

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 August 2022

Public Authority: Weston by Welland Parish Council

Address: clerk@westonbywellandparishcouncil.gov.uk

Decision (including any steps ordered)

1. The complainant has made two separate requests for a range of information from financial information, meeting minutes to emails. Weston by Welland Parish Council (the council) initially provided some information, then amended its response to refuse the requests under section 14(1) of the FOIA as it considered them to be vexatious.
2. The Commissioner's decision is that section 14(1) of the FOIA is engaged to both requests.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 1 July 2021 the complainant made the following information request to the council:

“All finance paperwork plus bank statements from January 2020 to July 2021. All paperwork/ minutes of the sub committee covering all meeting from its set up to look into the MUGA/ play area with copies of all 14 heads and terms plus info of the solicitor the heads and terms pass to plus all applications for grants from 2019 to 2021”

5. The council responded on 18 July 2021. It provided some information and advised that all other information is available on its website except for a copy of the Community Capital Grant for which the council applied for the defibrillator. It advised the complainant to contact North Northants Council for it.

6. The complainant contacted the Commissioner on 20 July 2021 dissatisfied with the council's response.

7. On 23 July 2021 the complainant requested an internal review asking whether the council holds any further information. He also stated that he was unable to find any other relevant information on the council's website.

8. On the same day he also made a second information request to the council:

“Can you please forward to me the following information under the freedom of information all copies of the draft heads and terms from any councillor that has copies. Also all emails from 2018 to date relating to the village play area or recreation area (MUGA) that is all third party's as well. A copy of the recording taken at the meeting dated 23 June 2021. Also a copy of the Weston fund holdings held by councillor (name redacted)”

9. The council responded on the 27 July 2021 stating that it has sent all the information and any further requests would be seen as unreasonable.

10. The complainant contacted the Commissioner further, still dissatisfied with the council's response to both requests

11. During the Commissioner's initial investigations, the council amended its position with regards to both requests and on 15 March 2022 it issued a

refusal letter to the complainant citing section 14(1) of the FOIA – as it considered both requests were vexatious.

Scope of the case

12. The complainant has told the Commissioner that he disagrees with the council's position that his requests are vexatious.
13. The scope of the case is for the Commissioner to determine whether the council is correct to refuse the two requests under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) of the FOIA – Vexatious requests

14. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
15. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon CC v Dransfield¹. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure." The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
16. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
17. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance². The fact that a request contains one or more of

¹ [Information Commissioner -v- Devon County Council and Dransfield | Courts and Tribunals Judiciary](#)

² [Dealing with vexatious requests \(section 14\) | ICO](#)

these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

18. The council has provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA. In doing so, it has considered the history and context leading up to this request being made.
19. The council has told the Commissioner that its clerk at the time of the requests being made was contracted to work two hours per week and was the council's only employee.
20. The council has explained that the complainant was co-opted on to the council several years ago and like all the other councillors, he was aware of the clerk's allocated weekly hours. It stated that he would also be aware that asking for the information he has would involve a large amount of work that would have taken weeks, if not months to complete.
21. In the elections of May 2021, the council has told the Commissioner that the complainant stood for election, however he did not get elected. The council has informed the Commissioner that the complainant then embarked on a destructive campaign of trouble making and misinformation.
22. The council states that these requests put completely unreasonable pressure of the clerk in terms of time and resources to respond, and that the complainant would have known that the clerk would need to work and claim overtime, impacting the council's small budget.
23. The council has informed the Commissioner that its total budget in 2021/22 was £2998.
24. The council has told the Commissioner that these two requests only added pressure to both her time and well-being and that these requests only form only a small part of a campaign, during which the complainant did all he could to make life difficult for the council.
25. The council provided the Commissioner with a statement from the clerk in which she states that the complainant has regularly questioned her work, council business and its legality, often reporting to the monitoring officer at Kettering Borough Council.
26. The council highlighted the complainant's accusatory tone in his 23 July 2021 internal review request.
27. The council provided the Commissioner with a copy of an email dated 26 July 2021 it sent to Northamptonshire County Association of Local

Councils (NALC) seeking advice regarding the intimidation of the clerk and in it, it raises concern of the clerk's well-being and that she may potentially resign.

