

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 March 2011

Public Authority: Wales Parish Council
Address: Parish Council Office
Kiveton Park and Wales Village Hall
Walesmoor Avenue
Kiveton Park
Sheffield S26 5RG

Summary

The complainant made a three part information request to the Council. The first part contained eight sections which were identical with the first eight parts of an earlier 15 part request; the second request was for sight of a correspondence file; and, the third request was for separate accounting files.

The Commissioner decided that:

the first information request was incorrectly refused relying on section 14(2) of the Act and that the section 21(1) exemption was incorrectly applied to the first request,

the Council breached section 1(1)(b) of the Act in relation to the first information request,

the second information request was neither refused nor satisfied he therefore required the Council to reconsider the second request afresh, and

the Council correctly refused the third information request relying on section 21(1) of the Act.

He also decided that the Council had breached section 17(1) of the Act.

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.

Background

2. Wales Parish Council (the Council) is one of 29 parish councils within the area of Rotherham Metropolitan Borough Council (Rotherham). The complainant was at all relevant times an elected member of the Council. The present clerk to the Council (the clerk) took up post in October 2009 following the retirement of her predecessor (the former clerk).

The Request

3. On 7 July 2009 the complainant wrote to the Council's chairperson and others with a detailed 15 part information request seeking information about the minutes and dates when formal Council approval was given for expenditure by it for purchasing professional services from a named firm of solicitors (the solicitors).
4. On 31 July 2009, following a meeting of the Council on 28 July 2009, the Council replied to the complainant saying that it claimed absolute exemption under section 21 of the Act adding that Kiveton Park Community Library (the library) held agendas and minutes of all of the Council's meetings which, the Council said, were *fully accessible* to the complainant.
The Council's letter did not tell the complainant about any complaints procedures that there might be or that he had a right of appeal to the Commissioner.
5. On 25 January 2010 the complainant made a fresh information request to the Council in three parts. The first part of his request for information contained eight sections which were identical with the first eight parts of his 15 part request of 7 July 2009. He told the Council that he had searched the documentation in the library but had been unable to find any of the information requested. He also asked (the second information request) for sight of the Council's correspondence file, to and from, the solicitors (the solicitors' file) and in addition (the third information request) for any separate accounting files which are kept. The request is at annex 2 to this Notice.
6. On 27 January 2010 the complainant wrote to other members of the Council saying that he had not been provided with a single answer to any of the questions he had asked over the previous few weeks.

7. On 9 February 2010 the Council replied saying that the first information request was exempt under section 21 of the Act as the library held agendas and minutes of the Council meetings and that they were *fully accessible*. The Council added, without giving reasons, that the first request was also exempt under section 14 of the Act as a vexatious request.
The Council did not refuse the second information request but asked the complainant to be specific regarding the documentation he required sight of.
The Council said that the third information request was exempt under section 21 of the Act as the library held monthly expenditure sheets of the Council and they were fully accessible. The Council added that no separate accounting files were held.
The Council invited the complainant to appeal to the Commissioner if he was dissatisfied with its response but did not indicate whether or not it had a complaints procedure or offer any further internal review of its response.

The Investigation

Scope of the case

8. On 12 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He said that his underlying concern was that large sums of parish monies were, in his view, being spent without full council authority being sought before that money was spent. The complainant specifically asked the Commissioner to consider his experience of seeking the information that the Council had said was held in the library. He said that having trawled several times thorough all of the relevant information held in the library, he had been unable to find the answers to his questions. The complainant said that a librarian had assisted him in his searches and that an officer from Rotherham had also searched the files. He said that Rotherham's findings too had been negative with the files held in the library not all being complete or kept in order. He added that he had found some of the authorisations to pay accounts that he was looking for but had been unable to find authorisations for incurring those expenses in the first place.
9. The Commissioner considered the handling of the 25 January 2010 information request by the Council and its application of sections 14 (Vexatious or repeated requests) and 21 (Information accessible to applicant by other means) of the Act.

10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. On 22 April 2010 the clerk told the Commissioner that decisions to refuse or release information were always taken to full Council.
12. On 21 July 2010 the Commissioner opened his investigation. On 30 July 2010 the Council told the Commissioner with regard to the first information request that, following his election to the Council in July 2007, the complainant had been provided with personal copies of all minutes and related papers for meetings. The clerk told the Commissioner that the Council had already resolved that the information requested was freely available to all parishioners via the library and she testified unreservedly that all the information in the first information request was freely available there. The clerk indicated to the Commissioner that she and the complainant did not enjoy a harmonious working relationship. The clerk said that she had considered the application of section 14 of the Act in the light of oral advice she had obtained from a member of the Commissioner's staff. With regard to the second information request, the Council said that the complainant had been allowed access on one occasion by the former clerk to read through sections of the solicitors' file. The clerk said that the complainant had looked through the solicitors' file on one occasion during her term of office. He had looked through the whole file at the Council's office and had left without asking anything about it. With regard to the third information request, the clerk said that she did not hold any separate accounting files for any individual organisations or suppliers. She added that financial information was circulated to all councillors and was also available in the library. The clerk said that the Council did not have in place a procedure for dealing with complaints.
13. On 6 August 2010 an officer of the library, witness A, told the Commissioner that some of the library copies of the Council's minutes for 2007 and 2008 were missing, particularly those for the latter end of 2007. Witness A indicated that information relating to parts 1 – 3 of the complainant's first information request was missing (minutes dated 22 May 2007) although that for parts 4 – 8 of the first information request was held. Witness A noted that some manuscript marks had been made on some of the library copies of the minutes which she interpreted to mean that someone else had been interested in some of the amounts paid to the solicitors. On 9 August witness A added that some 2007 minutes were missing, a situation which had never arisen before, and said replacement copies would be requested from the Council.

14. On 10 August 2010 the Commissioner told the Council, by way of a preliminary response, that in refusing the first information request, the fact that some relevant minutes were missing presented the Council with a problem as regards its reliance on the exemption at section 21(1) of the Act.
As regards the second information request, the Commissioner said that as the complainant had had two separate opportunities to inspect the solicitors' file, that could appear to discharge the Council's obligations although it would be helpful to know the dates of the inspections.
With regard to the third information request, the Commissioner said that he was content to accept the Council's evidence that no separate accounting files were held.
15. On 17 August 2010 the clerk told the Commissioner with regard to the first information request that she had visited the library when she took up post in the autumn of 2009. She also said that she had recently visited the library again and had spoken with witness A. The clerk said that she and witness A had confirmed that the minutes dated 22 May 2007 were held and that, therefore, the information was accessible as required by section 21 of the Act. She added that the minutes were *slightly out of chronological order* but that she did not see that as an issue *as it was the information contained in the minutes that was being sought*. The clerk acknowledged that *some minutes are missing* from the library.
As regards the second information request, the clerk said that the complainant had examined the solicitors' correspondence file in her office on 2 December 2009. She said that the complainant had also been shown the solicitors' file by the former clerk sometime between April 2009 and June 2009.
16. On 6 September 2010 the Commissioner invited the complainant and the Council to accept informal resolution of the complaint on the basis of his then preliminary view of it saying there were no steps he could require the Council to take in the event of proceeding to a formal decision.
17. On 16 September 2010 a member of the public acting on behalf of the complainant, witness B, emailed the Commissioner making clear that he was acting on behalf of the complaint and with his authority.
Witness B told the Commissioner that the complainant did not wish to withdraw his complaint against the Council saying, with regard to the first information request, that he had been *positively obstructed from obtaining* the information requested on the grounds that it was held in the library where he had been unable to find it.
With regard to the second information request, witness B added that the complainant had said that *at no time has he ever been permitted to see the correspondence file* with the solicitors.

The emailed communication from witness B also enclosed a copy of a letter that he had himself written to the Council on 25 May 2008 in which he had said that the Council's minutes were not placed in the library on a regular basis and that the set of minutes that was held in the library was often *jumbled up* and *incomplete*.

18. On 27 September 2010, witness B told the Commissioner that he had again visited the library to access Council records held there and had again found them not to be up to date.
19. On 12 October 2010 the complainant confirmed formally to the Commissioner that witness B was acting on his behalf. The complainant explained that he did not have computing facilities and that witness B carried out that kind of work for him. The complainant told the Commissioner, through witness B that he had *never ever been given sight of* the solicitors' file.
Also the same day, witness B told the Commissioner by way of background that he too had concerns about what he described as a *cloak of secrecy* surrounding the building of a new village hall. He said that large sums of money had left parish coffers without security and that parish precepts had risen severely as a result.
20. On 19 October 2010 the clerk, for the Council, told the Commissioner that when the Council had applied section 14 of the Act to the first information request, section 14(2) (Repeat request) had been intended and not section 14(1) (Vexatious request).
The clerk said that the complainant had had sight of its file for the solicitors on two occasions, once in her presence and once in the presence of the former clerk. Because he had already taken up the opportunity of looking through the files the Council was asking for clarification on what he wanted to see; he had not so far provided the Council with any clarification.
In response to a question from the Commissioner as to whether or not the complainant had exhausted the Council's complaints procedure, the clerk said that the request had been taken to a full Council meeting and had been discussed there; the clerk added that the full Council had approved the response that she had sent to the complainant on 9 February 2010.
21. On 20 October 2010 the clerk told the Commissioner that:
 - as regards the first information request, she was in the process of copying all of the Council's minutes, binding them and then sending them to the library.
 - she confirmed, and said that the librarian could confirm, that the information requested was held in the library.

- with regard to the second information request, that some additional correspondence had been received from the solicitors between 2 December 2009 when she said that she had met with the complainant and his 25 January 2010 information requests and that she had put this on the solicitors' file.
 - with regard to the third information request, no separate accounting files were held for anyone.
22. Also on 20 October 2010 the Commissioner wrote to the complainant by post asking him to say whether or not he had met with the clerk on 2 December 2009 and with the former clerk on an earlier occasion and, if so, what he believed the meetings had been about.
 23. On 26 October 2010 witness B again wrote to the Commissioner again saying that he did so at the request of the complainant. He confirmed again on behalf of the complainant that he had never been permitted to have sight of the Council's file of correspondence with the solicitors. He added that in his view there was *a culture in the Parish of concealment of information*.
 24. On 27 October 2010 the former clerk gave evidence to the Commissioner saying that there had been a particular occasion when the complainant had spent over an hour in the Council's office, at a separate desk, and had perused the whole of the solicitors' file, making notes and asking a few questions of clarification. The former clerk said he could not now recall the exact date of the meeting but added that there had been many other shorter visits by the complainant to the Council's office over a lengthy period of time when questions had been asked and information given regarding the solicitors.
 25. On 1 November 2010 witness B, again saying he was writing for the complainant, told the Commissioner that the complainant did not remember the exact dates or details of what was discussed during the numerous meetings he had had with the Council's clerks. Witness B said that the complainant was however very clear that at no time had he ever had sight of the various files he had requested to see, especially that relating to the solicitors.
 26. On 3 November 2010 the Commissioner asked the complainant if he could offer any explanation why the Council were adamant that they had shown him the solicitor's file on 2 December 2009 and on at least one earlier occasion but that he still maintained that he had not seen it.
 27. Later that same day, 3 November 2010, witness B wrote to the Commissioner saying that the only positive explanation the complainant could offer was that the former clerk had *produced the minutes illustrating where [the solicitors'] invoices had retrospectively been*

authorised just prior to payment. Witness B said that the complainant had commented that the situation *could be rectified by simply allowing him to see the files.* Witness B added – with supporting documentary evidence - that Rotherham had previously advised the Council to allow the complainant to see the information requested.

28. On 11 November 2010 Rotherham told the Commissioner that one of its officers had visited the library in February 2010 and had found that the copies of the Council's minutes held there were poorly organised. The officer had not been able to find all of the minutes he had been looking for on that occasion. Rotherham added that it had advised the Council to make the minutes of Council meetings available to members of the public on request at its office and on a website.
29. On 16 November 2010 the Commissioner put to the Council a further preliminary view of the matter, revised from that of 6 September 2010 in the light of further evidence received in the interim, and invited it to accept informal resolution of the complaint should the complainant also agree to accept his revised preliminary view.
30. On 29 November 2010 Rotherham told witness B, who forwarded the correspondence to the Commissioner, that one of its officers had visited the library on two separate occasions and had found the minutes of the Council's meetings that were held there to be poorly organised; the Rotherham officer had not found it an easy task to locate specific minutes.
31. On 22 December 2010 the Council told the Commissioner that it was extremely surprised that his preliminary view had changed from that put to it on 6 September.
As regards the first information request, the Council said it was satisfied that the information requested had definitely been held in the library at the date of the request.
For the second information request, the Council said that it believed that the complainant had had sight of the solicitors' file and did not consider it unreasonable to ask him to be specific about the information he was now requesting from it.
As regards the third information request, the Council reaffirmed that no separate accounting files were held.
32. On 27 December 2010 witness B provided further evidence to the Commissioner on this and on another unrelated matter.
33. On 10 January 2011 the librarian confirmed to the Commissioner the opening hours and days of the library.

Findings of fact

34. The Commissioner found that the library was open to the public for 35.5 hours a week spread over five days, closing on Wednesdays and Sundays.

Analysis

Substantive Procedural Matters

35. The complainant made three requests for information in his letter to the Council of 25 January 2010.

First information request

36. The first request was for a set of resolutions and minute references from the records of the Council. There were eight parts to this first request which repeated the first eight parts of a 15 part request which the complainant had made on 7 July 2009 and which the Council had refused on 31 July 2009.

Section 14 – Vexatious or repeated requests

37. Section 14(1) of the Act does not oblige a public authority to comply with a request for information if the request is vexatious. The Commissioner has seen no evidence that the information request was vexatious and the Council did not contend that it was.
38. Where a public authority has previously complied with a request for information, section 14(2) of the Act does not oblige a public authority 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.
39. The Commissioner has seen that the Council's 31 July 2009 refusal of the 7 July 2009 request (on section 21 grounds) had been defective in that it did not tell the complainant of his right to appeal to the Commissioner as required by section 17(7)(b) of the Act.
40. A period of some six months separated the earlier information request from that of 25 January 2010 which repeated part of it. Having regard for both this time interval and the non-compliance with the Act in the Council's 31 July 2009 refusal notice, the Commissioner decided that a reasonable interval of time had passed between the two requests and that the Council could not refuse the 25 January 2010 information request by relying on section 14(2) of the Act.

Exemptions

Section 21 – Information accessible to applicant by other means

41. Section 21(1) of the Act exempts information that is reasonably accessible to the applicant by other means.
42. The Commissioner considered whether or not the minutes of the Council's meetings to the complainant at the time of his request, 25 January 2010 had been reasonably accessible to the complainant by other means. The complainant says they were not reasonably accessible but the Council says that they were. It is common ground that some minutes were held in the library, the question for the Commissioner to decide is whether or not the information in the first information request was reasonably accessible there?
43. The Commissioner has received evidence, some of it conflicting, on the matter from the clerk, the complainant, witness B, the librarian and from Rotherham. He has seen firm evidence that the minutes held in the library shortly after that date were not properly organised and appeared not to be complete. Given the substantial doubts arising from the evidence of independent witnesses about the availability and accessibility at the library of some of the minutes requested, the Commissioner decided that, on a balance of probabilities, that the minutes were not reasonably accessible to the complaint at the time of his information request of 25 January 2010. In the light of that finding by the Commissioner, it follows that the Council cannot rely on the exemption at section 21(1) of the Act to withhold the information and so were in breach of section 1(1)(b) of the Act in relation to the first part of the request.

Second information request

44. The second information request of 25 January 2010 was for sight of the solicitors' file. The Council did not comply with the request nor did they refuse it by citing an exemption from the Act but instead asked the complainant to be specific regarding the documentation (from the file) he required sight of.
45. The Commissioner noted and accepted the Council's evidence that the complainant has been shown the solicitors' file on two separate occasions in the past but also saw that he had not been provided with copies of the information it contains. The Council withheld the information but without citing an exemption allowed by the Act but simply requiring the complainant to give reasons why he wanted the information. However the Act does not require applicants to give reasons for seeking information and is blind as to the purposes of information requests.

46. The Commissioner has received submissions from the complainant to the effect that he has not seen the solicitors' file. This evidence directly conflicted with that from the clerk and the former clerk to the Council.
47. The former clerk told the Commissioner that the complainant had seen the solicitors' file during the spring of 2009 but had not been given a copy of it. The clerk gave evidence that the complainant had again seen the solicitors' file on 2 December 2009. The complainant accepted that the meetings with the clerk and the former clerk had taken place but he said he could not now recall what information had been provided to him on those occasions. However he remained firm in his evidence that he had never ever seen the solicitors' file. In the absence of any determinative independent evidence, the Commissioner was not able, on a balance of probabilities, to decide between these opposing positions. However his decision as regards the second information request does not require him to do so.
48. The Commissioner decided that, even if the information had been seen previously by the complainant, it was not a repeat request because of the Council's evidence that some of the information in the solicitors' file changed between 2 December 2009 when the Council say the complainant last saw the solicitors' file and 25 January 2010 when he made his information request. The 25 January 2010 request was, therefore not a repeat request for the same information since part of the content of the solicitors' file had changed in the interim.
49. Since no exemption has been cited by the Council to support refusing the request, the Commissioner decided that the failure to provide the information requested did not comply with the Act.
50. A valid request for information has been made to the Council but no valid reason has been given for refusing it and no exemption from the Act has been cited. The Council clearly has no objection to the complainant seeing the file since it claims that it has already provided him with access to it. The Commissioner decided that the Council had made an inadequate response which did not permit him to identify which exemption, if any, the Council wishes to rely upon. Accordingly the Commissioner requires the Council to reconsider the second information request afresh.

