

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 26 March 2013

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

Decision (including any steps ordered)

1. The complainant requested information from Walberswick Parish Council ('the council') relating to the Community Benefit Fund. The Commissioner's decision is that the council correctly applied section 14(1) of the FOIA because the complainant was acting in concert with other individuals and the request was vexatious. The Commissioner does not require any steps to be taken.

Request and response

2. On 20 February 2012, the complainant wrote to the council and requested information in the following terms:

" Anonymous Donations of £2600.00 paid into the Community Benefit Fund.

...

1. How many donations were there?
2. When were they received?
3. How much were they for?
4. Who were they payable to?
5. Were they sent by cash, cheque or bankers draft and were they receipted by you?
6. What is the status of the 'CBF' and why did you pay these donations into it?
7. How can the funds in the CBF be deployed and on whose decisions

and authority?

8. How is the 'CBF' recorded in the parish council's financial records? Is it an identifiable separate element?

9. Are there any other named 'Funds' included in the parish council's accounts?

... can you please confirm that neither you nor any of the Parish Councillors knows from whom these donations came...

... you have not replied to my request of 02/01/12; Can I please have a copy of those financial regulations that were applicable to Walberswick Parish Council and under which payments were agreed and made for the period between the acceptance of the Treasurers' Report 2009 and the adoption of new financial regulations by the Parish Council in December 2011... Can you now please send the information to me?

...Has WPC obtained a loan or some sort of advance from SCDC to help the parish council deal with its current financial difficulties? If so what is the sum involved, what are the terms and when was it received? If there is a loan will or has the anonymous donations be used to pay off this loan? (sic)"

3. The council responded on 1 March 2012. It referenced 10 other requests received from the complainant between 28 December 2011 and 5 February 2012 and explained that it did not know if it held some of the information and applied the exemption at section 12 where the cost of compliance exceeds the appropriate limit. The council stated that the 10 referenced requests did not include supplementary requests relating to earlier requests or questions posed during the period that were not requests for information.
4. The complainant wrote to the council on 17 March 2012 expressing his dissatisfaction with the response and stating that he is asking the Commissioner to review the decision. On 24 June 2012, the complainant formally sought an internal review of the council's refusal to provide him with items 1-9 of the request.
5. On 18 July 2012, the council provided its internal review response maintaining its application of section 12. It stated that it is unable to undertake its core functions in a timely and effective manner because of the number of requests received from the complainant and others.

Scope of the case

6. The complainant contacted the Commissioner on 1 August 2012 to complain about the way his request for information had been handled.
7. During the Commissioner's investigation, the council stated that it wished to apply section 14(1) of the FOIA, instead of section 12, as well as the fact that some of the information is not held. The council referred to the decision notice dated 24 January 2013, on case reference FS50434776, which involved the same parties and found that the council was correct to apply section 14(1) on the basis that the request was vexatious and the complainant was working with others. The council requested that the Commissioner make the same finding on in respect of this request.
8. A public authority is able to raise a new exemption either before the Commissioner or the First Tier Tribunal and both must consider any such new claims. Therefore, the Commissioner has considered the council's reliance on 14(1) as the basis for refusing to provide the requested information.
9. The Commissioner has considered the council's arguments for the application of section 14(1) as supplied to him during the investigation of case reference FS50434776 and as presented to the complainant in previous responses to information requests. The Commissioner has also dealt with a number of other cases from this complainant and the other three people acting together and has also drawn on that knowledge and experience.
10. Although this decision notice draws on the arguments presented in other related cases, the Commissioner has considered the individual circumstances of this case.

Reasons for decision

11. Section 14(1) of the FOIA states the following:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".

12. When assessing vexatiousness the Commissioner adopts the view of the Tribunal's decision in *Ahilathirunayagam v Information Commissioner's Office*¹; that it must be given its ordinary meaning: would be likely to cause distress or irritation. Whether the request has this effect is to be judged on objective standards.

13. The Commissioner also endorses paragraph 21 of the Information Tribunal's decision *Mr J Welsh v the Information Commissioner*² where it stated:

"In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another."

14. As explained in his guidance on 'When a request can be considered vexatious or repeated'³, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

¹ Appeal number EA/2006/0070, paragraph 32

² Appeal number EA/2007/0088, paragraph 21

³

http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx

15. It is not necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious request will be. The Commissioner is able, as stated in paragraph 13 above, to take into account the history and context of the request when determining whether a request is vexatious. It is often the case that a request for information only reveals its vexatious quality when put into context.

Context and History

16. 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 four individuals. The Commissioner has also noted the approach taken in a number of cases related to Forestry Commission Scotland⁴, and also the University of Salford⁵. 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.
17. 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.
18. 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

⁴ FS50176016, FS50176942, FS50187763, FS50190235

⁵ FS50297312

application of section 14 at this time. This matter is discussed in the Commissioner's decision notice FS50422187.⁶

19. 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.
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. 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 concert⁷.
22. 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.

Could the request fairly be seen as obsessive?

23. When a request for information is refused as vexatious, it is often the case that an examination of the background will reveal a long and difficult relationship between the parties that has arisen as a result of a

⁶ http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50422187.ashx

⁷ <http://walberswick.onesuffolk.net/assets/Parish-Council/Minutes-2012/minutes-14.05.12.pdf>

dispute or a number of related disputes that, for whatever reason, have never been resolved to the satisfaction of the complainant.

24. The council has offered no specific evidence under this heading. However, the Commissioner is aware of the background to this request, as detailed in paragraphs 16-22. Consequently this request can fairly be seen as obsessive when considered contextually as part of a concerted campaign.

Is the request harassing the authority or causing distress to staff?

25. The Commissioner would like to highlight the fact that he is not concerned with what the complainant's intention may have been when considering this question. It is not unusual for a request to be deemed vexatious even though the complainant genuinely believes that the request and their behaviour were entirely justified. Instead, the Commissioner is concerned with the effect that the request would have had on any reasonable public authority.
26. 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. Six letters of resignation can be seen on the council's website⁸ and most refer to the problems faced by the council as a result of a small minority of people who they consider have attacked the council.
27. 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 two years up to the review response in this case.
28. The Chairman's letter of resignation dated 1 October 2012 specifically refers to the individuals' use of the FOIA:

"Over the last two and a half years the Council has had to endure correspondence of a harassing, and in some cases very offensive nature, from a few individuals, some of who are not even permanent residents or electors in the parish. The unbelievable volume of this correspondence and repeated demands using the 'Freedom of Information Act' and 'Data Protection Act' has severely damaged the

⁸ <http://walberswick.onesuffolk.net/parish-council/letters-of-resignation/>

council's financial position and jeopardized its ability to conduct the normal business of looking after the general interests of the parish."

29. 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"
- "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"

30. 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.

31. 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 both the councillors and the paid staff.

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

32. The Commissioner's aforementioned 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.

33. 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.

34. 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.
35. 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 periods post-date the request in question in this case but pre-date the internal review response. 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 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.
36. The clerk's 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.
37. 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.
38. 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.

39. 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.
40. Another point the council has advanced in terms of the distraction the requests have caused is the fact that all the councillors resigned (as a result of the impact of the requests) therefore the council could not take any decisions and the clerk was not being paid. The parish of Walberswick was therefore been left without a functioning council.
41. The Commissioner recognises that the response by the council has, at times, been inadequate or misguided. The council has been in a state of transition whilst the new parish clerk settled in and attempted to comply with outstanding requests for information whilst faced with an influx of new requests and requests generated from the responses that had been provided. However, the Commissioner does not doubt that compliance with the requests would impose a significant burden and the monopolising of limited public resources when considered in the context of a parish council. It is doubtful if this request would cause a substantial burden in isolation but when viewed as part of a concerted attempt by several individuals to put pressure on the council by means of the FOIA, the balance shifts to finding this factor engaged.

Is the request designed to cause disruption or annoyance?

42. As the Commissioner states in the aforementioned guidance on the subject, because this factor relates to the requester's intention it can be difficult to prove.
43. The council has acknowledged that many of the complainant's requests have not been answered or answered in what the complainant felt to be an unsatisfactory way. However, the council asserts that recent attempts to deal with requests have resulted in more requests being received. Additionally the council has concluded that some of these requests were designed to cause annoyance because, despite its attempts to satisfy the complainant's requests, the council has been met with new requests. As soon as responses to requests have been emailed or hand delivered, further requests are received. One example was provided when the parish clerk spent 8.5 hours responding to requests on 8 December 2011 (the complainant disputes this figure) and three

more emails were received containing requests on the evening of the same day. It can also be said that the council's own actions have contributed to the situation where an initial failure to appreciate their obligations under the FOIA was apparent.

Does the request lack any serious purpose or value?

44. The complainant has stated that this request should be considered on its own merits and it that it can't be denied that it is a request of substance. He has stated that the council's reluctance to have open dealings, particularly on financial matters, leaves the impression that it has something to hide and whilst it is not answering requests it is bringing the council into disrepute.
45. The Commissioner appreciates the difference between this request and some of the other requests from the four individuals acting together, which didn't appear to be for the purpose of obtaining information but rather to use the FOIA in order to highlight deficiencies in the council's procedures. However, when set against the context of the volume of requests, this does undermine the value.

Conclusion on vexatiousness

46. 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. It is clear that the requests can fairly be seen as obsessive, have the effect of harassing the council and imposing a significant burden in terms of expense and distraction, when considered contextually as part of a concerted campaign.
47. The Commissioner has upheld several complaints against the council. He acknowledges that there was a period of time when the council did not respond to freedom of information requests in the erroneous belief that its application of 'exclusion notices' made this unnecessary. He also recognises that the council's responses to requests for information have been tardy and procedurally incorrect on several occasions in the past which it has more recently attempted to remedy. Despite its acknowledged inability at times to meet the requirements of the legislation, the council has found itself in a beleaguered situation. The Commissioner concludes therefore that the action that has been taken by the complainant and other individuals and the associated burden and harassment being imposed on the council is disproportionate to whatever objective the complainant is trying to achieve. Therefore, the Commissioner has concluded that the council has correctly applied section 14(1) to the requested information.

Right of appeal

48. 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

49. 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.
50. 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