

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 October 2020

**Public Authority:** St Helens Parish Council  
**Address:** Office of the Parish Clerk  
2 Maida Vale Road  
Shanklin  
Isle of Wight  
PO37 7DB

### Decision (including any steps ordered)

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1. The complainant has requested a copy of an invoice and the associated receipt of its payment from St Helens Parish Council (the "Parish Council"). During the Commissioner's investigation, having reconsidered the wording of the request, the Parish Council advised the complainant that it did not hold the requested information.
2. The Commissioner's decision is that the Parish Council's interpretation of the request is a reasonable one and she is satisfied, on the civil standard of the balance of probabilities, that the Parish Council does not hold the information requested. However, she finds that the Parish Council issued a refusal notice which was both inadequate and provided outside the statutory time period for responding. It thus breached sections 1, 10 and 17 of the FOIA, respectively.
3. The Commissioner requires no steps as a result of this decision.

### Request and response

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4. On 2 December 2019, the complainant, who is himself a Parish Councillor, wrote to the Parish Council and requested information in the following terms:

*"... I have emailed you three times now on the 17<sup>th</sup> Oct. 2019 the 1<sup>st</sup> Nov. 2019 and 19<sup>th</sup> Nov. 2019 to politely request that you send*

*me PHOTO COPIES of the invoice from Mr [name removed] Plumber for the materials that he purchased in respect of the renovation works to the Duver toilets, this invoice was in the region of £1900.00 pounds so you will have no difficulty find [sic] which one it was, I have also asked you for a copy of the receipt of payment for the same invoice...".*

(The Commissioner understands that the earlier correspondence was addressed to a private email address rather than the Parish Council's official address for FOIA requests).

5. Following interim correspondence, on 11 February 2020 the complainant wrote again, saying:

*"... we will deal with your claim that I have had the information that I have been asking for since last year. Please read again my mail to the clerk and all councillors dated 2<sup>nd</sup> December 2019. In that mail I asked for photo copies of the invoice to Mr [name redacted] and a copy of the receipt of payment, you claim that I have had this information if this is correct then please prove to me how that was provided. I have never been given the requested information please ask yourself if I had why would I be still asking for it? This information is in the public domain and as you know I have every right to be given this information being a parish councillor makes no difference because I have the right to this information as a citizen of this parish. I will ask you one last time in a friendly and quiet manner, will you please provide me with PHOTO copies of the invoice made out to Mr [name removed] plumber for the purchase of materials I think it is £1911.00p pounds the clerk will know the exact amount and also the receipt for the payment for this invoice. It makes no difference that the accounts have been audited etc as you said last night I still have the right to see them".*

6. The Parish Council responded on 14 February 2020. It stated that the information was "*in the public domain*".
7. Following the Commissioner's advice, on 13 April 2020 the complainant requested an internal review. The Parish Council advised:

*"The information you have requested has been dealt with on several occasions, I have no further comment to make at this time".*

8. Following further correspondence with the Commissioner, the Parish Council wrote to the complainant on 23 September 2020 to advise that the requested information was not held.

## Scope of the case

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9. The complainant initially contacted the Commissioner on 11 March 2020, to complain about the way his request for information had been handled. It was ascertained that he had not asked for an internal review of his request and the Commissioner required him to do so; this was provided by the Parish Council on 13 April 2020.

10. During the Commissioner's investigation, following receipt of the Parish Council's revised response of 23 September 2020 advising that the information was not held, the Commissioner wrote to the complainant for his views. He responded saying:

*"The clerk made the payment for an invoice made out to Mr [name removed] and claimed for the expenses I am quite clearly asking to see the receipt of payment made by the clerk. He must have one and it should be in the files of the Parish council I have looked several times and it was not there. This information should be available for all to see.*

*Regarding the letter from the clerk of a few days ago it is attempting to change the question which I repeat was to be provided with photo copies of the Invoice made out to Mr [name removed] for the sum of £1911.07p. for the purchase of materials, and a copy of the receipt of payment for that invoice as claimed by the clerk at the PC meeting of the 11th March 2019 I have never claimed that Mr [name removed] made the payment. I actually requested details of those expenses at the meeting of the 11th March 2019 and it is minuted. I can assure you that I have never been provided with those two pieces of information".*

11. The Commissioner has considered whether the Parish Council's interpretation of the request was a reasonable interpretation and whether its response to this request complied with section 1(1) of the FOIA. She has also considered the timeliness of the Parish Council's responses.

12. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## Reasons for decision

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### Section 8 – request for information

13. Section 8 of the FOIA states that any reference to a “request for information” is a reference to such a request which –
  - (a) is in writing,
  - (b) states the name of the applicant and an address for correspondence, and
  - (c) describes the information requested.
14. The Commissioner considers that if a request meets the above requirements it is a valid request for information under the FOIA and the public authority has an obligation to respond to it within 20 working days.
15. The request clearly describes the information requested, ie an invoice from a named plumber for materials that he purchased and a copy of the receipt of payment for the same invoice. It was made in writing, submitted by email to the Parish Council and the correspondence provided the name of the complainant and the email address to use for its response.
16. It meets the requirements of section 8 and so is a valid request for information under FOIA.