Third information request

51. The third information request of 25 January 2010 was for any separate accounting files which are kept. The Council refused the request citing the section 21(1) exemption on the grounds that all the information it held was also available in the library and was therefore reasonably

accessible to the complainant. The Council said that no separate accounting files were held.

52. During his investigation, the Council confirmed to the Commissioner that no information was held that falls within the scope of the third information request and which was not already in the library. The complainant has not provided the Commissioner with any contrary information and the Commissioner saw none during the course of his investigation.
53. The Commissioner considered if the information was actually reasonably accessible to the complainant. The Commissioner accepts that information is reasonably accessible if a public authority: knows that the applicant has already found the information; or is able to precisely direct the applicant to the information. In the latter case the public authority has to be reasonably specific to ensure it is found without difficulty and not hidden within a mass of other information.
54. In this matter, the Commissioner saw that the library is open for a total of 35.5 hours a week spread over five days including one weekend day. He concluded that these opening times meant that the information held within the library was reasonably accessible to the complainant. The complainant did not dispute the availability of the accounting information in the library. Accordingly the Commissioner decided that the information was reasonably accessible to him there and that section 21(1) of the Act applied. Accordingly he decided that the Council had acted correctly in refusing the information request relying on section 21(1).

Procedural Requirements

55. The Council did not give reasons for its application of section 14 of the Act to the first information request. This was in breach of section 17(1) of the Act.

The Decision

56. The Commissioner's decision is that the Council dealt with the following elements of the request in accordance with the requirements of the Act:
 - The third information request was correctly refused in reliance on section 21(1).
57. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- the first information request was incorrectly refused relying on section 14(2) of the Act
- the section 21(1) exemption was incorrectly applied to the first request.
- the Council breached section 1(1)(b) of the Act in relation to the first information request.
- the second information request was neither refused nor satisfied.
- the Council breached section 17(1) of the Act.

Steps Required

58. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- provide to the complainant the information requested within the first information request
 - reconsider the second request afresh.
59. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

60. 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.

Other matters

61. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
- the Council does not have in place a complaints procedure and he recommends that it considers putting one in place,
 - minutes of Council meetings are not available from its office, nor do they appear to be available on a suitable website, and he recommends that these actions be taken.

Right of Appeal

62. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

63. 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.

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

Dated the 7th day of March 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

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."

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 Request

Section 17(1) provides that -

"A public authority which ... 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(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."

...

Section 17(7) provides that –

“A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.”

Information Accessible by other Means

Section 21(1) provides that –

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

Annex 2

Information Request dated 25 January 2010

Would you please inform me under what resolution and minute number the services of Messrs Illet & Clark were to be engaged, and which resulted in the following invoices:-

- 1) The invoice from I&C of 31st October 07 for "Funding between RMBC, WPC & KP&WVH" for £1,468.75
- 2) The invoice from I&C of 31st October 07 for "Provision of funding for KP&WVH" for £2,660.79
- 3) The invoice from I&C of 31st October 07 for "West Riding Archive Service & Copy registry for the Recreation Ground" for £295.63
- 4) The invoice from I&C of 6th April 08 for "WPC & KP&WVH Funding Agreement" for £940
- 5) The invoice from I&C of 24th October 08 for "Registering Recreation Grounds" for £525
- 6) The invoice from I&C for work 07 Apr 08 – 24 Oct 08 for "Acting on behalf of WPC regarding the KP&WVH and ancillary matters" for £2,350.00
- 7) The invoice from I&C of 31st October 08 for "Charities behalf access agreement KP&WVH to Recreation Ground" for £1,119.25
- 8) The invoice from I&C for work 25 Oct 08 – 04 Dec 08 for "KP&WVH and ancillary matters" for £2,185.00

I have searched the documentation in the library, but I have been unable to find any of the above information. For this reason I am asking you to examine your master filing system to find the information.

I would also like to have sight of the correspondence file, to and from, Illet and Clark and in addition any separate accounting files which are kept. It would be appreciated if was possible for you to provide the answers to me within the next seven working days.