

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 26 September 2013

Public Authority: Shotteswell Parish Council
Address: The Old Post Office
Back Hill
Shotteswell
Banbury
OX17 1JG

Decision (including any steps ordered)

1. The complainant has requested a copy of Shotteswell Parish Council's insurance documents and a copy of an inspection report from July 2011 and associated correspondence relating to a children's play area. Shotteswell Parish Council ('the council') council initially provided some information but the complainant alleged that more was held. The council then applied section 14 to the request as it considered it to be vexatious. The Commissioner's decision is that the council has correctly applied section 14 to the request. He does not require any steps to be taken.

Request and response

2. On 3 April 2012 the complainant made a request for the following two pieces of information:

"a copy of the insurance policy and associated terms and conditions relating to the insurance cover held by SPC."

"a copy of the RoSPA inspector's report based on his visit 9th July 2011 plus any associated follow-up reports or pertinent correspondence including that with suppliers and the like and evidence that any recommendations made by the inspector and/or any remedial work undertaken as a result of his inspection have been approved as being satisfactory by a competent and independent party."

3. The council states that it sent the complainant its response in April 2012, but the complainant maintains that he did not receive it and had complained to the Commissioner on 12 May 2012 about the lack of response to the request. Following the Commissioner's involvement, the response was sent to the complainant in November 2012.
4. The complainant was not satisfied with the response and wrote to the council on 11 March 2013 to outline his dissatisfaction. He was particularly concerned that the council had not provided the terms and conditions of the insurance policy and the complete Royal Society for the Prevention of Accidents (RoSPA) inspection report from the 2011 inspection of the children's tree house.
5. On 18 March 2013 the council responded stating that it was not prepared to send further copies of the policy information and asked the complainant to specify what further information about the policy he required. The response also stated that the full 2011 RoSPA report was not held.

Scope of the case

6. The complainant contacted the Commissioner on 5 April 2013 to complain about the way his request for information had been handled. He disputed that the council had provided him with a full response to his request as he required the insurance policy document and a full copy of the RoSPA report.
7. However, during the course of the Commissioner's investigation, the council sought to rely on section 14 to refuse the request as they considered that it was vexatious. The council wrote to the complainant on 20 May 2013 to inform him that it had changed its position.
8. The Commissioner therefore considers the scope of this case to be to determine whether the council was correct to rely on section 14 to refuse the request.

Reasons for decision

Section 14 – Vexatious requests

9. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
10. The term vexatious is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹ the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure.' The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
11. The Commissioner will therefore consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

Detrimental impact on the public authority

13. The council has provided the Commissioner with its reasons for finding the request vexatious. The reasons are varied and stem from a long history of engagement between the council and the complainant, originating from when the complainant's wife bequeathed a gift to the council in her will for building a children's play area in 2005. The council has explained that the complainant has taken issue with the children's play area and has submitted complaints to various bodies in relation to

¹ UKUT 440 (AAC) (28 January 2013)

² http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

it and also the two councillors who remain on the council since the time the gift was bequeathed; the clerk and the chairman. The council stated it has been swamped with letters from the complainant, and another individual acting with him, in an attempt to undermine the play area project.

14. It is clear from the information provided by the council that it considers that the complainant has a personal grudge against both the clerk and the chairman. It has explained that the complainant, and the above mentioned associate of his, made allegations about the conduct of the clerk and the chairman in relation to the financial legacy left to the council to the Standards Board last year. The Standards Board dismissed the allegations in February 2012, prior to the request in this case. The complainant and his associate then appealed the standards board decision, but this again was dismissed.
15. The clerk has informed the Commissioner that the complainant has threatened her and her family and that she had reported a particular incident of this nature to the police in June 2009. In addition to this, the chairman has instructed a solicitor to send a pre action protocol for defamation to the complainant in relation to a letter the complainant wrote in February 2007 which was published in the comments section of a planning application.
16. The council has also noted that the complainant and his associate had made allegations to the council's external auditors in the past year in relation to the play area but the auditor found these to be without foundation.
17. The council has also explained that the insurance information which the complainant maintains he has not been provided with was indeed provided and advised that its letter of 18 March 2013 was designed to ensure that the council did not provide the complainant with information which he already had or otherwise did not want. With regard to the RoSPA report, the council has informed the Commissioner that this is no longer held. The council receives annual reports from RoSPA and due to the limited storage facilities available to the council, as all documents are stored at the clerk's home, only the current report is held.
18. The council considers the complainant to be unreasonably persistent in asking for information which he states will assure him of the safety of the play equipment when he has already received such assurances from a number of other sources.
19. The council has also indicated that it considers that the complainant is making the requests with the intention of causing disruption to the council. It has demonstrated that the complainant often alleges that he has not received some or all of the information which the council sends