### Section 17 – refusal of request

17. Section 17(1) of the FOIA states that:

*“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—*

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.”*

18. In this case, although the Parish Council later changed its position to finding that the information was not held, its original refusal notice of 14 February 2020 failed to cite any exemption or provide any rationale as to its position.

19. Being a valid request, the Parish Council was obliged to respond in accordance with the FOIA. By merely stating that the information was in the public domain, and being unable to substantiate this by directing the complainant to where it is available, the Commissioner considers that the Parish Council failed to issue a response which complied with section 17 of the FOIA.

**Section 1 – general right of access**

**Section 10 – time for compliance**

20. Section 1(1) of the FOIA states:

*“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.”*

21. It is clear from this that the first requirement of section 1 of the FOIA is that a public authority must determine whether or not it holds the information that has been requested.
22. In this case, the complainant believes that the Parish Council holds information from which it could answer the request. The Parish Council's position is that it does not. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
23. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
24. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the Parish Council holds any recorded information within the scope of the request.

25. The Commissioner raised various queries with the Parish Council regarding the subject matter of the request. She was subsequently advised by the Parish Council that it does not, in fact, hold an invoice made out to the plumber named in the request, for the purchase of materials, and it therefore follows that it cannot hold a receipt for the payment of an invoice in respect of it. This is because it was the Parish Clerk who purchased the materials and who was subsequently reimbursed for the costs, not the person named in the request. The Parish Council provided the Commissioner with supporting evidence of this, in the form of a copies of the invoice and receipt.
26. Section 16 of FOIA places a duty on a public authority to provide "reasonable" advice and assistance to those making and wishing to make information requests. In the Commissioner's view, this duty requires a public authority to seek clarification of requests which are unclear or which are capable of multiple objective readings.
27. In the Commissioner's view, the request very clearly asks for a copy of an invoice made out to a named plumber for his purchase of materials, and the receipt for the payment of the same. The complainant repeats this several times, in correspondence with the Parish Council. However, it is clear that no such invoice or receipt can exist, as it was the Parish Clerk who purchased the goods (hence his reimbursement for the same).
28. It is therefore the Commissioner's view that the information described in the request is not held by the Parish Council, because it does not exist. She has gone on to consider whether, to comply section 16, the Parish Council should have asked whether the complainant required a copy of the Parish Clerk's invoice and receipt in its place, given that it pertained to the same renovations work. Whilst the Commissioner would not ordinarily expect a member of the public to be aware of precisely how or what information is held by a public authority, on this occasion she has taken a different view. This is because she understands that the complainant, in his capacity as a Parish Councillor, had authorised the reimbursement of the monies paid in this case. He had therefore previously known that it was the Parish Clerk who was being reimbursed for payment of the monies due rather than the plumber.
29. The Commissioner must consider the request as it is worded and she considers that this request was very clear and described, repeatedly, something which is, quite simply, not held by the Parish Council.
30. Whilst the Commissioner fully expects that a new request will be now be submitted which properly describes the information sought, based on an objective reading of the request under consideration here, the Commissioner considers that the Parish Council has now complied with

the request of 2 December 2019 by saying that the information specified in the request is not held.

31. The Parish Council did not breach section 16 as the request was clear and not open to interpretation, however, in failing to confirm to the complainant that it did not hold the requested information by the completion of its internal review, the Commissioner finds that the Parish Council breached section 1(1)(a) of the FOIA.
32. In failing to advise the complainant that the requested information was not held within the statutory time limit the Commissioner also finds a breach of section 10(1).
33. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"<sup>1</sup> strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"<sup>2</sup>.

## Other matters

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34. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.
35. The complainant is a Parish Councillor and he has made various approaches for information via the private email address of a fellow Parish Councillor. Such approaches are not valid requests for information under the terms of the FOIA. Should he choose to make any further requests for information, these should be directed, in the first instance, to the Clerk of the Parish Council at his formal Parish Council email address or by post to the Office of the Parish Clerk. The party that the complainant has been writing to is under no obligation to provide a formal response under the terms of the FOIA for information requests initially received via his own personal address. However, the Commissioner considers that best practice in this case would have been

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<sup>1</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>2</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

for the Parish Councillor who received the requests to have either directed the requester to the Parish Clerk, or for him to have forwarded any requests to the Parish Clerk himself, advising the requester accordingly. She would suggest that the Parish Clerk advises Parish Councillors that such practices are adopted for any future requests which they receive.

36. Furthermore, it is apparent that there has been a breakdown in communication between the parties in this case, which is unfortunate as it has led to a request such as this being made under the FOIA. The Commissioner would ordinarily expect the parties to be able to conduct 'parish council business' without the need to exercise information rights.



## Right of appeal

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37. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

38. 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.
39. 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** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**