

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2015

Public Authority: Wark Parish Council
Address: 12 Broadacres
Fourstones
Hexham
NE47 5LW

Decision (including any steps ordered)

1. The complainant has requested information about correspondence, meeting minutes and payments to a particular Trust. Wark Parish Council ('the Council') released related information that it holds having redacted some which it says is exempt under section 40(2) (third person personal data).
2. The Commissioner's decision is that Wark Parish Council has released all the relevant information that it holds and has met its obligations under section 1(1) of the FOIA.
3. He is satisfied that the Council has correctly applied the exemption under section 40(2) to the information it has redacted.
4. The Commissioner finds, however, that its fees notice does not comply with section 9(3).
5. As the complainant has already paid the fee requested and received the requested information, the Commissioner has not ordered any steps to be taken on this occasion. However he expects the Council to note the Commissioner's finding in this case and amend its fees for photocopying for future requests.

Request and response

6. On 6 April, the complainant wrote to Wark Parish Council and requested information in the following terms:

"I shall be obliged for copies of all correspondence between the Parish Council and the Village Greens Committee (both ways) from 1 January 2007 to the current date under the provisions of the Freedom of Information Act 2000. Please note that this includes copies of all minutes which have been produced by the Village Greens Committee and all financial accounts which should have accompanied them.

Can you please confirm how many pages of documents have been identified so we can agree on the cost as soon as practicable.

Can you also please confirm that the Giles Heron Trust have made payments to the VGC over the last two years and the purposes for which this money was intended. As Councillor Weir is a PC-nominated member of the Giles Heron Trust, can you please confirm whether she was aware of the transaction(s)."

7. The Council responded on 27 April. It said it had identified 33 documents that it holds that fall within the scope of the request and that it would release these to the complainant on payment of £16.60 (ie 50p per photocopied sheet). Having received this fee from the complainant, the Council released the information that it held, subject to some of the information being redacted.
8. Following intervention by the Commissioner, the Council undertook an internal review and wrote to the complainant on 25 June. It confirmed that it does not hold any further relevant information and that it had correctly redacted some information because it is the personal data of third persons.

Scope of the case

9. The complainant had contacted the Commissioner on 11 June to complain about the way his request for information had been handled. He does not consider that the Council has released all the information that it holds and that it has been excessively redacted. He is also not satisfied that the Council charged him 50p per photocopied sheet for the material that it released to him. Furthermore he does not agree with the Council's application of section 40(2).
10. The Commissioner has focussed his investigation on these matters.

Reasons for decision

Section 1 – information held/not held

11. Section 1(1) of the FOIA says that anyone requesting information from a public authority is entitled to be told by the authority whether it holds the information and, if so, to have the information communicated to them.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. In its submission to the Commissioner, the Council confirmed that it has released to the complainant all the information that it holds that falls within the scope of his request.
14. To help in his determination, the Council also told the Commissioner that:
 - As the sole employee of the Council since September 2007 the Clerk has a good knowledge of the information the Council holds and the filing arrangements. The Clerk spent some considerable time searching all relevant manual files and appropriate searches on his computer system. The Clerk says he is confident that he found all relevant documents.
 - With regard to electronic data, the Clerk is the only official and there are no networked resources. The Clerk's searches of the Council's electronic data were conducted using appropriate search terms and included e-mails.
 - The Clerk says that he considers it likely that manual records would not have been destroyed. He says that e-mails will almost certainly have been destroyed prior receiving the request as part of routine housekeeping. He has confirmed that neither manual nor electronic records were destroyed after the request was received.
 - The Council says it has an archiving policy whereby minutes and accounts for the previous year are sent annually to the County Records Office where they are publicly accessible. The policy is

not specific on retention locally but the Clerk considers there is no need to retain copies locally. The Council weeds files for non-important documents when time permits. E-mails received and sent are typically retained for around three months and then deleted.

- The only business purpose for which the Council would hold any material relevant to the request would concern documents relating to the inspection of the playground for which the public liability is covered by the Council's insurance. The Council says it does not always receive these inspection reports so does not hold as many as it expected.
15. The FOIA is concerned with information a public authority holds at the time it receives a request. It is not concerned with information an applicant considers an authority *should* hold, or that it may or may not have held in the past.
 16. The Commissioner notes that the complainant considers that the Council has managed the Stonehaugh Village Greens Committee irregularly and is therefore not releasing information that would prejudice the defence of its own position on this matter. In a substantial submission, he has told the Commissioner that the balance of probabilities must lie in the direction of the Council clerk having destroyed or withheld some of the information he has requested. The complainant has presented some reasoning to support his position.
 17. However, having also considered the Council's submission at paragraph 14, the Commissioner is prepared to accept on balance that, at the time of the request, the Council did not hold any information within the scope of the request that it has not already released to the complainant. Having not been provided with any firm evidence to the contrary, he is satisfied that the Council has met its obligations under section 1(1) of the FOIA. In cases such as this, where there appears to be little or no wider public interest, the Commissioner must come to his conclusion based on both parties' submissions. Any other investigatory or enforcement action would not be proportionate, or an efficient or effective use of the Commissioner's resources.
 18. However, to reduce the possibility of disputes in the future generally, the Commissioner suggests that the Council reviews its publication scheme and retention schedule and satisfies itself that it manages the information it holds in accordance with both.

Section 40(2) – third person personal data

19. With regard to the information that the Council has redacted, the Council says that the redacted information is the names and private home addresses of particular individuals who were members of the Stonehaugh Village Greens Association at the time of the request, and may or may not still be. The Council says that, as such, this information is the personal data of third persons and that to release it would contravene the Data Protection Act.
20. Section 40(2) says that information is exempt from disclosure if it is the personal data of third persons and one of the conditions under section 40(3) is met.
21. The Commissioner has first considered whether the requested information is personal data. The Data Protection Act defines personal data as data that relates to a living individual who can be identified from it. He is satisfied that the names and private home addresses of the individuals relate to those individuals and are therefore their personal data.
22. With regard to whether disclosure would breach one of the conditions under section 40(3), from the information provided to the Commissioner, he considers that disclosing this information would contravene the first Data Protection principle - that personal data should be processed fairly and lawfully.
23. In assessing fairness, the Commissioner has considered whether the individuals concerned have given their consent to disclosure, their reasonable expectations and what might be the likely consequences resulting from disclosure.
24. The Council has told the Commissioner that the individuals concerned have not been asked whether they consent to their personal data being disclosed. However, the Council Clerk says he is certain they would not want their names or home addresses to be disclosed. He also says that they would not reasonably expect that, as a result of their involvement in assisting the community, they would find their names and addresses released to the world at large (which is the effect of disclosure under the FOIA). In addition releasing this information could have two adverse effects. First, those individuals might receive unwanted correspondence. Second, the Council says that if it became known that the Council routinely disclosed people's names and private addresses, it would deter people from becoming involved in community activities.
25. The Commissioner notes that, in his submission, the complainant says that in his view, the individuals concerned would be surprised to learn

there was any 'anxiety' about their personal data being released. He also says that these individuals are all officers of a Parish Council committee and would therefore expect that the public might want to know their identity. Third, he has told the Commissioner he only wants their names and that it is unlikely that their addresses are contained in the redacted information. Finally, he considers it is in the public interest to expose any of the Council's 'irregular practices'.

26. In an early discussion with the Commissioner about the request, the Council told him that the individuals concerned are not formally connected to the Council and it was on this basis that the Council applied the section 40(2) exemption. The Commissioner notes that members of the Village Greens Association will therefore be private individuals offering their time voluntarily to promote the interests of residents and to provide facilities in the interests of social benefits inherent in recreation and leisure. They are not carrying out public duties or fulfilling public sector roles.
27. Having considered the both the complainant's and the Council's arguments, the Commissioner is satisfied that the Council correctly redacted the information in question because releasing it would be unfair and so breach the first Data Protection Principle. Furthermore, he considers that the Council's method of redacting this information is proportionate and entirely satisfactory.
28. Despite the factors above, the requested information may still be disclosed if there is a legitimate public interest in doing so that might outweigh the distress or damage disclosure, and the resulting intrusion into the private lives of those data subjects, would cause. Although the Commissioner recognizes that the redacted information is of interest to the complainant, as previously mentioned disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner has not been presented with evidence of any compelling wider public interest concerning this information, or the matter to which it relates, that would justify its release into the public domain. He is therefore satisfied that the Council has correctly applied the exemption under section 40(2) of the FOIA to the information it has redacted, because it is the personal data of third persons and releasing it would contravene the Data Protection Act.

Was the fees notice valid?

29. The complainant has told the Commissioner that in February the Council charged him 10p per photocopied sheet with regard to a separate request he had submitted to it. In March – and therefore at the point that he submitted the present request – the charge had increased to 50p per copy, which he considers is excessive.

30. Wark Parish Council has told the Commissioner that its FOI publication scheme, published on its website, now specifies a 50p per sheet charge for photocopying, as agreed by the Council. The Council says it does not have any copying facilities of its own. The Clerk works from home using their personal ICT equipment which is not particularly sophisticated. The nearest available commercial copying facility is four miles away in Hexham. The Council says it is difficult to assess the cost of copying on this basis, but agreed that the 50p charge was fair.
31. Section 9(3) of the FOIA refers to regulations made by the Secretary of State. The Regulations that were enacted were *The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004* (the "Regulations"). The relevant Regulation that discusses what can and cannot be charged for is Regulation 6 which says:
- 'Maximum fee for complying with section 1(1) of the 2000 Act*
- 6.**—(1) *Any fee to be charged under section 9 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by the public authority in accordance with this regulation.*
- (2) *Subject to paragraph (4), the maximum fee is a sum equivalent to the total costs the public authority reasonably expects to incur in relation to the request in—*
- (a) *informing the person making the request whether it holds the information, and*
- (b) *communicating the information to the person making the request.*
- (3) *Costs which may be taken into account by a public authority for the purposes of this regulation include, but are not limited to, the costs of—*
- (a) *complying with any obligation under section 11(1) of the 2000 Act as to the means or form of communicating the information,*
- (b) *reproducing any document containing the information, and*
- (c) *postage and other forms of transmitting the information.*
- (4) *But a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons undertaking activities mentioned in paragraph (2) on behalf of the authority are expected to spend on those activities.'*
32. The Commissioner notes that the Council's publication scheme gives a charge of 50p per photocopied sheet, with the basis of this charge being

that it is the actual cost incurred by the Council. The scheme gives postage as a separate charge.

33. Whilst the Commissioner appreciates the added expense small parish councils may incur in providing information, the Regulations make it clear that the Council can only charge for photocopying and postage on a cost recovery basis. It cannot charge for anything else. It specifically forbids the Council for charging staff time and an attempt to do so is a breach of section 9(3) that renders the fees notice invalid.
34. The Commissioner would also refer the Council to guidance produced by the ICO¹. This says that whilst the FOIA does not say how charges should be calculated, and therefore authorities have the discretion to determine the level of charges, the Commissioner would expect the level of charges to be compatible with the principle of promoting public access to the information held by public authorities.
35. In this case the Commissioner is not satisfied the Council has followed this guidance, as it seems to be relying on the cost of staff time in travelling to the nearest suitable photocopying facility to justify its figure. As discussed, this is not permissible under section 9(3) of the Fees Regulations.
36. Having reviewed the fees charged by other parish councils he considers 10p per page for photocopying would be compatible with the guidance.
37. It follows that the Commissioner finds that the Council breached section 9, as the purported fees notice did not comply with FOIA. The Commissioner notes that the complainant has already paid the original fee of £16.50. Whilst the Commissioner does not have the power to order the Council to refund the excess paid to the complainant, he trusts the Council will consider doing so as a result of this notice. It also expects the Council to consider amending the amount it charges in its published schedule of charges to the suggested figure of around 10p per photocopied sheet for future requests.

¹ <https://ico.org.uk/for-organisations/charging-for-information-in-a-publication-scheme/>

Right of appeal

38. 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

39. 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.
40. 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

Pamela Clements
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