

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2022

Public Authority: Stretham Parish Council
Address: clerk@strethampc.org.uk

Decision (including any steps ordered)

1. The complainant requested specified information relating to bullying and intimidation allegations. Stretham Parish Council (the 'Parish Council') responded and said that the requested information would not be provided as it was of a confidential and sensitive nature and disclosure would prejudice the criminal investigation, but cited no FOIA exemptions in order to withhold this information. The Commissioner asked the Parish Council to respond formally in accordance with the requirements of FOIA and to do so in the form of an internal review. Ultimately, one individual provided a single screen shot. From the available evidence, the Parish Council has not responded further to the request in any way.
2. The Commissioner's decision is that the Parish Council has not responded appropriately to either part of the request and has thereby breached sections 1 and 17 of FOIA for the reasons set out in this notice.
3. The Commissioner requires the Parish Council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to parts 1 and 2 of the request set out in paragraph 5 of this notice.
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 30 March 2022, the complainant wrote to the Parish Council and requested information in the following terms:
 - “1. copies [sic] of the screen shots the council hold in which [name redacted] the deputy clerk has claimed a parishioner has made which are libellous. These screen shots have been mentioned.
 2. Copies of all conversations, councillor statements and any other paperwork held by the council regarding the harassment/intimidation allegations of parishioners against the councillors. This was on the agenda last meeting however very little was said. So all information held by councillors around this agenda item. Especially the statements by councillors that Cllr [name redacted] spoke of at the meeting.”
6. The Parish Council responded on 27 April 2022. It stated that it would not be providing the requested information because it is “sensitive, confidential information that is being used as part of a criminal investigation” and said that to do so would prejudice the investigation. No FOIA exemptions were cited to withhold this information.
7. The complainant wrote to the Parish Council on 28 April referencing that the issue was in the public domain so, in his view, nullified its sensitivity argument. He asked the Parish Council to provide the requested information that day or he would otherwise complain to the Commissioner.

Scope of the case

8. In the absence of any response from the Parish Council, the complainant then contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner wrote to the Parish Council on 12 May 2022. Having explained that the Parish Council had failed to state whether or not recorded information is held relevant to the request or to issue a proper FOIA refusal notice, the Commissioner deemed that asking the public authority to address these matters in the form of an internal review was the most practical way forward. He provided the Parish Council with website links to his guidance on internal reviews.

10. From the available case correspondence the Commissioner notes that, on 31 May 2022, the deputy clerk provided a copy of the screen shot he held. However, the Commissioner has not seen any evidence to show that the Council has carried out the requested internal review or responded further in any way to the request.

Reasons for decision

11. Although internal reviews are not a statutory requirement under FOIA, the Commissioner must consider whether, ultimately, a public authority has handled a request properly under FOIA.
12. In this case, the Commissioner notes that one screen shot has been provided by one individual in response to part 1 of the request. It is not clear whether that one screen shot constitutes all the screen shot information held by the Parish Council. The Commissioner also notes that the wording of the request includes "screen shots" in plural taken from publicly available meeting agendas. This would seem to indicate that it is likely that more than one screen shot is held.
13. When a public authority receives a request made under FOIA then it must either:
 - provide the information to the requester;
 - write back to the requester to inform them that the information is not held;
 - refuse to confirm or deny whether information is held; or
 - confirm that information is held but refuse to provide it.
14. If the public authority refuses to confirm or deny whether information is held, or refuses to provide information, then it will usually need to send the requester a refusal notice explaining why.
15. A public authority may only refuse a request if the information is subject to an exemption in Part II of the Act, would exceed the appropriate cost limits under section 12 or is vexatious or repeated under section 14.
16. Section 1 of FOIA requires a public authority to confirm whether the requested information is held and if so, to communicate that information within 20 working days of receipt of the FOA request. Section 17 of FOIA requires that if any of the requested information is exempt (or relates to the duty to confirm or deny), that a refusal notice must be issued which states this, specifies the FOIA exemption(s) in question and explain why the exemption(s) apply.

17. In this case, the Commissioner considers that the Parish Council has failed to confirm whether this screen shot constitutes all the information held relevant to part 1 of the request.
18. He also considers that no exemptions have been cited to withhold any remaining screen shots the Parish Council may hold, nor to withhold the information requested at part 2 of the request.
19. The Commissioner finds that the Parish Council has, therefore, failed to comply with the requirements of sections 1 and 17 of FOIA. The Parish Council must therefore comply with the step at paragraph 3 of this notice.

Other matters

20. When providing a fresh response to this request, the Commissioner would refer the Parish Council to his published guidance¹ on issuing refusal notices under FOIA.

¹ https://ico.org.uk/media/for-organisations/documents/1628/refusing_a_request_writing_a_refusal_notice_foi.pdf

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

22. 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.
23. 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

Laura Tomkinson
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