

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 August 2007

Public Authority: Great Sankey Parish Council
Address: Whittle Hall Community Centre
Lonsdale Close
Off Kingsdale Road
Whittle Hall
Warrington
WA5 3UA

Summary

The complainant alleged that Great Sankey Parish Council (the "Council") withheld certain items of information when responding to his request for information about its 2004/2005 end-of-year audit. The Information Commissioner considered that the request fell within the scope of section 15(1) of the Audit Commission Act 1998 (the "ACA"), which provides specific rights of access to end-of-year account information in the period prior to its annual audit. The Commissioner decided that at the time of the request the information was reasonably accessible to the complainant otherwise than under section 1 of the Freedom of Information Act 2000 (the "Act"). The Commissioner therefore considered that the information was exempt from disclosure under the Act by virtue of section 21.

The Commissioner's Role

1. 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 Freedom of Information Act 2000. This Notice sets out his decision.

The Request

2. On 18 July 2005 the complainant made the following written request:

"...I wish to visit the Parish Office from approx 10.00a.m. on Thursday 21st July, to view the accounts and documents for Audit, year end 2004-5. In order to save

time and avoid too much disturbance to the office routine I would be obliged if you could have the following documents available for inspection.

- 1) Summary of Accounts
- 2) Income and Expenditure Sheets
- 3) Annual Return
- 4) Standing Orders
- 5) Financial Regulations
- 6) Minutes of all Council Meetings
- 7) Deeds and Leases
- 8) Quarterly Reports to Finance Committee
- 9) List of User Groups
- 10) Time Sheets
- 11) Cheque Stubs
- 12) Invoices and Receipts
- 13) Bank Statements
- 14) Internal Audit Report

If some of the above documents are not available, I would be obliged if you would give your reason, in writing for not being available as requested.”

3. The Council wrote to the complainant on 19 July 2005 confirming this appointment and enclosing the following refusal notice:

“The documents you mention will all be available, with the following exceptions

7) Deeds and Leases – the lease for Wroxham Road will not be available as it continues to be the subject of negotiation and is therefore commercially sensitive...

9) I do not intend to make a list of user groups available. I feel that since this is third party data, and also may be commercially sensitive, that it is not appropriate to release it to the public. Freedom of Information Act 2000, sections 41 and 43 refer.

10) Time sheets are not available to the public as they contain personal information which is exempted under section 40 of the Freedom of Information Act 2000 (disclosure would breach Data Protection Principles under the Data Protection Act 1998).

12) You may see invoices that have been presented to the Council. You may see selected receipts except in so far as it would be a breach of confidence. You may not see invoices generated by the Council. Freedom of Information Act 2000 sections 41 and 43 refer.”

4. On 21 July 2005 the complainant visited the Council to view the end-of-year account information. During the visit the Council agreed to send him redacted versions of nine receipts and two invoices, together with a document he had

- omitted from his original request. On leaving, he handed the Council a letter dated 21 July 2005 asking it to reconsider its decision to withhold the items at points 9, 10 and 12 of his original request. He signalled his intention to refer the matter to both the Commissioner and the external Auditor, for consideration under Audit of Accounts legislation.
5. On 25 July 2005 the Council wrote to the complainant advising that his request for a review of the decision would be discussed at a Council meeting on 14 September 2005, and that he would be contacted regarding the outcome after that meeting.
 6. Also on 25 July 2005 the Council wrote separately to the complainant enclosing redacted copies of the receipts and invoices he had requested during his visit, citing the Data Protection Act 1998 for the removal of personal details.
 7. On 27 July 2005 the complainant wrote a letter of complaint to the Chair of the Council's Finance Committee about what he described as his "Exercise of Electors Rights (Accounts and Audit Reg's 2003), in connection with the Council's accounts (2004/05)". He claimed to have complained about the Council to the Auditor, "for consideration under the Audit of Accounts legislation." He alleged that the Parish Clerk had acted aggressively during his visit and had effectively refused to allow him to view a copy of a set of minutes. He also complained that he had been supplied with information about hire charges for the 2005/06 accounts, rather than for the 2004/05 accounts. He also requested copies of invoices in support of the receipts he had been sent on 25 July 2005, and enclosed a further list of invoices and receipts he wished to be supplied with, stating that for the Council to refuse to supply them "makes a mockery of Electors Rights." He indicated his intention to complain to the Commissioner on or after the 20 August 2005 if his concerns were not addressed by then.
 8. On 4 August 2005 the Council wrote to the complainant. It referred him to its letter of 25 July 2005, which explained that his concerns would be considered at a forthcoming Council meeting. It apologised for sending information pertaining to the 2005/06 accounts and enclosed the corresponding 2004/05 information. It advised that copies of the receipts and invoices he had requested would be despatched once any personal data had been deleted from them. (This information was duly supplied on 15 August 2005.)
 9. On 14 September 2005, the complainant's concerns were apparently discussed at the Council's meeting. The minutes of the meeting state only that the Council agreed to hold an enquiry into a complaint received by a Parishioner "and related matters", and that senior members of the Council would be involved.
 10. On 13 October 2005, the complainant emailed his Councillor to ask for his view on his complaint. The Councillor replied by email on 16 October, advising that the Council considered that it had sent him all he was legally entitled to.
 11. On 26 October 2005 the complainant referred the matter to the Commissioner.

