

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2016

Public Authority: Rainworth Parish Council

Address: Rainworth Village Hall
Kirklington Road
Rainworth
Mansfield
NG21 0JY

Decision (including any steps ordered)

1. The complainant requested detailed financial information from Rainworth Parish Council (the parish council).
2. The Commissioner's decision is that while the parish council acknowledged the complainant's request and provided some relevant information, it has not issued a response which fulfils its obligations under the terms of the FOIA.
3. The Commissioner requires the parish council to take the following steps to ensure compliance with the legislation:
 - issue a fresh response to the complainant, with respect to the outstanding parts of the request, which does not rely on section 21 of the FOIA.
4. The parish council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 September 2015, the complainant wrote to the parish council via the 'whatdotheyknow' website and requested information in the following terms:

"I have been checking through the minutes that you have put only very basic financial details in the minutes

May I quote from the minutes of April 2015

"A schedule of accounts from 1st to 31st March including payments of £19,973.56 and remittance of £16,578.25 was presented to the meeting. Questions regarding the accounts were answered to the satisfaction of the council."

It is obvious that Councillors were shown documents detailing all payments but these have been withheld from the web version of the minutes.

Will you please let me have copies of all these statements for each month starting with April 2013 to date.

I also note that your would present to the Council a copy of the annual finances at the first meeting of the new accounts year, but this has not been published.

Minutes of April 2014

"A schedule of accounts from 1st - 30th April 2014 including payments of £4,620.82 and remittance of £55,553.73 was presented to the meeting"

Will you please let me have a copy of the full annual accounts schedule for the years ended 31 March 2014 and 31 March 2015.

Similarly I note that the budgets have not been published for past years.

Minutes of November 2013

"The Clerk presented each member present with a full copy of the estimated budget and reserves forecasts for 2014/15"

Will you please let me have a full copy of the Budget computation for 2014/15 as minuted in 2015/16 as minuted in November 2015

Will you please let me have a copy of your Financial Regulations and of your Standing Orders that were current to the accounts years 2013/14 and 2014/5. If there has been any amendment to these document for the current accounts year will you please also forward a copy”.

6. The parish council responded on 19 October 2015. It stated that all the requested information can be found on its website.
7. Following an internal review – prompted by the Commissioner’s intervention - the parish council wrote to the complainant on 18 December 2015. It again referred him to its website.

Scope of the case

8. Following earlier correspondence, the complainant contacted the Commissioner on 20 December 2015 to complain about the way his request for information had been handled.
9. He acknowledged that, since making his request for information, the requested Standing Orders and Financial Regulations were subsequently published on the parish council website. However, he complained that the parish council’s response did not provide the other documents as requested in the original request, namely financial information showing a greater level of detail than that published in the minutes.
10. He told the Commissioner that the response gave him the impression that the parish council have no intention of releasing that information.
11. The FOIA gives the right to access recorded information held by a public authority. 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 FOIA.
12. During the course of his investigation, the parish council told the Commissioner:

“The Council’s minutes contain accurate account information and they are approved by full council at each meeting, [the complainant] has no right to imply otherwise, all accounts are fully supported...”.
13. In this case, it is not within the Commissioner’s remit to determine whether the minutes contain accurate account information and are approved by full council at each meeting. Rather, the issue for the Commissioner to determine is whether the parish council holds recorded

information within the scope of the request and, if so, whether it has responded to the request in accordance with its obligations under the FOIA legislation.

14. It is not in dispute that the requested information relating to Financial Regulations and Standing Orders has been provided.
15. Having read the relevant correspondence, the Commissioner notes that the parish council did not specifically state whether or not the remaining requested information is held. Nevertheless, he considers that sections 1 (general right of access) and 21 (information accessible to applicant by other means) of the FOIA apply in this case.
16. He has also considered whether the parish council breached the procedural provisions of section 17 of the FOIA in relation to its refusal of the request.

Reasons for decision

Section 21 information accessible to applicant by other means

17. Section 21 of the FOIA provides that a public authority does not need to provide information under section 1 of the FOIA if that information is reasonably accessible to the applicant by other means.
18. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.
19. The purpose of the exemption is to ensure that there is no right of access to information via the FOIA if it is available to the applicant by another route. The Commissioner's guidance¹ on the subject explains that, unlike consideration of most other exemptions in the FOIA, a public authority can take the individual circumstances of the applicant into account. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside of the FOIA.
20. Furthermore, in order for a public authority to be able to rely on this exemption it needs to be able to precisely direct an applicant to the

¹ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

requested information. That is to say it needs to give an applicant sufficiently clear directions so that the requested information can be found without difficulty and not hidden within a mass of other information.

21. In addition, for section 21 to apply, it is necessary to consider whether the entirety of the information is reasonably accessible to the applicant.

22. In correspondence with the complainant, the parish council told him:

"all the information that you have requested can be easily found on our website..."

23. However, it is not apparent to the Commissioner how the published information constitutes the requested financial information being accessible to the complainant.

24. In order to make a decision in this case, the Commissioner asked the parish council to clarify its response. For example, he asked it to explain whether it holds further recorded information within the scope of the request – namely financial information, such as financial statements, over and above that available in the minutes on the website. He also asked the parish council, if it continues to maintain that the requested information has been provided, to explain how the requested annual accounts schedules are contained in the published minutes. He asked it, when responding, to link its arguments to the information that has been requested.

25. The council did not respond to those points directly. In the absence of the requested evidence from the parish council, the Commissioner does not find the exemption engaged.

Section 1 general right of access

26. Section 1(1)(a) and 1(1)(b) of the FOIA provide for a general right to access recorded information held by public authorities. The general obligations are to confirm or deny that information is held within the scope of the request and, if it is held, to provide that information unless it is exempt.

27. If there are grounds for refusing the request, the public authority must issue a refusal notice in accordance with section 17 of the FOIA, explaining why it has refused the request. The section 17 refusal notice must also provide details of any internal review procedure that the public authority operates, together with applicant's right to complain to the Commissioner.

28. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *'not later than the twentieth working day following the date of receipt'*.

29. In this case, the complainant disputes that the parish council does not hold information within the scope of his request. For example, in correspondence with the parish council, he said:

"In your reply to my Freedom of Information request you refer me to the figures quoted in the Minutes which are nothing more than a unsupported total of income and expenditure.

My request was for the full details that make up each monthly total as circulated to Councillors..."

30. He also said:

"On your website you show, under accounts, the bare statement of income and expenditure that you submit to the Auditor. These are just unsupported details.

You admit in the minutes that schedules were circulated to Councillors. It is copies of these detailed schedules that I require"

31. The Commissioner accepts that the parish council has adopted the model publication scheme, as a result of which it makes information available. In that respect, the Commissioner's guidance² states:

"The information you release in accordance with the publication scheme represents the minimum you must disclose. If a member of the public wants information not listed in the scheme, they can still ask you for it"

32. The Commissioner asked the parish council to explain whether it holds information within the scope of the complainant's request. He suggested, for example, that such information may be expenditure lists, financial statements or cash book entries showing all receipts and payments for a particular month.

33. However, the parish council failed to engage to an appropriate level with the Commissioner during the course of his investigation. For example, in its submission, the parish council did not provide the Commissioner with

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/>

an explanation about the amount of information it may or may not hold within the scope of the request, nor did it cite any exemptions.

34. The Commissioner is not satisfied that the parish council has accurately confirmed or denied whether it holds the information within the scope of the request. It follows that he finds that the parish council failed to handle the request in accordance with the provisions of the FOIA. It should have either confirmed whether it held the information and, if so, communicated that information in accordance with section 1, or issued a refusal notice under section 17 explaining its grounds for refusing the request.
35. The Commissioner's decision is that the parish council has breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days and breached section 17 by failing to issue a refusal notice that provided the details required by that section within the statutory time limit.

Other matters

36. The Commissioner notes that the parish council has raised concerns about the validity of the request. In order to assist the parish council with further FOIA requests, the parish council may wish to refer to the Commissioner's published guidance³ on this matter.

³ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

Right of appeal

37. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

38. 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.
39. 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