

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 9 January 2019

Public Authority: Old Somerby Parish Council
Address: The Orchards
School Lane
Old Somerby Grantham
Lincolnshire
NG33 4AG

Decision (including any steps ordered)

1. The complainant requested information about records relating to the formulation of the Neighbourhood Plan of Old Somerby Parish Council ("the Parish Council") including e-mails sent and received by Parish Councillors and records relating to a named individual's appointment and his brief. The Parish Council applied section 12(1) to the request, as the cost of compliance would exceed the appropriate limit.
2. The Commissioner's decision is that the Parish Council applied section 12(1) incorrectly as it did not reasonably estimate that the cost of the request would exceed the limit. She also finds that in failing to advise the complainant on how to refine his request to bring it within the cost limit, the Parish Council breached section 16(1) of the FOIA.
3. The Commissioner requires the Parish Council to take the following steps to ensure compliance with the legislation.
 - Write to the complainant with a fresh response to the request that does not rely on section 12(1) of the FOIA.

4. The Parish Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 August 2017, the complainant wrote to the Parish Council and requested information in the following terms:

"please consider this e-mail as my FOI request for records created since 01 April 2017 relating to a consideration of Neighbourhood Plan for Old Somerby; including e-mails sent and received by Parish Councillors and yourself in respect of substantive and procedural matters in this connection; including in regard to the constitution of the Parish Council and Neighbourhood Plan Steering Group; including information distributed to the putative members of a reconstituted Steering Group, so far denied to me."

6. This was followed up with an additional request on 5 October 2017 in the following terms:

"In my view the intentions of both Parish Council and Steering Group at any time should be accepted as being of public interest. Accordingly please accept this e-mail as a further FOI request to Old Somerby Parish Council for records relating to the formulation of the Neighbourhood Plan. This request is for the same categories of records previously requested, as created during the period 16 August to even date inclusive; including the brief for [personal data redacted] and e-mails and other records relating to how this was formulated and intentions as to how it was to be represented; records relating to [personal data redacted] appointment; records relating to the handling of FOI requests made to the Parish Council in connection with the Neighbourhood Plan."

7. On 17 September 2018 the Parish Council provided all the information it believed was within the scope of the request.
8. On 28 September 2018 the complainant requested an internal review of the Parish Council's handling of the request, stating that not all the information requested had been released and that the search for the information was not comprehensive or information is being withheld.
9. The Parish Council provided the outcome of its internal review on 24 October 2018. At this stage it cited Section 12 – exemption where the cost of compliance exceeds the appropriate limit.

Scope of the case

10. The complainant contacted the Commissioner 30 October 2018 to complain about the way his request for information had been handled.
11. The scope of the Commissioner's investigation into this complaint is to determine whether the Parish Council correctly applied section 12 of the FOIA to the request. She has also considered whether the Parish Council met its obligation to offer advice and assistance, under section 16.

Reasons for decision

Section 12

12. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") at £450 for non-central government public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Parish Council.
14. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
15. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.
16. On 13 November 2018, the Commissioner invited the Parish Council to submit its calculation for the time limit imposed on responding to the request for information. The Parish Council's response was inadequate

and the Commissioner asked it to provide a more detailed breakdown of its cost estimate.

17. On 6 December 2018, the Parish Council submitted its revised estimate. The Commissioner pushed the Parish Council to provide simple coherent explanations of the activities required and how long it would take in complying with the request but despite this she feels the Parish Council has still failed to persuade her that responding to the request would exceed the appropriate limit.
18. Whilst the Commissioner can accept that the information within the scope of the request would require examining to locate and extract it, the Parish Council advised the information covered an extended period but did not specify what period it covered. The Parish Council also indicated it would take additional time to review information already supplied. This included "reviewing the actions taken in locating the considerable and various computer based files and also hard copy files" over "an extended" time. Its estimate also took into account the reviewer having "no prior knowledge" of the issues. The Parish Council estimated it would take 6 hours to determine precisely what relevant information was held. Although the Commissioner accepts these activities would take some time and can be regarded as an activity covered by the fees regulations, she has difficulty in accepting the time estimate given the lack of detail provided.
19. The representations from the Parish Council also included estimates for time it would take to redact personal information. However, redacting information that the public authority believes to be exempt is not an activity covered by the Fees Regulations, and so time spent on this activity cannot be taken into account when forming a cost estimate for the purposes of section 12.
20. There were other elements to the cost estimate that the Commissioner considers inadmissible. The Parish Council added time estimates to compensate for councillors being elected recently to the position. However, this notice concerns the cost of the request at the time that it was made. That the membership of the Parish Council has changed since the time of the request is not relevant and is not a valid factor for the cost estimate.
21. The Parish Council estimated it would take a total of 23 hours to comply with the request for information. In light of the lack of detail in the description of its cost estimate, the Commissioner's view is that she has no choice other than to find that the cost estimate made by the Parish Council was not reasonable and that compliance with the request would not exceed the cost limit. Her conclusion is, therefore, that the Parish Council relied on section 12(1) incorrectly and at paragraph 3 above it is

now required to provide a fresh response to the request that does not rely on section 12(1).

Section 16 – duty to provide advice and assistance

22. Section 16(1) of the FOIA provides that all public authorities are under a duty to provide advice and assistance to any person who has made or who intends to make an information request to it. The Commissioner's published guidance on section 12¹ sets out the following minimum advice and assistance that a public authority should provide to a requester when refusing a request on cost grounds:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
- provide an indication of what information could be provided within the appropriate limit; and
- provide advice and assistance to enable the requester to make a refined request

23. In failing to offer any advice and assistance to the complainant on how to refine his request so that it was within the cost limit, the Parish Council breached section 16(1) of the FOIA. As the requirement to remedy this breach has been superseded by the step in relation to the section 12(1) finding, no remedial step in relation to this breach is required.

Other matters

24. The Commissioner served a previous decision notice on the Parish Council on 10 August 2018. Despite this decision notice giving 35 days for a response to be provided, the Parish Council failed to respond within that time. The Parish Council must ensure that there is no repeat of this delay when complying with this notice.

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Right of appeal

25. 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

26. 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.
27. 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