in response to information requests. The council is concerned about the extra expense in terms of time and money in order to resend information. As the council is very small it has no office equipment of its own and the copying and sending of information requires a ten mile round trip to the nearest town. It has therefore taken steps to have a colleague double check the content of all correspondence sent to the complainant and witness that it has been posted. The council has stated that it finds these demands on its resources to be frustrating, and it considers that the complainant is well aware of its limited resources in this regard.

20. In addition to the complainant's own requests and background with the council, the council has sought to rely on the fact that it is known that he is acting with an associate and that it is a stated aim of the two individuals to bring about the demise of the council. The Commissioner has seen clear evidence that the two individuals in question are in contact with one another and that freedom of information requests to the council do form part of their correspondence.
21. The Commissioner has also seen correspondence between the complainant and a third party in which he states that he subscribes to the aim of seeing the clerk removed from being able to hold any office.

Serious purpose and justification of request

22. The complainant has stated that the purpose of his request concerned the safety of the tree house in the play area. He explained that in 2011 the tree house had been inspected as part of RoSPA's annual safety inspection and was found to have faults requiring remedial action. The complainant maintains that due to the irregular and infrequent parish council meetings, the RoSPA report and details of the remedial works did not enter the public domain.
23. Further to this, the complainant does not consider his request to be for complex or voluminous information and contends that should the council's records be stored and filed correctly, complying with the request would simply involve photocopying two documents.
24. The complainant also considers that the council's behaviour in the handling of this request and the subsequent involvement of the Commissioner has been unnecessary and planned as he considers that the council has obfuscated and prevaricated in dealing with the matter. It is clear that the complainant considers his request to have a valid purpose and that any persistence shown is in the face of what he considers to be the difficult and uncooperative behaviour of the council.
25. The council has stated that the complainant said he requires a copy of the requested RoSPA report to satisfy himself that the children's tree house is safe and fit for purpose. However, the council maintains that

the complainant has received a number of written and verbal assurances from various sources regarding the safety of the play equipment. For example, the council has explained that the senior RoSPA inspector had stated that he had spoken with the complainant before he submitted his request and personally assured him that the tree house was safe. In addition to this, in the intervening period between making the request and asking for it to be reviewed, the complainant has received a further report from an independent inspector confirming that the tree house was safe and there were no outstanding issues. The council therefore maintains that if the purpose of the request was to determine the safety of the tree house, then the complainant had already received verbal and written assurances confirming that it was.

26. The council considers that requesting information which the complainant states will assure him of the safety of the play equipment when he has already received such assurances from a number of other sources demonstrates that the request has no serious purpose. It has also stated that as insurance documents are not proactively published, and the complainant has been sent the terms and conditions of the insurance and the asset register, which records all items insured by the council and their valuations, it is difficult to see what other information the complainant could require in order to serve his purpose.

Conclusion

27. The Commissioner has considered both the council's arguments and the complainant's position regarding the serious purpose of the request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the council was correct to find the request vexatious. He has balanced the purpose and value of the request against the detrimental effect on the council and is satisfied that the request reflects the complainants desire to keep the issue alive rather than to access recorded information. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

28. 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: council

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

29. 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.
30. 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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