

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 16 July 2012

Public Authority: Walberswick Parish Council
Address: Seaspray
Millfield Road
Walberswick
Southwold
Suffolk
IP18 6UD

Decision (including any steps ordered)

1. The complainant has requested a copy of a specific Councillors report and other information that Walberswick Parish Council holds relating to a meeting that considered an internal review of previous information requests. The Commissioner's decision is as follows:
 - In relation to point e of the requested information, Walberswick Parish Council did not deal with the request in accordance with section 1(1)(a), section 1(1)(b) and section 10(1) of the FOIA, in that it did not inform the complainant that the information was held, or disclose that information within the statutory time limit.
 - In relation to points a and d, the Commissioner's decision is that Walberswick Parish Council did not deal with the request in accordance with section 10(1) of the FOIA, in that it did not disclose the information within the statutory time limit.
 - In relation to points b, c, and f of the request, the Commissioner's decision is that, on the balance of probabilities, Walberswick Parish Council does not hold the requested information.

The Commissioner does not require any steps to be taken.

Request and response

2. On 17 August 2011 the complainant requested information from Walberswick Parish Council ('the council') in the following terms:

"The purpose of this letter is to formally request a copy of [named Councillor's] written report that you have referred to and other information that WPC holds related to the WPC meeting on 19/07/11 that considered the internal review I requested on 2/1/2011."

3. The council responded on 13 December 2011 as follows:

"I do not have an electronic copy of [named Councillor's] report, I shall hand deliver it to you either today or tomorrow.

The meeting held on 19.07.11 was minuted, the minutes were posted up on village notice boards and are on the Council's website. For ease of reference I attach them as appendix 1.

Additional information is as follows:

An email dated 24.10.11 from me to [named Councillor] (redacted), appendix 2.

A hard copy reply from [named Councillor] (redacted), appendix 3, to be handed delivered to you.

A hard copy of "Terms of Reference for Exclusion Notice Appeals" from [named Councillor], dated 11.03.11, to be hand delivered to you.

4. The complainant requested an internal review on 24 February 2012. The council provided a response on 1 March 2012 stating that a further search of Parish Council records had been made and the only record found that was not provided in the original response on 13 December 2011 is an overview of the complainants dealings with the Parish Council made by the previous Clerk which was referred to by [named Councillor] in his report. The council provided this overview and stated that it holds no further information than that already given to the complainant in connection with [named Councillor's] report or the meeting that considered it on 19.07.11.
5. In its internal review, the council also stated that it considered the review request of 24 February 2012 to make the following further requests and provided the following responses:
- The summary of me the WPC Clerk prepared and specifically refers to in his report. (if you are now claiming WPC does not hold this information, it must have been concealed or destroyed after I requested it.)
 - [named Councillor's] analysis, again that he specifically refers to, of my correspondence, presumably my letter of 25/11/10, that resulted

- in WPC issuing me an unjustified and unlawful exclusion notice. (the same points in brackets in a above apply here).
- c. The meeting between SALC and [named Councillor] on 5/04/11 and the meeting between [named Councillor] and [named Councillor] on 12/05/11. WPC must hold a record of these meetings ((the same points in brackets in a above apply here).
 - d. The guidelines [named Councillor] states he was provided (the same points in brackets in a above apply here).
 - e. The questions [named Councillor] put to the parish councillors and their replies and the relevant intra-WPC correspondence, again that he specifically refers to (the same points in brackets in a above apply here).
 - f. The copy of [named Councillor's] report is superficial and unsatisfactory. Was that in truth and honesty, the only documentation WPC had before it on 19 July 2011?. This seems most unlikely. Was there any supporting information/documentation accompanying this bizarre report?
 - a. Set out above.
 - b. I do not understand this request. If you are asking for a copy of your letter to the Council dated 25.11.10 you already have it.
 - c. There is no record of these meetings apart from [named Councillor's] reply to me which I attached to my replies dated 13.12.11 as appendix 3.
 - d. The terms of reference [named Councillor] was given by [named Councillor] were given to you as a hard copy by delivery to your Walberswick house on 14.12.11. [Named Councillor] refers in his report to the Information Commissioner's Office guidelines. I do not know because there is no record setting out what guidelines he was given.
 - e. There is no record of what questions [named Councillor] put to the Parish Councillors or their replies or what correspondence he was given.
 - f. No further documentation was put to the Parish Council on 19.07.11.
6. On 7 March 2012 the complainant wrote to the council stating that points a to f were not further requests but were part of the request made on 17 August 2011 as they all related to [named Councillor's] report but if the council were maintaining to treat them separately then she required an internal review of the responses.
7. The council wrote to the complainant on the same day providing the following internal review of points a to f:
- a. You were given the document in my letter of 01.03.12 and you make reference to it in your letter of 07.03.12.

- b. If you are asking for a written analysis prepared by [named Councilor], there is none recorded.
- c. There are no records apart from what you have already been given.
- d. My reply does not change.
- e. My reply does not change.
- f. My reply does not change, save that I can confirm from my own knowledge as I was at that meeting that no further documentation was put to the Parish Council meeting.

