

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2013

Public Authority: Walberswick Parish Council
Address: Old Hall
Wenhaston
Suffolk
IP19 9DG

Decision (including any steps ordered)

1. The complainant has requested copies of 83 pages of letters sent to Walberswick Parish Council (the council) by a specific individual which the council referred to in a letter dated 16 December 2011. The council initially considered that complying with the request would exceed the appropriate cost limit and therefore that section 12 applied. However, during the course of the investigation, the council withdrew its reliance on section 12 and advised both the Commissioner and the complainant that it now considered that section 14 applied as the request was vexatious when considered along with the requests of three other individuals who the council maintains are acting in concert.
2. The Commissioner's decision is that the council has correctly applied section 14 to the request. The council is therefore not required to take any steps.

Request and response

3. On 5 February 2012, the complainant wrote to the council and requested information in the following terms:

"I write to request photocopies of the letters (redacted to obscure the name and address of the sender) consisting of 83 pages that you claim comprised 50 requests for information under the FOIA. These 50 requests for information were specifically referred to in your reply dated 16/12/11 to an FOIA request dated 10/12/11 from a Mr M Williams that Walberswick Parish Council (WPC) placed on the WPC

website. (The request and your response has also been widely reported elsewhere on the internet)."

4. On 21 February 2012 the council responded stating that it was relying on section 12 to withhold the requested information as to extract the 50 requests would take in excess of 18 hours.
5. Following an internal review the council wrote to the complainant on 12 March 2012 upholding its original position that section 12 applied.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to formally instruct the council to disclose the requested information.
7. During the course of the investigation, the remaining councillors at the council resigned. The council then informed both the Commissioner and the complainant that it no longer considered that section 12 applied and that it was instead relying on section 14 as it considered that the request was vexatious.
8. The Commissioner therefore considers the scope of this case to be to determine whether the council has correctly engaged section 14(1) of the FOIA to the request dated 5 February 2012.

Reasons for decision

9. 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"

10. Previous Information Tribunal decisions have aided the Commissioner when coming to a decision as to whether or not a request is vexatious. In determining whether a request is vexatious or not, the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors:
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Could the request fairly be seen as obsessive?

- Does the request have the effect of harassing the authority or causing distress to its staff?
 - Is the request designed to cause disruption or annoyance
 - Does the request lack any serious purpose or value?
11. The Commissioner agrees with the Tribunal that the bar need not be set too high in determining whether to deem a request vexatious. He also agrees with the Tribunal that the term 'vexatious' should be given its ordinary meaning, which is that it 'vexes' (causes irritation or annoyance; in relation to section 14(1) annoyance must be caused by the process of complying with the request).
 12. The council has stated that the complainant's request is vexatious as it: has caused a significant burden in terms of time and expense, is harassing and distressing to members of the council to the extent that all the councillors have resigned, and that it believes the request is designed to cause disruption or annoyance and does not have any serious purpose. The council is also of the opinion that the complainant has been acting in concert with three other individuals, who have been submitting freedom of information requests to the council.
 13. In the Commissioner's view, an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However, he considers that, in order to judge a request as vexatious, a public authority should usually be able to make persuasive arguments under more than one of the above headings.
 14. Accordingly, the Commissioner has considered whether the council has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case. In the first instance however, the Commissioner will consider the context and history of the requests, particularly as the council considers that the complainant has been acting in concert with three other individuals since March 2010.

Context and History

15. The Commissioner recognises that there is nothing in the FOIA which prevents the aggregation of requests from disparate sources for the purposes of section 14, and he is mindful that section 12 of the FOIA makes specific provision for just such a process for the consideration of costs, where two or more requests have been made by different persons who appear to the public authority to be acting in concert, or in pursuance of a campaign. The council considers that a similar provision ought to apply in the circumstances of this request and others it has received from the four individuals. The Commissioner has also noted the

approach taken in a number of cases related to Forestry Commission Scotland¹, and also the University of Salford². In these cases he accepted that a number of applicants were acting together, in pursuance of a campaign and this was a relevant consideration as to whether the requests were vexatious.

16. Section 14 does not specifically contain the provision that if two or more requests are made "*by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign*" then the requests can be considered together. Therefore the Commissioner must consider the degree to which it can be said that the four requesters are acting in concert, and whether it is reasonable for the council to refuse the complainant's request on this basis.
17. In November and December 2010, the council issued separate 'exclusion notices' to the four requesters as it considered their freedom of information requests and general correspondence to be vexatious and/or repeated under section 14 of the FOIA. The requesters, including the complainant, complained to the Commissioner about the council's 'exclusion notices'. In the course of the Commissioner's investigations into those complaints in July 2011, the council withdrew its reliance on section 14. The Commissioner provided the council with guidance on the application of section 14 at this time. This matter is discussed in the Commissioner's decision notice FS50422187.³
18. The four requesters have since submitted a large number of freedom of information requests to the council relating to the planning application reference C/10/0188, the exclusion notices, the way the council handles freedom of information requests and council affairs. The requesters have further submitted a large number of complaints to the Commissioner about the way the council has handled many of those requests. The Commissioner is therefore aware of the scale, type and pattern of the requests the council has received since 2010.
19. The complainant has also acknowledged that the matter has been ongoing since 2010 and offered to provide the Commissioner with the 'full history' of what she considers to be the council's failings since that time. The complainant makes frequent reference to the 'exclusion

¹ FS50176016, FS50176942, FS50187763, FS50190235

² FS50297312

³ http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50422187.ashx

notices' as an example of the council's wrong doing. For example, in her letter to the Commissioner of 15 October 2012 she stated:

"This would include WPC knowingly issuing me an Exclusion Notice in December 2010, denying me my FOI rights and WPC wrongly confirming in July 2011 that issuing this wrongful Exclusion Notice was correct."

20. In July 2011 the current clerk took up post at the council and has retained records of the time she has spent dealing with freedom of information requests. In addition to this, from July 2011 to February 2012, the monthly council meetings had a fixed agenda item to discuss the problems faced with the number of freedom of information requests from the four individuals and the time taken to deal with them.
21. In relation to the request in this case, the council has explained that the 83 pages which contain 50 requests were submitted by one of the four individuals who the council consider to be acting in concert. The council considers that the complainant knows the requester ("requester X") and, whilst it acknowledges that it has no proof to this effect, it considers it likely that the complainant will have seen copies of the requested information from the requester X.
22. The reference to the *"83 A4 pages of letters and attachments, all closely typed"* was initially contained in the council's letter to the complainant dated 27 January 2012. This description of information is then used in the requester X's letter to the council (copied to the Commissioner) of 1 March 2012. To the best of the Commissioner's knowledge, neither the complainant nor the council has made this statement publically.
23. Further to this, requester X's letter of 2 March 2012 to the council (copied to the Commissioner) comments in detail on inaccuracies and misleading information provided by the council to the Commissioner in relation to a decision notice on a case submitted by the complainant (FS50422187). This letter also states that having viewed the decision notice, he has *"informed the member of the public involved"*. As the Commissioner's decision notices are published in anonymous form, the only way the original requester could have known that the decision related to the complainant was with prior knowledge of the complainant's correspondence and requests to the council.
24. The Commissioner also notes that the minutes for the meeting of 14 May 2012 record a discussion between a member of the public and two of the requesters about the background to the freedom of information

dispute. In relation to this discussion, one individual stated "the four of us together" and it is understood that this refers to the four individuals the council has referred to as acting in concert⁴.

25. Based on the council's position and the Commissioner's experience of dealing with complaints about the council from the four requesters, the Commissioner accepts that it is reasonable for the complainant to be considered to have been acting in concert with the three other requesters. He has therefore gone on to consider the council's arguments in support of its application of section 14(1) in this context.

Would complying with the request impose a significant burden in terms of expense and distraction?

26. FOIA was enacted to assist people in seeking access to recorded information held by public authorities. However, it was not the intention of FOIA to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.
27. The Commissioner's guidance states that when considering any burden imposed in complying with a request, consideration will need to be given not only to the cost of compliance, but also whether staff would be diverted or distracted from their usual work.
28. The council considers that the complainant's requests create a significant burden on the council in terms of expense and distraction when considered together with those of the three other people with she is acting in concert with.
29. The council has explained that the clerk is contracted to work 40 hours a month to deal with all council business. However, in August 2011 the clerk spent 44 hours dealing exclusively with freedom of information and data protection matters, 30 hours in September 2011 and 36 hours in October 2011. The clerk has never worked less than 52 hours in one month, 12 hours above her contracted hours in an attempt to deal with all freedom of information matters alongside normal council business. The Commissioner notes that the clerk spent a further 54 hours on freedom of information matters in the six weeks between the December 2011 and January 2012 meetings. The clerk also reported that the situation was similar up to the February 2012 meeting.

