

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 14 March 2007

Public Authority: Bretforton Parish Council
Address: c/o 1 Gordon Close
Broadway
WR12 7BJ

Summary

The complainant requested a copy of a cemetery plan which was refused by the Council under section 14 of the FOIA on the basis that it had already communicated the information and the request was therefore vexatious. The Commissioner considered the exclusions under section 14 (1) and section 14 (2) but was not satisfied that these exclusions applied. The Council subsequently applied section 40 (2) because it considered that information in the plan relating to living people who have purchased cemetery plots is third party personal data. The Commissioner agreed that this information is exempt but the Council are required to release a copy of the redacted plan to the complainant within 35 days.

The Commissioner's Role

1. 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 Freedom of Information Act 2000 (the "FOIA"). This Notice sets out his decision.

The Request

2. On 17 January 2006, the complainant submitted a request to the Council for various items of information, including as points 5) and 6) the following:
 - Copy of the Bretforton Burial Ground Cemetery Plan.
 - All register entries held by the Parish Council for graves 54/55/325/326.

3. The Council responded on 10 February 2006 and provided some of the information requested. In relation to points 5) and 6), the Council stated that it had enclosed the “relevant” area and entries.
4. The complainant wrote to the Council on 20 February 2006 to express dissatisfaction with the response. He stated that the Council had not complied with his request because it had not provided a copy of the full plan. He also specifically asked the Council to clarify whether a Register of Transfers exists and if so, to provide copies of the entries.
5. The Council responded on 8 March 2006 and stated that it considered that it had complied with the requests already in its responses to previous requests made by the complainant and the complainant’s inspection of the Council’s records. The Council refused to correspond further with the complainant.
6. Further to the Commissioner’s instruction to issue a refusal notice in accordance with section 17 of the FOIA, the Council wrote to the complainant on 24 March 2006 and stated that it had decided to refuse the request under section 14 of the FOIA on the basis that it had already communicated the information and the request was therefore vexatious.

The Investigation

Scope of the case

7. On 13 March 2006, the complainant contacted the Commissioner to complain about the way his request for information had been handled. In a further letter to the Commissioner on 24 April 2006, the complainant specifically asked the Commissioner to consider the Council’s decision to refuse his request under section 14 of the FOIA.

Chronology

8. The Commissioner wrote to the Council on 5 July 2006 to request more information about the Council’s decision to refuse the request. He referred the Council to the Commissioner’s Awareness Guidance No. 22 on the application of section 14.
9. The Council responded on 20 July 2006 and provided information concerning its refusal. It also confirmed that the Register of Transfers is a column heading in the Register of Purchased graves and that there are no entries recorded in this column for graves 54/55/325/326.
10. The complainant provided more information about his complaint in a letter to the Commissioner on 24 July 2006.
11. The Commissioner wrote to the Council on 7 August 2006 to clarify whether the Council wished to assert that both section 14 (1) and (2) apply to the request (i.e.

- the request is both vexatious and repeated). He explained that the information provided by the Council so far in relation to section 14 (1) had not been persuasive. As the Council had also queried whether some of the information may be third party personal data in its letter on 20 July 2006, the Commissioner also explained that the Council may redact any information found to be exempt should the Council decide to apply the exclusion under section 40 (2).
12. The Council responded on 14 September 2006 and stated that it wished to apply section 14 (1). It provided further rationale for its refusal as summarised in the Analysis section of this Notice.
 13. The Commissioner provided an assessment of the complaint to both parties on 4 October 2006. The assessment concluded that the Council had incorrectly applied section 14 (1). Although the exclusion under section 14 (2) was not expressly claimed by the Council in its letter of clarification to the Commissioner, it was also considered at this stage as it was apparent that the previous inspections of the information by the complainant had impacted the Council's decision to refuse the request as vexatious under section 14 (1). The Commissioner considers that the Council intended to apply both sections 14 (1) and 14 (2) and as such, the Commissioner's formal decision on the application of section 14 (2) is included in this Notice.
 14. The Council wrote further to the Commissioner on 30 October 2006 and sought the Commissioner's advice about information in the plan relating to the living purchasers of burial plots. The Commissioner considered the application of section 40 (2) and wrote to the complainant on 7 December 2006 to advise that the information is likely to be exempt under section 40 (2). In the meantime, the Council provided more information about its application of section 40 (2) during a telephone conversation on 11 December 2006.
 15. During a telephone conversation on 9 January 2007, the Commissioner asked the Council to consider providing a redacted copy of the plan to the complainant further to a letter from the complainant on 14 December 2006. The Council stated that there may be cost considerations in supplying the information and the Commissioner explained in a letter to the Council on 10 January 2007 that any charge must be reasonable and referred the Council to relevant guidance.
 16. The Council wrote to the Commissioner on 16 January 2007 and stated that it would not be able to begin work on the plan until March or April at the earliest due to holiday arrangements and other commitments. The Commissioner asked the Council to reconsider the time-scale proposed in a letter on 24 January 2007 and the Council responded on 1 February 2007 stating that it was unable to reconsider.

Findings of fact

17. The Council has applied section 14 (1) and 14 (2) and subsequently section 40 (2) to information in the plan relating to the living purchasers of burial plots. It has agreed to provide a redacted copy of the plan but it states that it cannot begin work on this until March or April at the earliest.

18. The complainant believes that the Council has incorrectly applied section 14 (1) and 14 (2) in its refusal to communicate the information. He has stated that he will accept a redacted version of the plan if the Commissioner finds that section 40 (2) applies to the information relating to the living purchasers of burial plots.

Analysis

Exclusion

19. In order to determine whether the request is vexatious under section 14 (1) of the FOIA, the Commissioner has had regard to Awareness Guidance No. 22 issued by his Office. In making his assessment, the Commissioner has focused on whether the request is vexatious because it would impose a significant burden and:
- clearly does not have any serious purpose or value;
 - is designed to cause disruption or annoyance;
 - has the effect of harassing a public authority; or
 - can otherwise fairly be characterised as obsessive or manifestly unreasonable.
20. The Council has applied section 14 following the complainant's request for a copy of the full cemetery plan and clarification regarding whether a register of transfers exists. Although the Council has made representations to the Commissioner concerning its limited resources as a parish council, the Commissioner does not accept that producing a copy of the full cemetery plan would impose a significant burden. He has not considered as relevant arguments proposed by the Council that there would be a significant burden in complying with the request because of a clash with holiday arrangements and other commitments or the time it would take to check the details on the plan as these factors have not been caused by the complainant. He also notes that a response to the complainant's request for clarification regarding whether a register of transfers exists would have only involved a straight-forward confirmation or denial.
21. It has become apparent during the course of the investigation that the complainant has been involved in an on-going dispute with the Council since 1 December 2003. The dispute concerns the discovery of unidentified remains in a cemetery plot for which the complainant's family held the deeds. The Commissioner recognises that this has plainly been a very emotive issue which has led to the complainant's desire to inspect the Council's records. Although the complainant has previously inspected the cemetery plan, it is reasonably clear that a hardcopy of the plan is desired for the purposes of more detailed and private inspection. It is not, therefore, clear that the request has no serious purpose or value.
22. With regard to whether the request is designed to cause disruption or annoyance, the Commissioner has considered a letter provided to the Council by a contractor. The letter, dated 12 May 2004, details the contractor's observations at a meeting

attended by the complainant which concerned a dispute over the mowing of grass in the cemetery. The contractor reports that, in his opinion, the complainant behaved aggressively and indicated a desire to cause the Council unending disruption. There is no evidence of this intention in the correspondence from the complainant and it is not apparent to the Commissioner that the request itself makes this intention clear or indeed, has this effect. On the balance of the evidence presented, the Commissioner considers that it is more likely that the request was designed to secure access to information rather than to disrupt.

23. The Council has alleged that the request constitutes further harassment by the complainant but it has not provided any evidence or argument in relation to the specific harassing effect of the request itself with the exception of a letter from the complainant on 20 February 2006. In the letter, the complainant states, “[name redacted], I am in no mood for playing games anymore”. Although the Commissioner agrees with the Council that the tone of the letter is unpleasant, the Awareness Guidance makes clear that an unpleasant tone alone is insufficient to elevate a particular request to the level of harassment.
24. The Council has also explained that it has had problems dealing with other members of the complainant's family as a result of the original dispute. As such, the Council has asserted that the complainant's request is a continuation of a pattern of behaviour which it has deemed harassing and vexatious according to its own internal procedures. The Commissioner has considered this viewpoint but does not agree that the Council's assessment can be transferred into the context of Freedom of Information. While the Commissioner accepts that the disputes described are likely to be related, some of the disputes appear to concern matters other than the complainant's efforts to secure access to the cemetery plan and the register entries and in addition to that, it is questionable whether the complainant can be held responsible for the behaviour of other members of his family.
25. The final element of the Commissioner's criteria is whether the request can fairly be characterised as obsessive or manifestly unreasonable. Both parties have explained to the Commissioner that the cemetery plans and register entries have been viewed by either the complainant or members of the complainant's family on previous occasions. The Council has stated that the registers were viewed on 8 July 2004 and, on 12 September 2005; the registers were viewed again along with a paper copy of the cemetery plan. Once the Council had explained that additional copies of the plan existed, a final viewing of the registers and all the plans was permitted on 10 October 2005. The Commissioner is also aware of another request for information submitted by the complainant on 11 January 2005 which resulted in a complaint to the Commissioner and a Decision Notice under section 50 of the FOIA against the Council.
26. Although the requests submitted by the complainant or members of his family appear to concern the same or similar theme, it is not the Commissioner's view that either the content or the volume of requests suggests that the most recent can fairly be characterised as obsessive or manifestly unreasonable. Further, the Commissioner considers that the Council's handling of the request in providing only the “relevant area” of the plan made further complaint almost inevitable. The

Council had obviously resolved to respond to the complainant initially, but following his complaint, the Council decided to apply section 14 retrospectively. In light of the assumption that the Council made about what information would be “relevant” to the complainant, it is understandable that the complainant should express dissatisfaction and this cannot fairly be seen as a sign of obsessive or manifestly unreasonable behaviour.

27. Regarding the complainant's request to know whether a Register of Transfers exists, the Council has stated that the complainant would have observed that there were no entries in the column upon previous inspection. The Commissioner considers that it is not correct for the Council to make such an assumption and in addition, the Commissioner notes that it would not have been difficult for the Council to provide brief clarification on this point in its letters to the complainant. The Commissioner therefore considers that the complainant's representations on this point have also been reasonable.
28. In view of the fact that the Council has declared that the request is vexatious because it is repeated, the Commissioner has also considered the application of section 14 (2). The Council has supplied a copy of the complainant's most recent request previous to the request now under consideration. This request was submitted on 27 September 2005. The complainant did not submit a further request until 17 January 2006. It is the Commissioner's view that the complainant left a reasonable interval in between requests. The term “reasonable interval” is not defined in the FOIA but the Commissioner has used as a useful indicator “Guidance on the application of the Freedom of Information and Data Protection (appropriate limit and fees) regulations 2004” issued by the Department for Constitutional Affairs. According to the guidance, the time period for aggregating repeated or similar requests is 60 working days. This is because it is considered unreasonable for a public authority to respond to the same or similar requests before the expiration of this time period. In addition, the Commissioner considers that it is also possible that the information could have changed during this period.
29. The Council has also claimed the exclusion under section 40 (2) in relation to the information in the plan which concerns the living purchasers of burial plots. The Council has explained that when people are buried, their partner may purchase the neighbouring plot and this information is represented by a “P” and the name of the partner. The Commissioner has considered whether this information is the personal data of third parties and is satisfied that the information falls within the definition of “personal data” according to section 1 of the Data Protection Act 1998 (DPA) because the information clearly relates to persons identifiable by name and their purchase of a burial plot as well as the fact of their partnership to the deceased.
30. As the Commissioner is satisfied that the information is third party personal data, he has also considered whether disclosure would contravene the first data protection principle under Schedule 1 of the DPA that information shall be processed fairly and lawfully and, in particular, shall not be processed unless one of the conditions in Schedule 2 is met. The Commissioner does not consider that any of the conditions under Schedule 2 are relevant with the exception of

Schedule 6 which requires a balancing of the legitimate interests of the complainant and the data subject.

31. The complainant has stated that he requires the information as part of his investigation concerning the remains found in his late mother's plot. The complainant believes that the name of the person whose remains were found may be recorded anywhere on the plan and he has stated that he does not trust the Council to redact the information appropriately. The Commissioner considers that the Council is unlikely to have recorded the name of the person whose remains were found as the living partner of a deceased person. The Council has confirmed that it is unable to identify the remains following inspection of its records. It is also irrelevant that the complainant does not trust the Council to redact the document appropriately. As such, the Commissioner does not consider that the processing of the personal data is necessary for the purposes of legitimate interests pursued by the complainant.
32. Further, the Commissioner is not satisfied in any case that the processing of the data would be fair and lawful and the processing would therefore be unwarranted. The Council has advised the Commissioner that the information is given in the expectation of confidence and nothing is said concerning any alternative use of the information beyond the transaction itself. Upon consideration of the nature of the information, the Commissioner believes that it is reasonable to conclude that the information is likely to have been provided in confidence. In addition, the Council has confirmed that to the best of its knowledge, all the purchasers are still living. It has also confirmed that it had no reason to record the information separately from the plan as the Council had never been asked to produce the plan before the complainant's requests.

The Decision

33. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the FOIA. He is not satisfied that the request meets the criteria set out in the Commissioner's Awareness Guidance No. 22 on section 14 or that it is appropriate in this instance to deem the request vexatious because the Council has done so according to its own internal procedures. He also considers that there has been a reasonable interval between the complainant's inspection of the cemetery plan and his subsequent request for a hardcopy of the plan and that it is possible that the information may have changed during this period. As such, the Commissioner's decision is that the information is not excluded under either section 14 (1) or section 14 (2). The Commissioner is however satisfied that some of the information on the plan relating to the living purchasers of burial plots is exempt under section 40 (2).

Steps Required

34. The Commissioner requires the public authority to take the following steps to ensure compliance with the FOIA:
 - The Commissioner requires the Council to provide a redacted copy of the cemetery plan to the complainant. The information to be redacted is the name of any living person who has purchased a burial plot.
35. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

36. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

37. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 14th day of March 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exclusions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”