Scope of the case

- 8. The complainant contacted the Commissioner to complain about the way her request for information had been handled.
- 9. The Commissioner considers it appropriate to consider with points a to fin this decision notice as they all fall within the scope of the initial request being 'other information that WPC holds related to the WPC meeting on 19/07/11...'.
fin
- 10. As shown in the request and response section above, information has been provided for points a and d. Therefore the Commissioner considers whether information is held in relation to points b, c, e and f, as well as any other information which may be held within the scope of the request.

Reasons for decision

Section 1 – Is the information held?

- 11. Sections 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
- 12. The complainant has asserted that more information may be held than the council has disclosed in its response and internal review.
- 13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the

information was held. He is only required to make a judgement on whether the information was held on the balance of probabilities.

14. During the investigation, the Commissioner made enquiries as to the searches carried out to establish whether the information was held.
15. The council explained that's its one employee (the Clerk), when dealing with the request on 13 December 2011 had been Clerk to the council some five months and had been dealing with a number of requests for information from four or five complainants including the one in this case. It explained that many of these requests had been outstanding from before the current Clerk was employed, many were supplementary requests arising from replies to earlier requests and the requests were often for similar information. By December 2011 the current Clerk was therefore fairly certain of what information was held by the Council both electronically and paper based.
16. The current Clerk explained that the previous Clerk had passed on all paper based and electronic information held by the council including all letters and emails to or from the complainants, to or from the Suffolk Association of Local Councils and to or from Councillors and the Clerk where they related to the requests. The named Councillor had been asked in October 2011 for any information he held and he provided what the Clerk thought was the last information he held on 30 October 2011 before resigning the next day. The council stated that in dealing with this request, both the electronic and paper records were searched and the information initially disclosed was relatively easy to locate as three other complainants had already requested almost identical information.
17. The Clerk also explained that further documents were located by the council and disclosed to the complainant on 28 May 2012. These were documents held by the named Councillor who passed them to the Chairman of the council after the named Councillor received correspondence from another complainant on 12 April 2012 asking if he was sure that everything he held had been disclosed. These documents were received by the Clerk on the 10 May 2012 and included the information requested at point e and possibly information within the scope of point c as detailed below. The Clerk hand delivered them to the complainant's property in Walberswick on 28 May 2012.
18. It was also explained that the Clerk met with the named Councillor on 14 May 2012 who provided hard copies of the additional documents in his possession and copies of emails he had sent to the Chairman on 3 November 2011 and 11 November 2011 which asked the Chairman to forward each email to the Clerk as he knew there was a problem with the Clerk receiving emails from him. The Chairman did so, but they did not arrive. The Clerk explained that because she wasn't expecting them

she didn't know there was correspondence she should have received and so didn't chase it. The Chairman didn't know that the Clerk had not received the emails, although he confirmed to the named Councillor that he had sent them.

19. In relation to point b, the council stated that the complainant's contention that there is an analysis by the named Councillor because he refers to it in his report is incorrect. Having seen the report the Commissioner agrees with the council that the Councillor did not state that he had made any written or electronic record of his analysis.
20. In relation to point c, the council has stated that the only record of the meeting of 5 April 2011 between the named Councillor and the Suffolk Association of Local Councils is in the report. The Commissioner notes that the report was disclosed in the initial response. The council also explained that one of the documents disclosed on 28 May 2012 to the complainant was a record made by the named Councillor of a meeting he held with the Chairman on 22 May 2011. The Clerk explained that it is possible that the 12 May 2011 meeting was a typing error in the report and should have read 22 May 2011.
21. In relation to point e, the request for a record of the questions put by the named Councillor to the other Councillors and their replies, the council's initial and review response was that there were no records. However, the council revised this response further to the additional documents coming to light and disclosed the requested information to the complainant on 28 May 2012.
22. In relation to point f, the council has reiterated that the only document considered by the council, or indeed on the table, at the meeting, was the named Councillor's report.
23. In reaching a decision the Commissioner has considered if the requested information was what he would expect the council to hold and whether there was any legal requirement or business need for the council to hold the information.
24. The Commissioner also considered whether the council had any reason or motive to conceal the requested information but could not identify one.
25. In addition, the Commissioner considered whether there is any evidence that the information was once held but subsequently deleted or destroyed. The council confirmed that the information was not created and therefore never held and never destroyed.
26. In the circumstances, the Commissioner does not consider that there is any evidence in that would justify refusing to accept the council's position that it does not hold the information requested at points b, c

and in this case. The Commissioner is therefore satisfied that on the balance of probabilities, the information requested is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA in relation to points b, c and f.

Procedural requirements

27. Sections 1(1)(a) and 1(1)(b) of the FOIA state that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
28. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days.
29. As the initial response took more than 20 working days, the council has breached section 10(1) of the FOIA.
30. As information at point e was only disclosed during the Commissioner's investigation, the council has also breached sections 1(1)(a) and 1(1)(b) as it did not confirm that information was held or disclose that information by the completion of the internal review.

Right of appeal

31. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF