS TO WHOM WOLSTON, BRANDON AND BRETTFORD JOINT BURIAL COMMITTEE'S AUDITOR.*

*PLEASE SUPPLY OURSELVES WITH INFORMATION AS TO WHOM WOLSTON, BRANDON AND BRETTFORD JOINT BURIAL COMMITTEE'S AUDITORS ARE".*

**3. On 30 January 2014 the complainants request information of the following description:**

*"WE ARE MAKING A FREEDOM OF INFORMATION REQUEST 30.01.2014 UNDER FOI LEGISLATION RE BRANDON AND BRETTFORD PARISH COUNCIL SOLICITORS AND WOLSTON, BRANDON AND BRENTFORD JOINT BURIAL COMMITTEE SOLICITORS.*

*PLEASE KINDLY SUPPLY INFORMATION AS TO WHOM BRANDON AND BRETTFORD PARISH COUNCIL'S SOLICITORS ARE AND INFORMATION AS TO WHOM WOLSTON, BRANDON AND BRETTFORD JOINT BURIAL COMMITTEE'S SOLICITORS ARE".*

**4. On 15 February 2014 the complainants requested information of the following description:**

*"WE WRITE MAKING A FREEDOM OF INFORMATION REQUEST UNDER FOI LEGISLATION.*

*PLEASE KINDLY PROVIDE OURSELVES WITH COPIES OF DOCUMENTATION (AGENDA/RESOLUTION) WHICH CORRELATES THE ACTIONS AND ACTIVITIES OF WOLSTON PARISH COUNCIL, THAT HAVE BEEN UNDERTAKEN ON BEHALF OF B&BPC, WITH B&BPC'S AUTHORIZATION THAT THE ACTIONS AND ACTIVITIES BE UNDERTAKEN ON BEHALF OF B&BPC, BY WOLSTON PARISH COUNCIL (CIRCA 2011/12/13/14)*

**5. On 17 February 2014 the complainants requested information of the following description:**

*"WE WRITE MAKING A FREEDOM OF INFORMATION REQUEST UNDER FOI LEGISLATION.*

*WITH REFERENCE TO LOCAL GOVERNMENT ACTS 1894 AND 1972, PLEASE KINDLY SUPPLY (IN PRINTED PAPER FORMAT) THE PARTS OF THE LEGISLATIONS THAT ALLOWED/ALLOWS BRANDON AND BRETTFORD PARISH COUNCIL, AND WOLSTON PARISH COUNCIL, AUTHORITY TO ALLOW THE RE-ESTABLISHMENT OF THE LOCAL AUTHORITY PUBLIC AUTHORITY LEGAL ENTITY, WOLSTON BRANDON AND BRETTFORD JOINT BURIAL COMMITTEE, AS A CHURCH OF ENGLAND FUNCTION, DUTY AND RESPONSIBILITY".*

**6. On 18 March 2014 the complainants requested information of the following description:**

*"WE WRITE TO MAKE A FOI REQUEST UNDER FOI LEGISLATION. WITH REFERENCE TO B&BPC'S PARTICIPATION IN ACTIVITIES WITH 3<sup>RD</sup> PARTIES FOLLOWING WPC'S PROCEEDINGS/ACTIVITIES OF 24.06.2011 PERTAINING TO OURSELVES*

*PLEASE PROVIDE (IN PRINTED PAPER FORMAT/HARD COPY) EVIDENCE (INFORMATION THAT PROVES) THAT IT WAS LEGAL FOR B&BPC REPRESENTATIVES TO PARTICIPATE IN ACTIVITY/ACTIVITIES, WITH 3<sup>RD</sup> PARTIES, PERTAINING TO OURSELVES FOLLOWING WPC'S PROCEEDINGS/ACTIVITIES OF 24.06.2011 PERTAINING TO OURSELVES".*

**7. On 19 March 2014 the complainants requested information of the following description:**

*2WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION RE WOLSTON PARISH COUNCIL'S (WPC) DECISION/DIRECTIVE OF 24.06.2011.*

*PLEASE PROVIDE THE NAMES OF THE TWO B&BPC REPRESENTATIVES, WHO ATTENDED MEETINGS/APPOINTMENTS/DISCUSSIONS WITH REPRESENTATIVES FROM WOLSTON PARISH COUNCIL (WPC) AND WOLSTON, BRANDON AND BRETTFORD JOINT BURIAL COMMITTEE (WBBJBC) AND A 'OTHER' 3<sup>RD</sup> PARTY, AND WHO HELD DISCUSSIONS AND MADE DECISIONS, REGARDING OURSELVES AND OUR CORRESPONDENCE, BEHIND OUR BACKS, WITHOUT OUR PRESENCE, WITHOUT OUR KNOWLEDGE AND WITHOUT OUR PERMISSION".*

**8. On 20 March 2014 the complainants requested information of the following description:**

*"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION.*

*PLEASE IDENTIFY (IN PRINTED PAPER FORMAT/HARD COPY) WHO B&BPC'S SOLICITORS/LEGAL REPRESENTATIVES ARE".*

**9. On 24 March 2014 the complainants requested information of the following description:**

*"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION.*

*IT IS ESTABLISHED BY DIRECTION OF LOCAL GOVERNMENT ACTS, THAT WOLSTON, BRANDON AND BRETTFORD JOINT BURIAL COMMITTEE (WBBJBC) CARRY OUT STATUTORY PUBLIC AUTHORITY FUNCTION AND DUTY FOR B&BPC (AND WOLSTON PARISH COUNCIL).*

*PLEASE PROVIDE (IN PRINTED PAPER FORMAT/HARD COPY) DIRECTION INFORMATION THAT ST. MARGARETS PAROCHIAL CHURCH COUNCIL/ST. MARGARETS PAROCHIAL CHURCH COUNCIL TRUSTEES ALSO CARRY OUT STATUTORY PUBLIC AUTHORITY FUNCTION AND DUTY FOR B&BPC (AND WOLSTON PARISH COUNCIL).*

**10. On 3 April 2014 the complainants requested information of the following description:**

*"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION RE BURIAL AUTHORITY.*

*PLEASE SUPPLY INFORMATION AS TO WHO HAS RESPONSIBILITY FOR PARISH RECORDS AND REGISTERS, AND INFORMATION AS TO WHO HAS RESPONSIBILITY FOR ANY INACCURACIES IN ANY PARISH RECORDS AND REGISTERS, PERTAINING TO BURIALS IN DYERS LANE CEMETERY WOLSTON AND PERTAINING TO B&BPC BURIAL AUTHORITY".*

**11. On 4 April 2014 the complainants requested information of the following description:**

Reference: FS50533115

*"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION.*

*PLEASE SUPPLY US WITH A FULL LIST OF BRANDON AND BRETTFORD PARISH COUNCIL'S WORKING GROUPS AND COMMITTEES.*