

Freedom of Information Act 2000

Decision notice

Date: 28 July 2014

Public Authority: West Felton Parish Council

Address: Parish Office
Forton Bank
Montford Bridge
Shrewsbury
SY4 1ER

Decision (including any steps ordered)

1. The complainant requested information relating to items on an agenda for a meeting held by West Felton Parish Council (the Council). The Council refused the request under section 14 of the Freedom of Information Act (the Act) as it considered it to be a vexatious request. The Commissioner's decision is that the request is vexatious. No further action is required.

Request and response

2. On 5 December 2013, the complainant wrote to the Council and requested information in the following terms:

"Please provide me (either by e-mail if possible or otherwise by hard copies) with the following documents referred to in the agenda for the Parish Council meeting to be held on Thursday, 12th December 2013, as identified below in italics in relation to the relevant items of business identified.

The documents in question are not included in those listed in the Parish Council's website in relation to that meeting but are obviously ones referred to in its Publication Scheme as being "background documents which are referred to in the agenda ... or were circulated in preparation for the meeting". They are thus considered part of the agenda.

I have no practical means of accessing them other than by application to you in your capacity as the Parish Council's 'Proper Officer'.

- *Agenda item 5.2, Black bin bags are being dumped at the bottom of Fox Lane:-
"SC measures to promote proper recycling".*
 - *Agenda item 5.3, State of the road across Rednal Airfield: tractor damage to roadside verges:-
"Caroline Beasely's e-mail".*
 - *Agenda item 6.3, Councillor Training Session-2 to be arranged on the most convenient date:-
"Carole Warner's email".*
 - *Agenda item 8.1, SC Housing Land Supply Nov 2013:-
"Briefing note: legal consequences and implications for West Felton". "*
3. The complainant wrote to the Council again on 27 January 2014 asking for a response to his request. The Council replied on the same day with its response. It stated that the request had not been responded to previously as it had not been received until that day, and that the request was being refused as vexatious as per section 14 of the Act. The Council stated in its response that it would not conduct an internal review as this would lead to the same conclusion.

Scope of the case

4. The complainant contacted the Commissioner on 29 January 2014 to complain about the way his request for information had been handled.

5. The Commissioner considers the scope of the case to be whether the request is vexatious.

Reasons for decision

6. Section 14(1) of the Act states that a public authority may refuse a request if it is vexatious. The Act does not define the term, but it was discussed before the Upper Tribunal in the case of Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013).
7. In this case the Upper Tribunal defined a vexatious request as one that is "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
8. In making his decision the Commissioner has obtained submissions from both the complainant and the Council to understand the circumstances surrounding the request in order to reach a decision on whether the request is vexatious. The Commissioner will consider their arguments where appropriate.
9. The complainant argued to the Commissioner that a request for information contained in a publication scheme could not be refused as vexatious. He cited the Commissioner's previous guidance on vexatious requests which states that:

"You should be aware that you cannot use section 14 to refuse any request for information that should be published under your publication scheme. You will need to provide this information, or direct the requester to where it is available."
10. However, the Commissioner's current guidance does not concur with this statement. This states that the Commissioner would generally expect information contained in a publication scheme to be provided but if the request meets the criteria for a vexatious request it can be refused.

11. The request was made after the current guidance was issued so the Commissioner will base his decision in accordance with this, rather than the previous guidance.

Reasons why request is not vexatious

12. The information requested by the complainant is supporting documents for a Council meeting. The Commissioner's guidance¹ on supporting information for meetings and agendas states that as a general rule a public authority should disclose:

"any background documents which are referred to in the agenda or minutes, or were circulated in preparation for the meeting. These are considered part of the agenda."

In most circumstances the Commissioner would therefore expect the information relevant to the complainant's request to be provided as standard. The complainant also informed the Council in his request that this would be his only method of obtaining the information, and maintains in his submissions to the Commissioner that the information has not been made publicly available.

13. The Commissioner considers that the volume of information and the work required to answer this request would not be a significant burden to the Council. In this regard, the Commissioner's view is that the request is proportionate and not an unjustified use of the formal procedure.
14. The complainant acknowledged that he has sent a sizable amount of correspondence to the Council in the past but argued that this was to be expected given his previous role as an elected member. The Commissioner considers that a

1

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/minutesandagendas.pdf#page=3

certain level of interaction and correspondence would be expected between a Council and one of its elected members.

15. Having reviewed the complainant's correspondence the Commissioner notes that much of it is concerned with the proper running of the Council, with particular attention to ensuring that the Council and its elected members are complying with its legal obligations. The Clerk at the Council confirmed this and agreed that he did not believe the complainant was acting maliciously in making requests to the Council.

Reasons why request is vexatious

16. The Chairman of the Council spoke to the Commissioner and rebutted the claim that the relevant information had not been made publically available. He confirmed that the information was available at the meeting to members of the public and that it would have been provided to the complainant if he had attended. The Commissioner accepts this argument and dismisses the suggestion that the information was not made publicly available.
17. The Council stated to the Commissioner that it did not consider the request to be vexatious on its own merits, but rather that should be seen in the context of the complainant's previous involvement with the Council. In its submissions to the Commissioner the Council stated that by November 2012 the complainant had sent in 225 emails, at which point it made the decision for the Parish Clerk to stop responding to them. From that point to the date of the request the complainant sent in a further 28 emails. In addition to this, the complainant has sent in a number of letters to members of the Council and the various Parish Clerks over the years. The Council argues that whilst the complainant might be expected to submit correspondence – in the course of his former duties as an elected member and as a concerned citizen – the sheer volume imposed by one person on a small Council with very limited resources is unwarranted, and highlights the complainant's obsession with the affairs of his local Council.

18. The Commissioner would not expect a Council employee to stop responding to correspondence in normal circumstances. However, the Council argued that the persistence of the complainant was becoming a burden upon its resources, especially its members of staff. Former Clerks have left due to the volume of work imposed by the complainant's correspondence, and the current Clerk left and only returned on the condition that he would no longer have to deal with the complainant's correspondence. He informed the Commissioner that this came at a significant loss of earnings, but one that he was prepared to take because he believed that the burden created by handling the complainant's correspondence was a threat to his health. The Commissioner considers that this is a significant point: whilst he would not advocate an individual being ignored he cannot overlook that a member of staff is willing to curb his own earnings in order to remove himself from the burden of dealing with the complainant, or that the handling of the complainant's correspondence caused distress to members of staff to the extent that it was impacting on their health. This is a strong indication that the request is vexatious; the circumstances surround it show that the complainant's correspondence has caused a significant burden and distress to Council employees.
19. It is also significant that members of staff are prepared to leave employment because of the work imposed upon them by handling the complainant's correspondence. This was highlighted in an Internal Auditor's report of June 2013, which stated that it had been a long-running issue that the Council had failed to retain a Clerk for a meaningful length of time. The Council has argued this can be attributed to the actions of the complainant. In the Commissioner's view, this request is a continuation of the complainant's previous correspondence, as it is of a similar nature to much that came before it. Given that the complainant's correspondence has created a significant burden and associated staffing difficulties for the Council, the Commissioner considers that the continuation of this correspondence would represent a further burden upon the Council. This burden has continued to the point where it is

clearly affecting the running of the Council and is therefore seen as being unjustified.

20. As mentioned, the Commissioner has reviewed previous correspondence sent by the complainant. Whilst the Commissioner noted that the complainant can be seen to try and highlight issues for the Council, he also notes that in a number of the emails – and also within his submissions to the Commissioner – there are accusations of improper conduct by Council staff and the complainant frequently uses a hostile tone. The complainant berates members of staff over its mistakes in implementing legislation such as the Act. For example he claims that the Chairman cannot issue a refusal notice in response to a request because of section 101 of the Local Government Act 1972, which is not the case. Similarly the complainant made it clear the Council should not have the authority to declare a request as vexatious despite this exemption being within the powers afforded to a public authority under the Act. The Commissioner considers that whilst the intentions of the complainant might be to ensure the Council is compliant with the relevant legislation his approach to this can be inappropriate and at times involves an unwarranted degree of criticism. Whilst the request itself does not display these tendencies, the Commissioner's view that this request is an extension of this previous correspondence means this point must be taken into account, and adds further weight to the argument that the request is vexatious.

Commissioner's decision

21. The Commissioner considers that the request taken in isolation is not vexatious, and he notes the comments from the current Parish Clerk that the complainant's intentions are not malicious when making requests of this nature. He also notes that the requested information does not represent a burden in itself, and would be straightforward for the Council to provide.
22. However, the Commissioner's view is that the request is a continuation of the complainant's previous correspondence, which is seen as being so voluminous it represents a burden

to the Council. This correspondence has also impacted upon the Council in other ways, notably in the way its members of staff have resigned or asked to reduce their duties and their earnings in order to avoid interaction with the complainant. Lastly, the Commissioner considers that the approach taken by the complainant in his correspondence with the Council is unnecessarily antagonistic and highlights further that this request is part of an unwarranted interference with the Council's functions. Therefore, the Commissioner's decision is that the request is vexatious. No further action is required.

Right of appeal

23. 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: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

24. 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.
25. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF