

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2018

Public Authority: Potto Parish Council
Address: 34 The Birches
Coulby Newham
Middlesbrough
TS8 0UA

Decision (including any steps ordered)

1. The complainant has requested a copy of the process which the Parish Council uses to conduct internal reviews of information requests.
2. The Commissioner's decision is that Potto Parish Council's ("the Parish Council's") response did not amount to discharging its duty under Section 1 of the FOIA and it therefore breached that provision.
3. As the Commissioner considers that the complainant has access to all the information that the Parish Council holds within the scope of his request, she does not require the Parish Council to take any further steps.

Background

4. On 23 November 2017, the Commissioner issued Decision Notice FS50680859 to address another complaint made about the Parish Council.
5. In the "Other Matters" section of that decision notice, the Commissioner expressed her concern about the Parish Council's lack of an appropriate

procedure for conducting internal review requests, commenting at paragraph 22¹:

"[The Commissioner] therefore recommends that in order to comply with the code, the Council ensures it has appropriate procedures in place for undertaking internal reviews of requests for information."

Request and response

6. On 7 February 2018, the complainant wrote to the Parish Council and, referencing the Commissioner's words above, requested information in the following terms:

"Please provide me with a copy of these procedures."

7. The Parish Council acknowledged the request the same day and issued its formal response on 17 February 2018. It stated that:

"Potto Parish Council does not have a separate procedure for undertaking reviews of requests for information, rather we follow the guidance from the National Association of Local Councils (NALC) for handling FOI requests and reviews."

8. Following an internal review the Parish Council wrote to the complainant on 5 March 2018. It reiterated its assertion that it did not have a separate internal review procedure, but it provided a link to the NALC guidance and to a section of the Parish Council website where it said that the complainant could find a copy of its complaints procedure.

Scope of the case

9. The complainant contacted the Commissioner on 18 March 2018 to complain about the way his request for information had been handled. The complainant believes that the Parish Council does not hold information within the scope of the request and should have confirmed that to him. He is also of the view that the Parish Council has breached Section 10 in the way that it handled the request.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172814/fs50680859.pdf>

10. The Commissioner considers the scope of her investigation to be to determine whether or not the Parish Council has complied with its duty under Sections 1 and 10 of the FOIA

Reasons for decision

Section 1 Duty

11. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

12. In this case, the Parish Council's initial response stated that it did not hold information within the scope of the request. However the Commissioner considers that this was based on an erroneous interpretation of the request.
13. The complainant's request was for copies of the "procedures in place for undertaking reviews of requests for information" not for "the Parish Council's internal review procedure."
14. This goes beyond mere sophistry – it is a subtle but important difference. The Parish Council may not have a separate process which has been designed specifically for carrying out internal reviews of information requests, but it does have procedures which it bases this process on.
15. In its response of 5 March 2018, the Parish Council drew attention to its complaints procedure, which it subsequently confirmed to the Commissioner that it used as the basis for assessing internal reviews of information requests. The Commissioner considers that this complaints procedure came within the scope of the original request and therefore it should not only have been provided to the complainant in the initial response, but the Parish Council should have made clear that the process was used for this purpose.
16. Whilst the Commissioner takes account of steps taken by a public authority at the internal review stage when assessing whether a Section 1 breach has occurred, in this case, the internal review did not remedy

the breach as the Parish Council, whilst tacitly confirming that it held information within the scope of the request did not provide a copy of information which it held within the scope of the request.

17. Once a public authority has confirmed that it holds information within the scope of a request, it must do one of two things: communicate that information to the requestor or; issue a refusal notice which complies with the requirements of Section 17 of the FOIA.
18. Section 11 of the FOIA defines the methods of providing information as:
 - (a) *the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,*
 - (b) *the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and*
 - (c) *the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,*
19. In this case, the Parish Council – whilst clearly attempting to be helpful – did not provide a copy of the information. Nor did it refuse to provide the information and cite Section 21 of FOIA (reasonably accessible to the applicant). Instead, it provided a link to a document silo where it said the information could be found.
20. Whilst the information may indeed have been available via that link at that time, this response did not meet the procedural requirements of the FOIA. She therefore considers that the Parish Council did not properly discharge its duties under Section 1(1) of the FOIA.

Section 10

21. The complainant was dissatisfied with the time taken to answer the request and has asked the Commissioner to consider whether the Parish Council complied with its duty under Section 10 of the FOIA.
22. Section 10(1) of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
23. The Parish Council's response informed the complainant that it did not hold the requested information, it informed the complainant of his right to request an internal review and of his right to complain to the Commissioner. Whilst the Commissioner has already explained above why she considers that the Parish Council did in fact hold the information, she nevertheless considers that the Parish Council's

response constituted a valid refusal notice which the complainant could challenge.

24. The Parish Council received the request on 7 February 2018. When it responded on 17 February 2018 (which was not in fact a working day), just 7 working days had elapsed since the date on which the request would have been received.
25. The Commissioner therefore considers that, not only did the Parish Council respond well within the statutory limit of 20 working days, but that she can see no justification to suggest that the response was not also "prompt" when weighed against the Parish Council's other statutory obligations and priorities.

Other matters

26. The Commissioner provides the following observations mainly for the benefit of the complainant although the Parish Council may wish to be aware of them too.
27. Section 50(2)(a) of the FOIA permits the Commissioner to refuse to accept a complaint for investigation where the complainant has not already exhausted any internal review or complaints procedure offered by a public authority.
28. Whilst the Commissioner considers that it is good practice for public authorities to offer an internal review (as the process can correct errors) an internal review is not itself a statutory requirement of the FOIA and no public authority can find itself in breach of FOIA for failing to carry one out in an appropriate way – or, indeed, at all.
29. As was accepted in the decision to strike out an appeal in *Lotz v Information Commissioner (EA/2017/0032)*², comments which the Commissioner makes under the "Other Matters" section of a decision notice do not form part of that particular decision and are not binding on a public authority. Rather, this section is used, by the Commissioner, to comment on matters which have arisen during her investigation, or to issue advice which she feels may be beneficial.

30. In Decision Notice FS50680859, the Commissioner noted that the Parish Council would benefit from adopting an appropriate internal review procedure – but this was a recommendation, not a requirement and therefore the Parish Council could not possibly have, as the complainant insists, been “in breach” of the decision notice, regardless of any steps the Parish Council may or may not have taken.
31. Whilst the Commissioner has already noted that the internal review in this particular case failed to remedy a breach of the FOIA, she sees no reason to make any broader comments here on the adequacy of the Parish Council’s internal review process.

Right of appeal

32. 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

33. 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.
34. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF