

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 25 June 2007

Public Authority: Brockhampton Group Parish Council
Address: The Parks
Acton Beauchamp
Worcester
WR6 5AB

Summary

The complainant requested four items of information from Brockhampton Group Parish Council (the "Council") relating to an area of common land called Bromyard Downs. The Council refused to provide this information however did not state, under the terms of the Act, its justification for doing so. During the course of the Commissioner's investigation, the Council alleged that some of the information requested was not held by the Council for the purposes of the Act, that the requests were vexatious and repeated, that to respond to them would be too costly (when combined with other requests made by the complainant and other members of a User Group to which he belongs), that some of the information was "confidential" and that some of the information was available to the complainant by other means. The Commissioner has concluded that the Council was not required to provide information to the complainant in relation to three of the requests, however must provide some information in relation to one of the requests.

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 "Act"). This Notice sets out his decision.

The Request

2. On 14 August 2006 the complainant wrote to the Council and requested the following information:
 - i. "The updated list of Commoners."
 - ii. "The Downs Development Plan for the Bromyard Downs."

- iii. "The By-laws."
 - iv. "[a copy of] the Constitution of the Parish Council".
3. The Council responded on 31 August 2006. It stated that:
- "Your...letter requesting a whole list of information has been dealt with on many previous occasions, the answers remain the same".

The Investigation

Scope of the case

4. On 13 October 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Council's alleged refusal to supply the information requested.

Chronology

5. The Commissioner telephoned the Council on 11 January 2007 and explained that he was able to begin his investigation into this complaint. The Commissioner asked the Council to explain its grounds for refusing the complainant's requests for information, as its letter to him of 31 August 2006 was not clear on this point.
6. One of the complainant's associates had also made a complaint to the Commissioner, the investigation into which had already begun. A Decision Notice has since been issued in relation to this complaint, under reference: FS50135471. The Council stated that the arguments it had raised in relation to FS50135471, in a letter dated 7 December 2006, also applied to this complaint. It directed the Commissioner to consider its letter of 7 December 2006, and the bundle of correspondence provided with it, in relation to this complaint.
7. The Council's letter of 7 December 2006 stated that the complainant's requests for information were vexatious and repeated and that, when combined with requests for information made by other members of the Bromyard Downs User Group (the User Group), of which the complainant is known to be a member, it would exceed the appropriate limit of £450 or 18 hours' work, calculated at £25 per hour. This is explained further in paragraph 34.
8. With regard to the vexatious/repeated provision, the Council explained that the complainant and other members of the User Group had raised many issues which fell within either its jurisdiction, or that of the Commons Management Committee (a committee of the Council). Attempts by the Council to answer the concerns raised had often not been to the satisfaction of either the complainant or other members of the User Group, and in some cases the correspondence had become protracted. The Council sought to use letters which had passed between it and the complainant, and it and other members of the User Group, as evidence that the request demonstrated a pattern of obsessive behaviour.

9. In relation to the issue of fees, the Council stated that it believed the appropriate limit of 18 hours had been exceeded by responding to requests for information from the complainant and other members of the User Group. The Council stated that “each letter [from the complainant and/or the User Group] requires a great deal of time”. It went on to set out the activities that had been taken into account when calculating the appropriate limit:
 1. discussions between the Chairman and the Clerk to the Council following receipt of a request;
 2. drafting and typing acknowledgement letters;
 3. deciding whether to include the item on a meeting agenda and copying letters to Council members;
 4. discussions at meetings; and
 5. replying to letters.
10. In its telephone conversation with the Commissioner on 11 January 2007, the Council made further comments as to why it believed the information requested should not be made available. In relation to request (i) the Council argued that it had discussed this matter at its meetings and it did not think it would be fair to the Commoners to release this information. The information requested at (ii), which the Council termed the “Management Plan”, had been commissioned and paid for by one of the Councillors. The Council had not provided information in response to request (iii) as the 1994 by-laws which had previously been made available were under review by County of Herefordshire District Council (Herefordshire Council) and therefore the Council would be providing “out of date” information if it responded to this request. Finally, the Council stated that it had already supplied a copy of the information requested in (iv), and a letter demonstrating this had been provided to the Commissioner in the bundle sent under covering letter of 7 December 2006.
11. The complainant had indicated to the Commissioner that he had requested a copy of the list of Commoners from Herefordshire Council and been provided with such a list, however that it was approximately thirty years out of date. Therefore, the Commissioner telephoned Herefordshire Council on 15 January 2007 to clarify whether the list of Commoners as requested by the complainant was already publicly available. The Commissioner spoke with the Commons Registration Officer, who explained that Herefordshire Council were required by statute to keep a register of land to which common rights were attached, and that when this register was compiled in the 1960s some of the landowners’ details were also included on the register. However Herefordshire Council was not obliged to update the register when ownership of the land changed.
12. The Commissioner’s letter of 19 January 2007, sent to the Council primarily in relation to complaint FS50135471, stated that when calculating whether the appropriate limit had been exceeded, the Council could only take into account time it had taken to carry out the following activities:
 - a) determine whether the information is held;
 - b) locate the information or a document which may contain it;

- c) retrieve the information or a document which may contain the information; and
- d) extract the information from a document containing it.

These factors are set out in regulation 3 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations"), which are explained further at paragraph 34.

The Commissioner also explained to the Council that fees could only be aggregated if the following conditions were met:

- I) two or more requests have been received by one person or by different persons who appear to be acting in the course of a campaign; and
- II) the cost of carrying out the work listed in a) to d) above for all of the requests would exceed £450 (based on £25 per hour of staff time); and
- III) the requests are for the same or similar information; and
- IV) the requests have been received by the council with sixty consecutive working days.

These factors are set out in regulation 5 of the Fees Regulations and are explained further at paragraph 36.

- 13. In the same letter, the Commissioner directed the Council to consider a table of requests for information he had drawn up from the bundle of documents submitted to him under covering letter of 7 December 2006. He asked the Council to identify from the table which requests, if any, it intended to aggregate for fees purposes, and to explain why it believed the requests met the criteria for aggregation as set out at points I to IV in paragraph 12 above.
- 14. The Commissioner wrote to the Council on 22 January 2007. He stated that, having considered the information the Council had submitted, he did not believe the complainants requests were vexatious, for the following reasons:
 - A. It must be the request itself, and not the person making the request, which is considered vexatious, in order for section 14(1) to apply.
 - B. There was evidence of the complainant raising many issues with the Council and the Commons Management Committee, however not of making lots of FOI requests for the same/similar information.
 - C. The Commissioner did not consider, from the evidence provided, that the requests could be said to be lacking in serious purpose or value.

In this letter the Commissioner also asked the Council to provide an explanation as to how it believed the appropriate limit would be exceeded by responding to the complainant's request. The Commissioner directed the Council to consider his letter of 19 January 2007, sent primarily in relation to complaint FS50135471, when responding to this point.

- 15. On 30 January 2007 the Council wrote to the Commissioner. It confirmed details of its telephone conversation with the Commissioner on 11 January 2007 in that:

- i. it had thought that to provide details of the names and addresses of the Commoners would constitute a “breach of confidentiality”;
- ii. the Management Plan was a “private document”;
- iii. the by-laws were “in the process of being revised”; and
- iv. a copy of the Council’s constitution had already been provided to the complainant.

16. The Commissioner required some further information in relation to requests (ii), (iii) and (iv) and so wrote to the Council on 15 February 2007.

In relation to request (ii), the Commissioner asked the Council to explain:

- where the Management Plan was held, for example whether the Councillor who had paid for it retained it or whether it was stored with other Council documents;
- what action was taken as a result of the plan; and
- whether any further information had been generated as a result of the plan.

Regarding request (iii), the Commissioner asked the Council to confirm categorically whether it held a copy of the by-laws which were being reviewed by Herefordshire Council.

Further, the Commissioner asked the Council to provide evidence to demonstrate it had already supplied the complainant with a copy of its Constitution, in order to be satisfied it had complied with its obligations under the Act in relation to request (iv).

17. On 12 March 2007 the Council wrote to the Commissioner. It explained that, in relation to request (ii):

- the Councillor who had paid for the Management Plan to be produced always had it in his possession;
- that “various actions take place in line with suitable management practice”; and
- that “visible information [was] created”.

In relation to request (iii) the 1994 by-laws had recently come into the possession of the Council and copies had been distributed at a meeting of the Commons Management Committee on 1 March 2007.

Regarding request (iv), the Council explained that “[the complainant] was told at least three years ago that the Parish council operate[s] according to the NALC [National Association of Local Councils] publication ‘Powers and Constitutions of Community, Parish and Town Councils’. He was told where he could obtain a copy.”

18. On 16 March 2007 the Commissioner telephoned the Council and set out his initial conclusions to his investigation. He confirmed the same information to the complainant in a letter dated 23 March 2007.

19. The complainant wrote to the Commissioner on 28 March 2007 and queried his reasoning in relation to some points. The Commissioner telephoned the complainant on 30 March 2007 to discuss his letter of 23 March 2007.
20. Following his discussion with the complainant, the Commissioner thought it necessary to verify some of the information that had been provided to him, by both the complainant and the Council. He therefore telephoned the Commons Registration Officer at Herefordshire Council on 2 April 2007 to discuss these issues. The Commons Registration Officer provided sufficient advice to allow the Commissioner to take a decision in respect of the complainant's requests.

Analysis

Procedural matters

Section 1 – General rights of access

21. The Commissioner has considered the extent to which the Council has complied with section 1 of the Act.
22. Section 1(1) provides that:

“Any person making a request for information to a public authority is entitled –

 - (a) to be information in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.”
23. The complainant requested four pieces of information on 14 August 2006. The Council responded on 31 August 2006, however this response neither provided the requested information nor constituted a valid refusal notice under the Act. As will be explained below, the Council has correctly withheld some of the information requested from the complainant, namely that requested in:
 - request (i) – the names and addresses of the Commoners who do not sit on the Council or the Commons Management Committee;
 - request (ii) – the Management Plan;
 - request (iii) – the by-laws; and
 - request (iv) – the constitution of the Council.

However, the Commissioner also believes that the Council was incorrect to withhold the names and addresses of the Commoners who sit on the Council and/or the Commons Management Committee. As yet, the complainant has not been provided with the information the Commissioner believes should be made available to him, and therefore the Council has breached section 1 of the Act in respect of this element of request (i).

Section 3 – Information held/not held for the purposes of the Act

24. The Commissioner has considered whether the information requested by the complainant in (ii), the Management Plan, is “held”, for the purposes of the Act, by the Council.
25. Section 3(2) states:
- “For the purposes of this Act, information is held by a public authority if –
- (a) it is held by the authority, otherwise than on behalf of another person, or
 - (b) it is held by another person on behalf of the authority.”
26. In its telephone conversation with the Commissioner on 11 January 2007, the Council stated that the Management Plan had been paid for by one of its councillors and was therefore “his” document. The Council confirmed this in writing on 30 January 2007, and stated that the Management Plan was a “private document”.
27. The Commissioner wrote to the Council on 15 February 2007 and asked it to explain:
- where the Management Plan was held, for example whether the councillor who paid for it retained it, or whether it was stored with other Council documents;
 - what action was taken as a result of the Management Plan; and
 - whether any further information had been generated as a result of it.
28. The Council responded on 12 March 2007 and stated that:
- the councillor who had paid for the Management Plan to be produced retained the document;
 - “various actions take place in line with suitable management practice”; and
 - “visible information is created”.
29. The complainant wrote to the Commissioner on 28 March 2007 and alleged that the Management Plan:
- had been held by both the Council and Herefordshire Council; and
 - was being used to manage an area of public land and was therefore, in his opinion, a public document.
30. The Commissioner telephoned the Commons Registration Officer at Herefordshire Council on 2 April 2007 to verify the information that had been provided by both the Council and the complainant in relation to the Management Plan. The Commons Registration Officer stated that:

- the draft Management Plan for the Downs, had been paid for by a parish councillor (and member of the Commons Management Committee), however that the Commons Registration Officer and the Parish Council were aiming to construct a development plan (to improve management of the downs) and hoped that they could persuade the councillor to share the information in “his” document, to assist in the drafting of the development plan.
- In his opinion, the Management Plan was not essential in assisting the Council and the Commons Management Committee to perform its functions as regards the management of the Downs, and so he considered the Management Plan to be more of a supplementary document.

31. The Commissioner therefore considers that the Management Plan is not held by the Council for the purposes of the Act, and therefore the Council has correctly applied section 3(2).

Section 12 – Fees

32. The Commissioner has considered whether the Council has correctly applied section 12 of the Act.

33. Section 12(1) provides that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

34. The appropriate limit is set out in the Fees Regulations as £450 for local authorities. This equates to 18 hours work. Local authorities may only legitimately refuse requests for information on fees grounds if it would take more than 18 hours to:

- a) determine whether it holds the information requested;
- b) locate the information requested;
- c) retrieve the information from a document containing it; and
- d) extract the information from a document containing it.

35. In its letter to the Commissioner of 7 December 2006, the Council stated that it thought responding to the requests of the complainant and those of the User Group would exceed the appropriate limit because of the time taken to:

1. discuss the request with the Chairman;
2. draft and type acknowledgement letters;
3. decide whether to include the item on a meeting agenda and copy letters to Council members;
4. discuss the request at meetings; and
5. reply to letters.

36. The Fees Regulations allow requests for information to be aggregated in the following circumstances:

- I) where two or more requests have been received by one person or by different persons who appear to be acting in concert or in pursuance of a campaign; and
 - II) the cost of carrying out the work listed in a) to d) at paragraph 34 above for all of the requests would exceed £450 (based on £25 per hour of staff time); and
 - III) the requests are for the same or similar information; and
 - IV) the requests have been received by the council within sixty consecutive working days.
37. In his letter to the Council of 19 January 2007, the Commissioner explained that, from the correspondence the Council had provided to him, it was clear that the complainant and one other gentleman were acting in concert. However it was not immediately clear why the Council considered other individuals to be acting in concert. The Commissioner asked to be provided with some evidence of this. Further, the Commissioner asked the Council to detail which requests it intended to aggregate, and to explain, in terms of the factors listed at II to IV at paragraph 36, why it believed it could aggregate the requests. The Commissioner highlighted to the Council that none of the factors it had listed in points 1 to 5, paragraph 35, could be taken into account when calculating the fees limit, and that it had not provided any evidence to suggest that the appropriate limit would be exceeded when taking into account only considerations listed in points a) to d), paragraph 34. He asked the Council to provide such evidence.
38. The Council failed to supply any relevant evidence that the fees limit had been exceeded during the course of the Commissioner's investigation. In the absence of evidence to the contrary, the Commissioner may only reasonably conclude that the fees limit has not been exceeded by responding to this, or any other request(s).

Section 14 – Vexatious and repeated requests

39. The Commissioner has considered the extent to which the Council has correctly applied section 14 of the Act.

Vexatious requests

40. Section 14(1) states:

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

41. The Commissioner considers that it must be the request itself, and not the person making the request, which is considered to be vexatious before section 14(1) can be said to apply.
42. The Commissioner asked the Council to justify why it considered the complainant's request for information to be vexatious, using his Awareness Guidance on the subject as a starting point. The Awareness Guidance states:

“...the Commissioner’s general approach will be sympathetic towards authorities where a request, which may be the latest in a series of requests, 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 the public authority; or
- can otherwise fairly be characterised as obsessive or manifestly unreasonable”.

The request imposes a significant burden

43. The Council explained that the complainant and other members of the User Group regularly wrote to the Council in relation to a range of issues, and attended meetings of both the Council and the Commons Management Committee. The Council explained that, in its opinion, the course of conduct pursued by the User Group amounted to harassment and was designed to waste the Council’s time. The Council provided a bundle of correspondence between it and the complainant, and other individuals which it alleged were members of the User Group. The Commissioner noted that, from the correspondence provided to him by the Council, alleged members of the User Group made a total of 14 requests for information from the date of the Act coming into force (1 January 2005) and the date of the last request on file (13 November 2006). The complainant made 6 of these requests for information. The requests have concerned a number of issues over which the Council, or the Commons Management Committee, have jurisdiction.
44. The Commissioner is satisfied that the complainant and one other individual are acting in concert, as they have both made complaints to him and they have conceded this point. The Council has failed to provide any evidence to suggest that other individuals should be considered as acting in concert with the two referred to above.
45. The Commissioner does consider that the requests made by the complainant, and the other individual known to be acting in concert with him, impose a significant burden on the Council. It is likely that the requests constitute a very high proportion of the requests received by the public authority, and the Council has indicated that responding to the requests consumes a significant amount of its time. However, before section 14(1) can be said to apply, the Commissioner must consider whether the requests also meet one or more of the criteria set out in bullet points at paragraph 42.

The request does not have any serious purpose or value

46. Some requests will be so obviously lacking in serious purpose or value that they may only be fairly treated as vexatious.

Request (i)

47. Whilst not being required to do so, the complainant has explained that he would like to be provided with this information in order to know who the Commoners are, so that he may be aware who is entitled to be elected to the Commons Management Committee, and who may propose and second such nominations. The Commissioner considers there is a serious purpose behind this request.

Request (ii)

48. The complainant has requested this information in order to better understand the Management of Bromyard Downs by the Commons Management Committee, and the decisions taken by the Committee in relation to this area of land. Again, the Commissioner considers there to be value to this request.

Request (iii)

49. The 1951 Scheme of Regulation and Management of the Downs, which sets out the Council's powers and responsibilities in relation to the area of common land, states, at paragraph 11, that all by-laws should be published on the common on at least two Council notice boards. This demonstrates that long before the Act was envisaged, it was acknowledged that the by-laws relating to the Downs should be made available to the public.

Request (iv)

50. Councils' constitutions typically set out their powers, their structure, and explain how they will take decisions. A council's constitution can be considered a fundamental document in explaining to the public how it operates.

The request is designed to cause disruption or annoyance

51. If the applicant explicitly states that his or her intention is to cause a public authority inconvenience by making a request for information, then it is likely it will be considered vexatious. However in this instance, there is no written evidence to suggest that the complainant has such an intention.
52. The Council is aware that the complainant belongs to a User Group and that members of this group have made a number of requests for information to the Council, however there is no written evidence, from the information submitted, to suggest the Group has intended to cause inconvenience by making requests for information.

The request has the effect of harassing the public authority

53. The Council has indicated to the Commissioner, both in correspondence and over the telephone, that it considers the frequency and volume of correspondence from the complainant and his associate to constitute harassment. However, the Commissioner must judge whether it is reasonable for the Council to hold this view.

54. It appears to the Commissioner that the complainant and his associate have repeatedly requested information because the Council has not made information available in full in response to their requests. If the requested information had been made available following the first request for it, it is likely that the complainant would not have repeated requests to be provided with it. The Commissioner does not therefore consider that the requests have had the effect of harassing the public authority.

The request can be fairly characterised as obsessive or manifestly unreasonable

55. In assessing whether a request can be deemed obsessive or manifestly unreasonable, a public authority may consider a pattern of requests for information and other correspondence, made by an individual or a group to which he belongs. As explained at paragraph 43, the complainant and persons the Council alleges are members of the User Group, have made a number of requests for information and written to the Council regarding various issues not related to their requests. However, given the breadth of issues raised, there is insufficient evidence to suggest that the requests follow a pattern of obsessive or manifestly unreasonable behaviour.
56. The Commissioner does not therefore consider the complainant's requests to be vexatious within the meaning of section 14(1) of the Act.