⁴ <http://walberswick.onesuffolk.net/assets/Parish-Council/Minutes-2012/minutes-14.05.12.pdf>

30. In addition to this, due to the large amount of freedom of information requests on top of the other council business, the council has explained that the clerk was required to work 128 hours in April 2012 and 131 hours in May 2012. The Commissioner notes that these post-date the request in question in this case. However, the council has explained that the additional work that was required in April and May 2012 was due to it not being completed in a timely fashion or at all in February and March 2012. The Commissioner therefore acknowledges that this can be taken into account when analysing the extent to which the freedom of information requests of the group have been burdensome.
31. The clerk is paid an hourly rate of £8.344 and the salary is taken from the council's precept which for the financial year of 2011-2012 was £7,742. The council has advised that in the period July 2011 to November 2011, the cost of the clerk's time in dealing with freedom of information requests from the four requesters amounted to £1093. The increased expenditure on the clerk's wages led to the council requesting an advance of £2000 from Suffolk Coastal District Council from the 2012-2013 financial year.
32. The increased burden of freedom of information requests from the four individuals has resulted in an increase of the annual precept to £16,000. This has allowed for an increase in the clerk's contracted hours to 60 hours a month, dealing specifically with freedom of information matters for 35 hours a month. This is in an attempt to ensure that other council matters are completed on time and given full consideration.
33. It has also explained that the council has had to make cuts in order to fund the expense of dealing with the four individuals' freedom of information requests. Such cuts included the annual Christmas tree, the annual grant to the Parochial Church Council, the annual gift of vouchers to the lady who cleans the bus shelter all year and also cancelling three monthly routine meetings of the council.
34. With regard to the burden in terms of distraction, the council has argued that much of the administrative work that the clerk is contracted to do has either not been carried out at all or has been completed at the last minute. The council considers that this means that its core functions have not been carried out in a timely manner and that this has impacted on the quality of the administrative work. For example, the clerk has not had time to provide newly elected councillors with any training.
35. Another point the council has advanced in terms of the distraction the requests have caused is the fact that the council no longer has any councillors as they have all resigned as a result of the impact of the requests. At this point in time, the clerk is not being paid and the council

cannot take any decisions. The parish of Walberswick has therefore been left without a functioning council.

36. Taking into account the size of the council and its limited resources, it is clear to the Commissioner that the burden of the complainant's freedom of information requests when considered in conjunction with those of the other three individuals since at least July 2011 has been significant, both in terms of expense and distraction.

Does the request have the effect of harassing the authority or causing distress to its staff?

37. The council has argued that the harassing effect of the number of freedom of information requests, combined at times with the content of those requests has led to all of the councillors resigning from the council. The four most recent letters of resignation can be seen on the council's website and each refers to the problems faced by the council as a result of a small minority of people who they consider have attacked the council.⁵ The Commissioner recognises that these resignations took effect after the date of the complainant's requests in this case. However, he accepts that they should be considered as they demonstrate the harassing effect the campaign has had on the councillors over at least the past two years, including the period up to the request in this case.
38. The Chairman's letter of resignation dated 1 October 2012 specifically refers to the individuals' use of the FOIA:

"The unbelievable volume of this correspondence and repeated demands using the 'Freedom of Information Act' and 'Data Protection Act' has severely damaged the council's financial position and jeopardized its ability to conduct the normal business of looking after the general interests of the parish."

His letter also states that he found the correspondence from the requesters to be "harassing, and in some cases offensive in nature."

