

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2016

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

Decision (including any steps ordered)

1. In an 11 part request, the complainant has requested particular meeting minutes, correspondence, conveyancing documents, agreements and insurance schedules from Wark Parish Council ('the Council'). The Council released some of the information, says it does not hold some and that some could be released on the payment of a fee.
2. The Commissioner has decided that:
 - On the balance of probabilities, the Council does not hold the information requested at parts 2, 3, 5, 6, 7 and 8; does not hold further information requested at part 11 and has met its obligations under section 1(1) of the FOIA.
 - The Council has breached section 9(1) because it did not provide the complainant with a fees notice with regard to part 1 of the request within 20 working days of receiving the request.
3. The Council has now provided the relevant fees notice and the Commissioner does not require it to take any further steps.

Request and response

4. On 22 August 2015, the complainant wrote to Wark Parish Council and requested information in the following terms:

"I would be obliged if you can supply the following documents as soon as practicable:

- 1. Copies of Wark Parish Council minutes between 1 August 1984 and 31 May 1985.*
- 2. Copies of all correspondence between the Forestry Commission and Wark Parish Council between 1 January 1984 and 31 December 1995.*
- 3. A copy of the agreement relating to the management of the council's amenity land at Stonehaugh referred to in a letter sent to the parish council by the Forestry Commission dated on or around 16 January 1985.*
- 4. A copy of the conveyancing document relating to the transfer of ownership of the amenity land at Stonehaugh from the Forestry Commission to Wark Parish Council.*
- 5. A copy of the conveyancing document relating to the transfer of ownership of the Stonehaugh stargazing shelter from the University of Newcastle to Wark Parish Council.*
- 6. A copy of the minutes of the meeting between Wark Parish Council and the University of Newcastle, its servants, agents, contractors or partners on 13 June 2013 where potential sites and concepts of the stargazing shelter at Stonehaugh were discussed.*
- 7. A copy of the Wark Parish Council minute showing that the council resolved to make an application for planning permission for the building of the stargazing shelter at Stonehaugh on its amenity land.*
- 8. A copy of the Wark Parish Council minute showing that the council resolved to allow the stargazing shelter to be built on the council's amenity land at Stonehaugh.*
- 9. A copy of the Wark Parish Council minute showing that the council resolved to take over ownership of the stargazing shelter at Stonehaugh after it was constructed.*
- 10. A copy of the signed agreement between Wark Parish Council and Newcastle University relating to the ownership and maintenance of the stargazing shelter at Stonehaugh.*

11. *Schedules relating to the parish council's insurance payments to cover its public liabilities and capital assets for the two financial years, 2013/2014 and 2014/2015."*
5. During his investigation, the complainant told the Commissioner that he had sent a payment of £100 on account to the Council on 17 September 2015.
6. On 18 September 2015, the Council responded, as follows.
 1. Information not held as they are archived at County Records Office where they are publicly available
 2. Information not held
 3. Information not held
 4. Information not held
 5. Information not held
 6. Information not held
 7. Specific information requested not held
 8. Specific information requested not held
 9. Information held and published on the Council's website. Can also be released on payment of charge.
 10. Information held and can be released on payment of charge
 11. Information held and can be released on payment of charge
7. Following an internal review the Council wrote to the complainant on 21 October 2015. The Council acknowledged that the Records Office holds the information requested at part 1 on behalf of the Council ie that the Council does hold this information. It said it could release this information to the complainant on receipt of a charge of £29.75 with postage an additional cost of £1.75. The Council asked the complainant if he was prepared to accept this cost from the funds that he had provided (see paragraph 5). The complainant replied and said that he was not satisfied with the Council's position regarding the information held by the Records Office, and he considered that the Council should provide this information at no cost.
8. With regard to part 4 of the request, the Council had identified relevant information it holds and released this to the complainant. With regard to parts 10 and 11, the Council again released relevant information – the Commissioner assumes that the Council used the above funds to pay the charge that is detailed in its publication scheme for the release of this material. The Council maintained its position regarding parts 2, 3, 5, 6, 7, 8 and 9 of the request. From correspondence he received from the complainant on 27 October 2015 the Commissioner assumes that the complainant subsequently received the information he requested at part 9, either by accessing the relevant Wark Parish Council meeting

minute that is published on the Council's website or by paying the required charge and receiving a hard copy.

9. In correspondence to the Council dated 31 October 2015, the complainant: disputed the Council's position regarding part 1; asked that the Council carry out further searches for the information requested at parts 2 and 3; asked for confirmation that the Council does not hold conveyancing information relating to the stargazing shelter at Stonehaugh (part 5); disputed that no meeting had taken place on 13 June 2013 between the Council and the University of Newcastle (part 6); again requested the information at part 7 and 8 and said that the information he had received in response to part 11 was not what he had requested.
10. During the Commissioner's investigation, the Clerk to the Council who had been dealing with request – and previous requests that the complainant had submitted – resigned.

Scope of the case

11. The complainant contacted the Commissioner on 24 September 2015 to complain about the way his request for information had been handled. He is not satisfied with the Council's response to part 1 and considers that the Council holds the information he requested at parts 2, 3, 5, 6, 7 and 8 and that it holds further information than it released in response to part 11.
12. The complainant confirmed to the Commissioner on 3 November 2015 that the Commissioner should focus his investigation on whether or not the Council holds the information, or further information, that the complainant requested at the seven parts above. The Commissioner has also considered the fee that the Council has requested in order to release the information at part 1 of the request.

Reasons for decision

13. Section 1 of the FOIA says that when a person submits a request for information to a public authority, that person is entitled to be informed in writing by the authority whether it holds the requested information and, if it does, to have that information communicated to them.
14. Parts 2 and 3 of the request concerns information that is over 20 years old. The Council confirmed in its submission to the Commissioner that it has not retained this information and consequently does not hold it.

Given the age of this material, the Commission is prepared to accept that the Council does not hold it.

15. Part 5 concerns a conveyancing document. The Council confirmed in its submission that it does not hold this information but did not offer further explanation. In further correspondence with the Commissioner in January 2016 the Council confirmed that it signed a related maintenance agreement but does not hold the requested conveyancing document.
16. Part 6 concerns a meeting that the complainant considers took place on 13 June 2013. The Council has told the Commissioner no such meeting – that is, a meeting organised by the Council - took place and that it is satisfied that this meeting did not take place because it would have been the secretariat of such a meeting and has no record of it. The Council says that it may have been the case that the University of Newcastle organised a meeting with local residents to which a Parish Councillor may have gone. It confirmed that the Council would not hold minutes of such a meeting.
17. Parts 7 and 8 of the request are for Council minutes recording resolutions. The Council has confirmed to the Commissioner that it does not hold this information. It says that all its minutes are published on the Council's website and that, having read them, the complainant would know that this information does not exist. The Commissioner notes that the Council publishes minutes going back to 2011 on its website. Although the Commissioner has not reviewed all the minutes on its website, he is nonetheless prepared to accept the Council's position – that it does not hold the information that the complainant has requested in these parts; namely minutes showing particular resolutions concerning the stargazing shelter. Before he resigned, the Clerk to the Council had been in post for approximately eight years and, since he provided the Council's secretariat function, the Commissioner is prepared to accept that the Clerk, on behalf of the Council, would have had a good knowledge of the Council's meetings and their resulting minutes.
18. Part 11 of the request concerned insurance schedules. In his request for an internal review dated 21 September 2015, the complainant suggests that he has been sent a summary of the 2013/14 schedules and full details of the 2014/15 schedules and that he would like full details of the 2013/14 schedules. The complainant considers that the Council should hold further information relevant to this part. The Council has confirmed to the Commissioner that it does not hold any further information and, on the balance of probabilities, the Commissioner is prepared to accept this. In its submission to him, the Council had said to the Commissioner that it could ask its insurance broker if it held more information but that the FOIA does not oblige it to do this. In the Commissioner's view, the

Council's insurance broker would not be holding further information about these schedules, if indeed it does hold it, on behalf of the Council but for its own business needs. Consequently, he agrees that the Council is not obliged to contact its broker about this matter.

19. Having considered all the circumstances of this case, the Commissioner is prepared to accept on the balance of probabilities that the Council does not hold the information requested at parts 2, 3, 5, 6, 7, 8 and does not hold further information within the scope of part 11. This is because of the age of the material and/or the knowledge and experience of the key member of Council staff initially involved.

Section 9 - fees

20. With regard to part 1 of the request – Council minutes between 1984 and 1985 - the Council had originally told the complainant that this information is archived at the County Records Office (ie that the County Records Office holds this information on behalf of the Council), where it is publicly available.
21. In correspondence to the Council dated 21 September 2015, the complainant said that it is immaterial whether this information is lodged at the County Records Office; it is "available" and the Council should therefore supply it. The complainant said that he was not available to collect copies from the Records Office during October 2015, even if he considered it appropriate to do so. More information on the matter of information being available is at paragraph 27.
22. At internal review on 21 October 2015, the Council said that to release the information to the complainant itself, it would need to charge the complainant £29.75 with postage an additional £1.75.
23. In its submission to the Commissioner the Council provided an explanation for the relatively high fee that it has requested from the complainant in order to provide this information. It is because in order to photocopy the requested material without damaging the minute books in which it is held, the Record Office uses an expensive scanning process. The Commissioner assumes that the Records Office would charge the Council for this and the Council's proposed fee to the complainant would recoup this expense.
24. Section 9 of the FOIA covers fees. This section says that an authority to whom a request for information is made may give the applicant a notice in writing (a 'fees notice') – within 20 working days of receiving the request – that says a particular fee is to be charged for complying with section 1(1). The authority must determine any fee in accordance with the Secretary of State's regulations. To summarise, the FOIA does not

allow an authority to charge a flat fee for releasing information. However, it can recover its communication costs, such as for photocopying, printing and postage.

25. The Commissioner is satisfied that the proposed fee in this case is to recover costs associated with communicating the minutes in question to the complainant and that there is provision under the FOIA for the Council to do this. However, although the Council could be said to have issued a fees notice with regard to part 1 as part of its internal review of 21 October 2015, it did not do so in its original response of 18 September 2015. It therefore issued a fees notice outside of the 20 working days that is a requirement of section 9(1).
26. Section 9(2) of the FOIA says that where a notice has been given to an applicant, an authority is not obliged to comply with section 1(1) [ie to provide a response] unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant. In his published guidance on fees¹, the Commissioner recommends that public authorities should tell the applicant about the deadline in its fees notice. This does not appear to have happened in this case and the three month period with regard to the 21 October 2015 fees notice has now expired.

Other Matters

27. The Commissioner notes that the Council told him during his investigation that it subsequently formally invoiced the complainant for the information requested at part 1 of his wider request ie it issued another fees notice.

¹ https://ico.org.uk/media/for-organisations/documents/1168/fees_cost_of_compliance_appropriate_limit.pdf

Right of appeal

28. 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

29. 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.
30. 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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