

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2013

Public Authority: Walberswick Parish Council
Address: Old Hall
Wenhaston
Suffolk
IP19 9DG

Decision (including any steps ordered)

1. The complainant requested information from Walberswick Parish Council (the council) related to an internal review report that had been written by a councillor in 2011 concerning 'exclusion notices' issued against certain individuals by the council, including the complainant. The council responded by saying that most of the information relating to the subject of this complaint was 'not held' or that it required further clarification. At internal review stage some further information was provided in relation to one point. Subsequently further information came to light and has now been provided to the complainant.
2. The Commissioner's decision is that, on the balance of probabilities, there is no further information held by the council that has not already been supplied to the complainant.
3. The Commissioner requires no further steps to be taken.

Request and response

4. On 24 September 2011, the complainant made a request for information under the FOIA which related to a report that had been written by a councillor concerning 'exclusion notices' that had been issued against certain individuals, including the complainant, by the council:

"INITIAL COMMENTS ON WALBERSWICK PARISH COUNCIL'S
EXCLUSION NOTICE DECISION AND INTERNAL REVIEW REPORT &

REQUEST FOR FURTHER INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

The request then listed 20 separate points (not all of them freedom information requests).

5. On 15 December 2011, in response to an enquiry from the complainant, the council wrote to say that it had already responded to his request on 29 September 2011.
6. It was stated in the same letter that the complainant had asked for an internal review on 13 December 2011 and the council attached its internal review, dated 15 December 2011.

Scope of the case

7. The complainant contacted the Commissioner on 2 April 2012 to complain about the council's response to points 10, 11, 14, 15, 16, 17, 18, 19, and 20 of his request for information.
8. However, points 10, 11, 15, 16, 17 and 20 related to his personal information and were assessed by the Commissioner as part of a data protection complaint.
9. The only points the Commissioner considered were not the complainant's personal information were points 14, 18 and 19. For the sake of clarity these were as follows:

"14. In Paragraph 6 it states that we (SALC and [named person]) were satisfied at their Meeting on the 5th April 2011 that Walberswick Parish Council had been compliant with the requirements. Please provide me with a copy of the notes and other information and documents relating to that Meeting and advise me which 'requirements' they considered before making this decision...?"

18. Please provide me with a copy of the notes and other information and documents that relate to [named person's] discussions with individual members of the Parish Council and at the special Meetings when the public were not allowed to attend, mentioned in paragraph 9 of his Report.

19. Please provide me with the name of the Councillor who was unable to reply to the questions posed by [named person]?"

10. Therefore the focus of this complaint is whether the council provided all that it holds in relation to points 14, 18 and 19 of the complainant's request.

Reasons for decision

Section 1(1)

11. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
12. The council had stated in its internal review that it did not hold the information at points 14 and 19. Regarding point 18, the council said that there was no "*paragraph 9*" and would require clarification but that it held an additional document which was a note that had been created on 30 October 2011 which would be hand delivered.
13. On 23 October 2012, the Commissioner asked the council for details of the searches it had carried out in order to reach a determination concerning whether any further requested information was held.
14. The council was unable to answer the Commissioner's questions in detail due to its ongoing problems with a backlog of FOIA issues, financial problems and a temporarily installed parish council. However, the parish clerk wrote to the Commissioner on 18 February 2013, making the following points:
 - Since the date of the complainant's requests she had made further searches on the council's hard copy and digitally held records for information pertaining to his requests. She had also asked councillors for any information they might hold, separate from the main council records, relating to the review by the named person.
 - The clerk explained that she had emailed the named person on 4 October 2011 and then again on 24 October 2011. During November 2011 the named person provided her with a hard copy reply, dated 30 October 2011, to her 24 October 2011 email which had been delivered by hand.
 - In April/May 2012 the complainant wrote directly to the named person and, as a result, the named person provided the parish clerk with further information relating to the request. This information included

hard copies of documents the named person had retained from the internal review he had conducted. Redacted copies of these were sent to the complainant on 28 May 2012. The clerk was surprised that she had not received these documents before, despite her previous requests. However, it would appear that there had been an interruption in email traffic, possibly whilst BT was digging a trench in this location, and the named person only received hand delivered emails at that time.

15. The specific points the council makes with regard to points 14, 18 and 19 are as follows:

Point 14

- When the council gave its initial reply on 29 September 2011 it stated that no information was held. A new document was created by the named person on 30 October 2011 which dealt with the issue under the heading "SALC" but was merely a brief account of information that the complainant had already included in his request. The council maintains that there is no evidence that the information ever existed prior to this.

Point 18

- The council's initial response had been that, as there was no numbered paragraph 9 in the report, it needed the complainant to provide the wording in order to respond. As explained in paragraph 13, there was a problem in email communication in November 2011 but information relating to this point became available in May 2012. It was hand delivered to the complainant on 28 May 2012.

Point 19

- The council's response had been that the information was 'not held'. Further information was given to the complainant on 28 May 2012. From the unredacted copies the parish clerk was able to ascertain that the councillor who did not reply (for personal reasons) did do so after the review report had been completed. The letter from the council to the complainant, dated 28 May 2012, provided six sets of answers from councillors, the seventh councillor (making up the total) being the named person who had created the questionnaire.

16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically

whether the information was held. He is only required to make a judgement on whether the information was held "*on the balance of probabilities*"¹.

17. In deciding where the balance lies, the Commissioner considers the scope, quality and thoroughness of searches conducted by the public authority together with any reasons offered by the public authority or the complainant as to why the information is not held or should be held, where appropriate.
18. The Commissioner's approach was supported by the Information Tribunal in the hearing of Thompson and Dyke v Information Commissioner EA/2011/0164 and 0165. The Tribunal stated that the Commissioner is:

"...entitled to accept the public authority's word and not to investigate further in circumstances where there is no evidence as to an inadequate search, any reluctance to carry out a proper search and any grounds for believing there is a motive to withhold information actually in its possession."

The Tribunal referred to the Commissioner's national remit and limited resources and that to act otherwise might require a full scale investigation to be carried out in every case where a public authority is "*simply not believed*".

19. For the above reasons, the Commissioner has concluded in this case that, on the balance of probabilities, the council did not hold any information at point 14 of the request; that it has now provided the requested information it holds relating to point 18; and that, in relation to point 19, the complainant has now been provided with further information which the council states is third party personal information and all the information it holds. The Commissioner does not consider that there is evidence to firmly suggest that the council holds any further data to that which has already been disclosed.

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others/Environment Agency (31 August 2007) EA/2006/0072.

Other matters

20. The Commissioner has upheld several complaints against the council. There was a period of time when the council did not respond to freedom of information requests in the erroneous belief that its application of 'exclusion notices' made this unnecessary. He also acknowledges that the council's responses to requests for information have been tardy and procedurally incorrect - a situation which it is attempting to remedy. The piecemeal disclosure of information in this case has not been helpful for either the complainant or the Commissioner in determining whether all the requested information has been provided. In future the council should endeavour to provide all information it holds within the scope of the request in the initial response.

Right of appeal

21. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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