The Investigation

Scope of the case

12. On 26 October 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Council's response to his request for items 9 (user groups), 10 (staff time sheets) and 12 (invoices and receipts) of his request. He mentioned that he had requested the information in connection with the "Exercise of Electors Rights (audit reg's 2003 SI/533)". However during the course of the investigation it became apparent to the Commissioner that the exemption at section 21 was engaged and it is this which this Decision Notice focuses on.
13. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

14. On 2 November 2005 the Commissioner acknowledged the complainant's letter and explained that it would be investigated in due course. The complainant was advised to exhaust the Council's internal review procedure if he had not already done so.
15. On 8 December 2005 the complainant wrote to the Commissioner alleging that his complaint had been dealt with again at a Council meeting in November, with the outcome being that it stood by its decision, but that none of this had been formally communicated to him. He claimed that the Council had disregarded commitments made in its complaints procedure in failing to do this.
16. On 19 December 2005 the Commissioner wrote to the Council informing it that it was the subject of a complaint and requesting that it advise the complainant of the outcome of its review of his complaint. The letter also drew attention to the need to supply details of its internal complaints procedure in its refusal notice, in order to comply with section 17 of the Act.
17. On 19 December 2005 the Commissioner wrote to the complainant advising that his complaint was still awaiting allocation. The Commissioner outlined the contents of his letter to the Council and asked the complainant to let him know if it generated a response from the Council.
18. The Council replied to the Commissioner in a letter dated 10 January 2006. It stood by its decision to withhold the information from the complainant but undertook to re-examine the matter again at the next available Council meeting in light of the Commissioner's letter.
19. It also stated that it had been in correspondence with the Commissioner about the complainant on three previous occasions, and that the requirements at section 17 had never been drawn to its attention. Nevertheless it said that where

information was withheld the complainant was each time informed of the relevant exemption of the Act, and that he had exhibited independent knowledge of his right to complain to the Commissioner in his letters, so it would have been superfluous to have notified him of this. It clarified that the Council does not have a specific FOI complaints procedure, only a procedure for dealing with general complaints about the Council.

20. Lastly, it outlined something of the history of its relationship with the complainant, claiming that until 2003 he was a Council member, and that he had submitted a string of complaints about the Council regarding the discharge of its functions and conduct of its staff. It claimed too that the complainant had made a series of information requests, apparently focussed on obtaining information about the Council's finances and particular members of staff.
21. On 23 January 2006 the complainant emailed the Commissioner referring to his letter of 19 December 2005 and confirming he had still heard nothing from the Council.
22. On 20 February 2006, the Commissioner wrote to the complainant advising that his complaint would be considered in due course.
23. On 21 February, 3 March, 8 March and 9 March 2006 the complainant emailed the Commissioner to advise that he had still not been contacted by the Council. On 20 March 2006 the complainant wrote to the Commissioner confirming he had still heard nothing from the Council and advising that he had therefore drawn the matter to the attention of the local monitoring officer in the hope that it would be brought to the attention of the local standards committee.
24. On 4 September 2006 the Commissioner wrote to the complainant informing him that the matter was about to be investigated and requesting further information about a related complaint against the Council.
25. On 10 September the complainant submitted a further complaint against the Council, about the handling of a similar access request he had made in respect of its 2005/06 end-of-year accounts.
26. On 17 October 2006 the Commissioner wrote to the Council, formally setting out the details of the complaint. The Council was asked to supply copies of the information that had been withheld and further clarifying information in support of its claims that exemptions 41 and 43 applied in respect of the withheld information.
27. On 7 November 2006 the Council replied, enclosing some sample time sheets, receipts and invoices, the latter two having been cleansed of personal details when supplied to the complainant. It explained that the documents withheld ran into the hundreds, and that to supply them all to the Commissioner would be very time consuming. The Council stressed its limited resources and invited the Commissioner to view the full range of documents on-site if necessary. It was also willing to supply further individual samples if the Commissioner had particular items in mind.

28. In explaining its reasons for withholding the information requested by the complainant, the Council did not relate the exemptions to the information in question. Instead, it gave some insight into the Council's approach to confidential information and commercial interests.

Confidentiality and Privacy

29. In considering the question of "confidentiality", the Council only addressed the duty of confidence it felt it owed to community centre user groups, although its refusal notice of 19 July 2005 also cited section 41 as a factor in withholding information about invoices and receipts.
30. The Council explained that the organisers of community centre users groups were advised of its intention to publish their details in the Parish Newsletter and also on the internet, and were given the opportunity to opt out of this. It claimed all community centre users were written to in this manner in 2004, 2005 and 2006. It considered it reasonable for those who opted out to expect that their details would be held in confidence. It cited an incident in 2003 when hoax letters were sent to community centre users telling them that the Council had shared their details with third parties over the internet and claimed that the reaction of the recipients demonstrated this expectation. It also drew attention to the fact that the only information withheld from the invoices and receipts supplied to the complainant related to the "privacy" of community centre users. It clarified that the complainant had been given a copy of the public Parish Newsletter which contained the public list and supplied a copy for the Commissioner to view.

Commercial Interests

31. The Council argued that disclosure of the withheld information to the complainant would be detrimental to its own commercial interests. It pointed to the fact that the complainant had previously been a member of the Council, and alleged that during that time he had attempted to influence Council policy on the use and funding of certain community centres [there is no suggestion here that there was anything unlawful about the complainant's alleged actions]. It alleged that the complainant continued to have an interest in the way in which certain community centres were used and the Council considered this interest conflicted with its own interests. It argued that in withholding the information it was acting to protect its own commercial interests and by extension, those of its users.
32. Although not mentioning section 43 by name, the Council claimed to have taken account of the public interest in the decision to withhold information, commenting, "When I considered the public interest I weighed up the commercial and security needs of 34 groups of regular users against the interests of 1 individual who failed to give a valid reason as to why he wanted this data."
33. The Council supplied the Commissioner with a copy of the lease for its Wroxham Road property. Its letter concluded with the suggestion that the complaint might be considered to be vexatious.

34. The Commissioner wrote to the Council on 13 November 2006 and requested further samples of unredacted receipts, invoices and time sheets.
35. The Commissioner wrote to the complainant on 14 November 2006 asking for clarification as to what he had received from the Council, as it was not clear from previous correspondence that the Council had supplied him with certain documents in response to his complaint. The complainant responded on 20 November 2006, claiming that he had supplied the requested information in October 2006, although the Commissioner had no trace of this. The complainant emphasised that his principle concern was that he should have been permitted access to all this information at the time he inspected the end-of-year accounts.
36. The Council supplied further sample documents on 20 November 2006. It explained that the documents did not cover the period of the complainant's request, those particular documents having been placed in storage and being difficult to retrieve, but that they followed the same format as those documents.
37. On 9 January 2007, the Commissioner wrote to the complainant repeating the request for copies of what he had received from the Council. The complainant responded on 16 January 2007, with copies of the redacted receipts, invoices and time sheets he had been sent.
38. On 3 April 2007 the Commissioner wrote to the Council providing a preliminary assessment that the complainant was not entitled to see unredacted copies of the staff time sheets, receipts and invoices. The letter queried whether a decision had been ever been reached about the release of deeds and leases to the complainant and asked for the Council's explanation as to which exemptions applied if the information was being withheld.
39. The Council replied on 12 April 2007, indicating that, having taken advice from Warrington Borough Council, it was willing to release the lease for Wroxham Road. It asked for advice as to whether it should supply it to the complainant straight away or offer it to him when he came to view the following year's accounts.
40. On 1 May 2007 the Commissioner wrote to the Council to inform it that the complainant's access request was made under the ACA and as such it fell outside the scope of the Act by virtue of the exemption at section 21. The Commissioner stated he had no power to compel the release of the information under the Act. He clarified that this did not mean that the Council need not supply the information requested by the complainant, rather that it was bound by the ACA rather than the Act when considering whether to do so.
41. On 1 May 2007 the Commissioner also wrote to the complainant to inform him of this decision.
42. The complainant replied on 10 May 2007 declining to withdraw his complaint and commenting that the Act offered his only realistic means of redress. He claimed to have been told by the Audit Commission that if he wished to enforce the rights provided by the ACA he would need to take the Council to court.

Analysis

43. The full text of the relevant regulations can be found in the legal annex, however the salient points are summarised below.

Exemption

44. The Council claimed the exemptions under sections 40, 41 and 43, however during the course of the investigation it became apparent to the Commissioner that section 21 was the applicable exemption. Therefore this Decision Notice does not consider the exemptions identified by the Council.
45. Section 21 exempts information from the right of access under the Act where the information requested is reasonably accessible to the applicant by other means. In considering whether the exemption at section 21 applies the Commissioner therefore examined two things: –
- Was the information which was the subject of the request accessible otherwise than under the Act?
 - If so, was it reasonably accessible to the applicant?

Was the information accessible otherwise than under section 1 of the Act?

46. Section 15(1) of the ACA provides a specific right for any person to inspect and makes copies of a Council's end-of-year accounts and related material.
47. On 18 July 2005 the complainant asked for access to several items in relation to the 2004/05 end-of-year accounts, and subsequently complained that information about deeds and leases, user groups, staff time sheets, invoices and receipts was withheld, either in whole or in part. Each of these items would appear to be accommodated in the list of accessible information at 15(1)(a) of the ACA.
48. The complainant displays awareness of his rights under the ACA and associated Regulations and it seems to have been his intention to invoke those rights. Whilst not a requirement of the Act, his initial access request to the Council makes no reference to Freedom of Information legislation (it is introduced by the Council, in its response) and his request for a review of the Council's initial decision mentions his intention to refer the matter to the external Auditor "for consideration under Audit of Accounts legislation". He then complains to the Council about the way it handled his request for information in connection with the "Exercise of Electors Rights (Accounts and Audit Reg's 2003)". His initial complaint to the Commissioner cites his request as being made in connection with the "Exercise of Electors Rights (Audit Reg's 2003 SI/533)". In his letter of 20 November 2006 the complainant comments that he has inspected the end-of-year accounts on "many" previous occasions, and that it is only with this request to view the 2004/05 accounts that he has encountered restrictions on what he has been permitted to see. This request coincides with the first year in which the Act's "right

to know” provisions were introduced and it seems reasonable to assume that his previous applications were dealt with as requests under section 15(1) of the ACA.

49. The Commissioner therefore considers that the items withheld from the complainant’s request to view the 2004/05 accounts fall within the scope of the information listed at section 15(1)(a) of the ACA and are therefore accessible under that legislation.

Was the information reasonably accessible to the applicant?

50. In order for information which is available other than under the Act to be exempted from disclosure under section 21, it must be reasonably accessible to the applicant. Section 21(2)(b) of the Act states

“Information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment”.

51. The ACA establishes a right to inspect end-of-year accounts and related information, prior to its audit. However it also extends beyond the right of inspection and establishes, at section 15(1)(b), the right to “make copies of all or any part of the accounts and those other documents.” The right is therefore also a right to a hard copy of the information, if the applicant so requires.
52. The Commissioner is mindful that the rights conferred by the ACA only apply within a limited timeframe (“at each audit”). Section 14 of the Accounts and Audit Regulations 2003 (SI 533) sets this viewing window at twenty working days, with section 16 of those Regulations requiring Councils to publish a notice giving information about when and where the accounts and related material may be viewed.
53. The complainant submitted his access request on 18 July 2005, asking to be allowed to view the accounts at the Council offices on 21 July 2005. This request was granted and the visit duly took place. The complainant only had to wait four days to be permitted access to the information.
54. The Commissioner therefore considers that the information which was the subject of the request was reasonably accessible to the applicant. This, taken with his view that the information is available otherwise than under section 1 of the Act, means the Commissioner considers that the exemption at section 21 applies.
55. The Commissioner considers that this exemption applies irrespective of whether the requested information was actually made available to the applicant. The Commissioner recognises that he has no power to examine the Council’s compliance with the requirements of the ACA; this is discussed below, in the “Other Matters” Section.

The Decision

56. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

57. The Commissioner requires no steps to be taken.

Other matters

58. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Procedural Matters

59. The Council's initial refusal notice did not meet the standard set out at section 17 of the Act. It did not give sufficient information about why the exemptions which it identified applied (albeit the Commissioner subsequently identified section 21 as the appropriate exemption); it did not explain how the public interest had been considered in its decision to withhold information in reliance on section 43; and it failed to give information about the complainant's rights of appeal.
60. The Commissioner has dealt with this separately by drawing the Council's attention to the requirements of section 17.

Claiming the appropriate exemption

61. The ACA provides clear rights of access to the sort of end-of-year account information the complainant is seeking. The Commissioner has no authority to examine the decisions made by Councils in discharging their obligations under this legislation.
62. The Council has not itself claimed that the exemption at section 21 applies, however the Commissioner has exercised his discretion in treating it as though it had and in directing the applicant to pursue his rights under the ACA. The Commissioner considers that section 21(2)(b) of the Act is aimed at preserving intact existing legal regimes which provide access to information. The Act is not designed to subsume other legal access rights, or to give alternative routes of access where existing regimes are already available. The Act's access rights are therefore supplementary in character; they build on but do not replace existing access rights, unless the Act or other legislation specifically revokes them. Those existing rights, and the separate procedural regimes which are tailored to them, continue in place, and the Act observes corresponding limits to its role. This acknowledges both the distinctive policy considerations underlying those discrete

access regimes, and also the need for orderliness in avoiding confusion between regimes.

63. In reaching this view the Commissioner is mindful of the Tribunal's thinking in England and Bexley v the Information Commissioner (EA/2006/0060 & 0066), in which it commented that it could see nothing in the Information Tribunal (Enforcement Appeal) Rules 2005 (SI 2005 No 14) which would prevent the Tribunal from allowing a party to amend a Notice of Appeal to claim an exemption it had not previously claimed.

Right of Appeal

64. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 7th day of August 2007

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Refusal of Request

Section 17(1) provides 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.”

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”

Audit Commission Act 1998

Access to end of year accounts

Section 15(1) provides that –

“At each audit under this Act, other than an audit of accounts of a health service body, any persons interested may-

- (a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and
- (b) make copies of all or any part of the accounts and those other documents.”

The Accounts and Audit Regulations 2003 (SI 2003 533)

Public inspection of accounts

Section 14 (1) provides that –

“Subject to paragraph (2), the relevant body or, as the case may be, the chairman, notified under regulation 13, shall make the accounts and other documents mentioned in section 15 of the 1998 Act available for public inspection for 20 working days before the date appointed by the auditor under that regulation.”

Section 14 (2) provides that –

“The council of a parish, or the chairman of a parish meeting of a parish not having a separate council, notified under regulation 13, shall make the accounts and other documents in relation to a period to which regulation 9(3) applies available for public inspection on reasonable notice.”

Notice of public rights

Section 16 (1) provides that –

“Not later than 14 days before the commencement of the period during which the accounts and other documents are made available in pursuance of regulation 14, a relevant body to which regulation 11(2) applies, or in the case of a parish meeting, the chairman of the meeting, shall give notice by advertisement of the matters set out in paragraph (2).”

Section 16 (2) provides that –

“The matters referred to in paragraph (1) are -

- (a) the period during which the accounts and other documents referred to in paragraph (1) will be available for inspection in accordance with regulation 14;
- (b) the place at which, and the hours during which, they will be so available;
- (c) the name and address of the auditor;

- (d) the provisions contained in section 15 and section 16 of the 1998 Act; and
- (e) the date appointed under regulation 13.”