

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2017

Public Authority: West Felton Parish Council

Address: Parish Office
32 Longueville Drive
Oswestry
Shropshire
SY11 2YN

Decision (including any steps ordered)

1. The complainant has requested information relating to a contract between West Felton Parish Council (the Council) and Greenfingers Groundforce Ltd. The Council refused to comply with the request for information as it deemed the request to be vexatious in accordance with section 14(1) of the FOIA.
2. The Commissioner's decision is that the request is vexatious and that the Council has correctly applied section 14(1) of the FOIA to refuse the requested information. She also considers that the Council was not obliged to issue a refusal notice in respect of the request, in accordance with 17(6) of the FOIA.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 14 February 2017, the complainant wrote to the Council and requested information in the following terms:

"Further to previous correspondence on the above subject, it now appears to me from the Parish Council's minutes that the true situation is that its current ongoing contract in relation thereto is with a company called 'Greenfingers Groundforce Ltd.', having regard to the fact that its accounts for that work are being paid by "direct debit" (according to minute number 6 b) of its 17th January 2017 meeting). Therefore,

please provide me with a copy of the relevant contract it has with that company for that work and the minute authority for awarding that ongoing contract thereto.

Please also inform me as to the manner in which that contract conforms to the requirements of Section 135(3) of the Local Government Act 1972 (particularly in relation to securing competition and regulating the manner in which tenders for the work were invited)."

5. The Council did not respond to the complainant.
6. Following the Commissioner's intervention on 27 September 2017 the Council advised her that they were treating the request as vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 21 June 2017 to complain that he had not received a response to his request dated 14 February 2017 despite reminding the Council on 27 February 2017 and 13 March 2017 that a response was outstanding.
8. In correspondence with the Commissioner the Council explained that it considered the request to be vexatious within the meaning of section 14 of the FOIA.
9. The complainant has previously been informed that any further requests received from him relating to Parish Council business would be deemed vexatious and not responded to.
10. The Commissioner has considered whether the Council correctly applied section 14(1) of the FOIA to the request and if so, whether the Council was entitled by section 17(6) of the FOIA not to issue a refusal notice.

Reasons for decision

Section 14 – vexatious requests

11. Section 14(1) of the FOIA states that section 1(1) of the FOIA does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test

12. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon County Council & Dransfield*¹. The Tribunal commented that the term could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
14. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"...importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
15. The Commissioner has published guidance on dealing with vexatious requests². The guidance includes a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether or not a request is vexatious.
16. In light of this, the Commissioner would need to be persuaded that the Council have considered the impact on themselves against the purpose and value of the request.

¹ <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

17. The Council consider that the complainant has been on a mission to 'bring down' the Parish Council since he moved into the village. They are also of the opinion that he nearly succeeded in doing this. In 14 years the Council has had to employ 11 parish clerks and they allege that the previous post holders have been bullied out of their position by the complainant.
18. The Council employed a new parish clerk on 3 January 2017 and they say she was thrilled to accept the position. However, since her appointment she has received more than 140 emails from the complainant and the Council say she is no longer so keen on her new position. This has previously been detailed in the decision notice FS50670558³ issued by the Commissioner on the 25 May 2017.
19. The Council said that the council tax payers of West Felton do not want the clerk being paid vast amounts of overtime to deal with correspondence and FOIA requests from the complainant and thus increase the amount of council tax they pay.
20. The Council argues that FOIA was not *"introduced to be used as a weapon with which to damage/destroy a parish council."*
21. The Council also referred to the Tribunal decision EA/2013/0212⁴ which relates to a previous FOIA request from the same complainant to the Council. The Council considers that the statement by Judge Warren that *"...they were right to conclude that the requests were vexatious; answering them would simply trigger more"* is the profound part of the decision.
22. Taking into consideration the evidence provided by the previous parish clerk, the 140 plus emails sent to the new clerk since her appointment in January 2017 and also the reasons given by the Tribunal in EA/2013/0212, the Commissioner is satisfied that this request is vexatious under section 14(1) of the FOIA.

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014169/fs50670558.pdf>

⁴ [http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1238/Lovell,%20Lionel%20Christopher%20EA.2013.0212%20\(19.03.14\)%20Prom%20date%2020.03.14.pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1238/Lovell,%20Lionel%20Christopher%20EA.2013.0212%20(19.03.14)%20Prom%20date%2020.03.14.pdf)

Section 17 – refusal of request

23. Section 17(6) of the FOIA allows a public authority to refuse to issue a refusal notice in instances when:
- (a) the public authority is relying on a claim that section 14 applies,
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
24. The Commissioner will usually only consider it unreasonable to expect a public authority to issue a further notice when it has previously warned the requestor that it will not respond to any further vexatious request on the same or similar topics.
25. Correspondence seen by the Commissioner shows that the complainant's previous requests relate to the Council's minutes from meetings and required the background papers, contracts, emails and letters mentioned in those minutes.
26. The Council issued a refusal notice on 3 July 2014 citing section 14. In that correspondence, when referencing 17(6) of the FOIA, it told the complainant that it would not provide any further responses to requests of a similar nature.
27. During the course of the Commissioner's investigation the Council maintained its position that whatever response is issued to the complainant it would open the floodgates to more correspondence.
28. Taking into account the Council's arguments, the Commissioner has decided that it was reasonable for the Council to rely on the previously issued refusal notice to not correspond with the complainant.

Right of appeal

29. 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

30. 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.

31. 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

Alun Johnson
Team Manager
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SK9 5AF