39. Other letters of resignation make the following comments:

- *"certain people are determined to bring about the demise of the parish council"*
- *"constant harassment and unpleasantness from a very small minority of people"*

⁵ <http://walberswick.onesuffolk.net/parish-council/letters-of-resignation/>

- *"over the past 2 years the parish council has come under relentless criticism from a small group of people making it impossible to carry out its duties"*

40. The council has also explained that the previous clerk felt so harassed by the number of requests she was receiving from the group that she commenced grievance procedures against the council and resigned from her post in July 2011. The current clerk worked with the previous clerk for a month in July 2011 and has stated *"she appeared to me to be seriously affected by the work pressure she was under in attempting to deal with the requests"*. The current clerk has also informed the Commissioner that at the time she joined the council, all of the councillors separately expressed concern to her about the freedom of information request problem with the four individuals. The council has stated that one of the councillors resigned in October 2011 stating that the problems were too much for him.
41. Considering the reasons the councillors have given for resigning and the longstanding nature of the concerted action of the four individuals, including the complainant, the Commissioner has no difficulty in accepting that the requests have had the effect of harassing members of the council.

Was the request designed to cause disruption or annoyance?

42. The Commissioner's published guidance on section 14 comments that because this factor relates to the requester's intention, it can be difficult to prove. In this case, the complainant has refuted that her requests have been designed to cause annoyance.
43. However, the council has explained that the information which is the subject of this request is the correspondence and requests submitted by one of the other requesters. The council maintains that the complainant works particularly closely with this requester and has therefore suggested that it is highly likely that she has already seen the information which she is requesting.
44. The council has also explained that the complainant is aware that the information is not held in an electronic format and that the council does not have a photocopier. The council has therefore argued that in knowing the lengths to which the council would have to go to in order to provide redacted copies of the 83 pages, the complainant's request is designed to cause disruption and annoyance.
45. The council has acknowledged that it cannot prove that the complainant has already had access to the information, but suggests that given that they are acting in concert, the complainant could ask the original

requester for the information. The Commissioner understands the council's position, and is himself aware that the complainant and the original requester share information, as referred to in paragraphs 21 to 23.

46. In view of the available evidence, the Commissioner understands the council's position that the request was designed to cause disruption and annoyance, as it is clear that the request relates to information which originates from an individual with whom the complainant is associated. However, as stated in paragraph 42, the Commissioner recognises that it is difficult to prove that a request was designed to cause annoyance or disruption, and in this instance, there is no unquestionable proof that the complainant has already seen the requested information.

Does the request lack any serious purpose or value?

47. In principle, FOIA is not concerned with the motives of an applicant but in promoting transparency for its own sake. Nevertheless, the arguments for the application of section 14(1) may be strengthened where a public authority can demonstrate that a request has no value or purpose. It is rare, though, that a lack of serious purpose on its own could turn a valid request into a vexatious one.
48. The complainant maintains that her requests are necessary due to the way in which the council has handled her information requests in the past. She refers particularly to the 'exclusion notice' served on her in December 2010 as an example of the council's wrongdoing (see paragraph 19).
49. The Commissioner accepts that in the past the council has not handled freedom of information matters well, and has commented on this in previous decision notices against the council⁶. He therefore accepts that a degree of repetition in requests can be attributed to the council's handling of requests. As such he recognises that the complainant and the other individuals maintain that their requests serve the serious purpose of highlighting problems at the council.

Conclusion

50. The Commissioner has weighed up the arguments put forward by the council alongside his knowledge of the context and history of the request and the information provided by the complainant. He

⁶ FS50379341, FS50422187, FS50421923, FS50423033

acknowledges that the council has not handled freedom of information matters well in the past, and understands therefore why the complainant and the other individuals have continued to submit requests and other correspondence to the council. It is possible that had the council responded positively to the requests in early 2010, the situation would not have progressed to its current state.

51. However, the Commissioner cannot ignore the devastating impact the complainant and the individuals have had on the council. This includes the 100% increase in the council's precept, to pay at least in part towards the increased time the clerk has had to spend on dealing with requests and associated correspondence. It also includes the fact that the council is now without councillors which means that the parish is without a functioning council. It is clear that the requests have been harassing in nature towards both the past and current clerk and to the various councillors, mainly in terms of the scale and frequency, but also with regard to the content.
52. The Commissioner therefore concludes that the council was correct to apply section 14(1) to the request in this case.

Right of appeal

53. 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

54. 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.
55. 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

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