Repeated requests

57. 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 the previous request and the making of the current request.”

58. The Commissioner has interpreted “request for information” to mean “request for information made under the Act”. A public authority may not deem a request for information repeated under section 14(2) of the Act when the complainant has requested the same or similar information previously only prior to the Act coming into force.
59. From the correspondence submitted by the Council, it appears the complainant made these requests for information on two previous occasions, in November and December 2004. However, on neither of these occasions was the complainant provided with copies of the information requested. It therefore seems reasonable for him to have made these requests again, once the Act had come into force. The Council has therefore misapplied section 14(2) in respect of the complainant's requests for information.

Section 17 – Refusal of a request

60. Section 17(1) provides:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

61. As will be explained below, the Council was entitled to apply an exemption to some of the information requested by the complainant. However, the Council simply advised the complainant it had dealt with the requests he had made “on many previous occasions, the answers remain the same”, and failed to provide him with a notice which met with the requirements of section 17(1).

Exemptions

Section 21 – Information accessible to the applicant by other means

62. The Commissioner has considered whether the Council has correctly applied section 21 of the Act.

63. Section 21(1) states:

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Request (iii)

64. In his letter to the Commissioner of 28 March 2007, the complainant stated that a copy of the 1994 by-laws were available on a notice board on the common. In his telephone conversation with the Commissioner on 30 March 2007, the complainant further explained that the Council had not confirmed which by-laws were extant. The complainant believed the 1994 by-laws may not be “current”.

65. The Commissioner telephoned the Commons Registration Officer at Herefordshire Council on 2 April 2007 and queried which by-laws applied to Bromyard Downs. The Commons Registration Officer confirmed that the 1994 by-laws are currently applicable. The Commissioner is therefore satisfied that, whilst the Council has not made this point explicitly, the by-laws are reasonably accessible to the complainant otherwise than under section 1 of the Act.

Request (iv)

66. The complainant confirmed, in his letter to the Commissioner of 28 March 2007, that he now had access to a copy of the Council's constitution. Further, the Council drew the Commissioner's attention to an undated letter it had sent to the complainant, most likely in November 2004, which states that the Council adheres to the principles contained within the NALC publication, "Powers and Constitutions of Community, Parish and Town Councils". The Commissioner is therefore satisfied that the Council's constitution is reasonably accessible to the complainant otherwise than under section 1 of the Act.

Section 40 – Personal information

67. The Commissioner has considered whether the Council correctly applied section 40(2) of the Act.
68. Section 40(2) of the Act states:

"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."

The first condition is satisfied where disclosure of the personal information would contravene either one or more of the data protection principles as set out in Schedule 1 of the Data Protection Act 1998 (the DPA), or section 10 of the DPA (the right to prevent processing likely to cause damage or distress).

The second condition is satisfied where the personal information would be exempt from disclosure to the data subject (the person to whom the data relate) under the DPA.

69. In its telephone conversation with the Commissioner on 11 January 2007, the Council indicated that it believed it would be unfair to the Commoners to release this information. It confirmed by letter of 30 January 2007 that it considered that it would constitute a "breach of confidentiality" to provide this information under the Act. The Council did not state which exemption under the Act it believed to be applicable to this request, therefore the Commissioner assumed that the Council considered the exemption contained within section 40(2) of the Act to apply, namely that the information requested constituted personal data within the meaning of the Data Protection Act 1998 (DPA) and that disclosure of such information would breach one of the data protection principles, as set out in Schedule 1 of the DPA.
70. The names and addresses of the Commoners can be divided into two categories: the Commoners who sit on the Council and/or the Commons Management Committee, and the Commoners who do not sit on either. The name and address

information in relation to both constitutes personal data, in that the data identifies living individuals. The Commissioner has gone on to consider to what extent disclosure of this information may breach one or more of the data protection principles.

71. The Commissioner believes the first data protection principle is most relevant to this complaint. It states:

“personal data shall be processed fairly and lawfully...”

Commoners who do not sit on the Council or Commons Management Committee

72. The Act is applicant and purpose blind. This means that it is not appropriate to take into account the motives of the person applying for information. If the information was released, it seems feasible that Commoners may be contacted because of the rights that are attached to land they own. In view of this, if there was a general right of access to the names and addresses held by public authorities of individuals whose involvement in a particular matter arises only by virtue of where they reside (such as the Commoners of Bromyard Downs), this would be unfair to the individuals who were identifiable. This is because the information relates exclusively to their private lives and it does not fall within the reasonable expectations of the Commoners that this information will be made available to the public at large. Therefore disclosure of this information would breach the first data protection principle.

Commoners who sit on the Council and/or the Commons Management Committee

73. The Commissioner appreciates that if the names and addresses of Commoners who sit on the Council and/or the Commons Management Committee were made available under the Act, they may be contacted because of the rights that are attached to land they own. The Commoners who sit on the Council and/or Commons Management Committee have undertaken to represent the interests of other Commoners and the community. Paragraph 5 of the 1951 Scheme of Management states:

“The inhabitants of the district and neighbourhood shall have a right of free access to every part of the commons...”

74. Disclosure of these names and addresses would enable those with an interest in Council matters or in the management of the Downs to be able to contact representatives elected for the purpose of ensuring the Downs are correctly managed. The Commissioner considers it would not be unfair to disclose the names and addresses of individuals who have put themselves forward to undertake public responsibilities as representatives of their communities because they can expect to be contacted by those they represent and any other person with an interest in the Downs. Therefore the first data protection principle would not be breached by disclosing this information.

The Decision

75. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

Request (i)

The Council complied with section 1 of the Act because it correctly withheld, in accordance with section 40 of the Act, part of the information requested, namely the names and addresses of the Commoners who do not sit on the Council and/or the Commons Management Committee.

Request (ii)

The Council correctly applied section 1 of the Act in relation to this request by stating that the information requested is not held for the purposes of the Act, within the meaning of section 3(2).

Requests (iii) and (iv)

The Council correctly applied section 1 of the Act in relation to these requests, by appropriately applying the exemption under section 21 because the information is reasonably accessible to the complainant by other means.

76. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

Request (i)

The Council has not complied with section 1 of the Act in relation to part of this request, as it incorrectly withheld the names and addresses of the Commoners who sit on the Council and/or the Commons Management Committee. The Commissioner has decided that it would not be unfair to those individuals to release this information.

Requests (i to iv)

The Council did not deal with the requests in accordance with Section 12 of the Act, in that it incorrectly stated that compliance with the complainant's requests would exceed the appropriate limit.

The Commissioner has decided that the Council was incorrect to apply section 14(1) and 14(2) to the complainant's requests, in that requests were neither vexatious nor repeated.

The Council breached section 17(1) of the Act insofar as it failed to issue a satisfactory refusal notice when withholding information from the complainant.

Steps Required

77. The Commissioner requires the public authority to take the following step to ensure compliance with the Act:

The public authority must supply a copy of the names and addresses of the Commoners who sit on the Council, and a copy of the names and addresses of the Commoners who sit on the Commons Management Committee, to the complainant.

78. The public authority must take the step required by this notice within 35 calendar days of the date of this notice.

Failure to comply

79. Failure to comply with the step 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

80. 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
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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 25th day of June 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

General rights of access to information held by public authorities

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Public authorities

Section 3(1) provides that –

“in this Act “public authority” means –

- (a) subject to section 4(4), any body which, any other person who, or the holder of any office which –
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or a publicly-owned company as defined by section 6”

Section 3(2) provides that –

“For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person, or
- (b) it is held by another person on behalf of the authority.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

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.”

Refusal of a request

Section 17(1) provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and

- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) provides that –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that –

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.”

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Information accessible to the applicant by other means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1) -

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”

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 exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either -
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data

protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.