28. The council state that the complainant has also challenged the legality of the council itself denouncing it in public more than once as 'illegal'.
29. The council gives one example that the complainant and a group of associates, who also did not get elected, sought to challenge the legality of the council based on the accusation that the 'Acceptance of Office' forms, required within a certain time limit after the election were completed in a manner that was illegal.
30. The council had to seek assurances from the county council that its processes had been legal which the council states these allegations were thoroughly examined and found to have no merit.
31. Even after this finding the council has told the Commissioner that the complainant has never dropped this allegation and loudly accused the council of being 'illegal' at a council meeting in January 2022.
32. The Commissioner notes that the date of January 2022 postdates the requests, and in consideration of whether a request is vexatious, the Commissioner can only consider evidence that pre-dates the requests. However, he understands the council wanting to demonstrate that the complainant has continued to question the legality of the council.
33. The council has stated to the Commissioner that in both the complainant's personal appearances and written, his behaviour and language has been abrupt, hostile, and often intimidating. In other incidents, the complainant's behaviour and language has been intimidating.
34. The council has told the Commissioner that since the election in May 2021, three of the elected councillors have since resigned. The council accepts that there are slightly different circumstances for each councillor, but it still argues that the unpleasantness caused by the complainant has been a contributory factor in all their cases.
35. It provided a statement from one of these councillors, who is named in the second of the complainant's two requests.
36. The Commissioner has reviewed this statement, which speaks of encounters with the complainant in April and May 2021 prior to the request being made.

37. The council state that these show the types of intimidation being placed on those elected to the council causing unwarranted disruption and distress.
38. The council also submit to the Commissioner that from February 2020 through to the complainant's last meeting as councillor in February 2021, financial matters were on every agenda and conducted properly. During this time, the council has told the Commissioner that the complainant, in his then position as councillor, had every opportunity to ask for finance paperwork and bank statements. However as a member of the council he received and accepted the financial papers as properly presented.
39. The council therefore contends that his 1 July 2021 request, for financial information above and beyond what is normally presented to councillors, springs from a desire to cause difficulty and nuisance as part of his wider campaign against the council.
40. The complainant has told the Commissioner that whenever a member of public makes an information request, the council always fail to provide the information.
41. He states that when he has asked for information when he was a councillor, all his emails went unanswered, so has now asked for the information under the FOIA.
42. The complainant claims that the council also used information it collected under the FOIA to bully and blacken a member of the village who was standing for the election, causing his vote to collapse.
43. The complainant states this is a true and genuine request for information which should be in the public domain.

Conclusion

44. The Commissioner on review of the above notes that this is a very small council of one employee, employed for a few hours a week, so has very limited resources and it needs to balance its time proportionately with its other public functions.
45. The Commissioner accepts the council's submissions and statements provided to demonstrate that the complainant has caused an unjustified degree of intimidation to those elected onto and working for the council.
46. The Commissioner also notes the council's concern for the clerk, in having to deal with the complainant which is causing concern over whether she will continue in her position. This in turn, will be putting stress on the council in terms of its ability to function.

47. The Commissioner has been presented with no evidence of wrongdoing by the council over its responses to other information requests, the elections or its legality.
48. He accepts that the two requests in this case could be construed as an unjustified fishing exercise to try to pressure and challenge the council's legality and question its way of operating, all forming part of a pattern of behaviour that is harassing towards the council, and the Commissioner is of the view that responding to these requests is unlikely to resolve matters and this pattern of behaviour towards the council is most likely to continue.
49. After considering the history and context leading up to the two requests being made, the Commissioner is satisfied that the council has demonstrated that there has been a disproportionate and unjustified level of disruption, irritation or distress caused to it.
50. The Commissioner therefore finds that the council is correct to rely on section 14(1) of the FOIA to refuse the two requests as vexatious.

Right of appeal

51. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.
53. 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
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