

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 September 2016

**Public Authority:** East Stoke with Thorpe Parish Council

**Address:** 19/21 Main Street  
Keyworth  
Nottinghamshire  
NG12 5AA

#### **Decision (including any steps ordered)**

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1. The complainant has asked East Stoke with Thorpe Parish Council ("the Council") for recorded information which comprises copies of all the emails its Clerk has sent and received between 1 November 2010 and 31 May 2011 and copies of the Council's minutes for meetings held between 30 November 2009 and 8 February 2010.
2. The Commissioner's decision is that the Council is entitled to rely on section 14(1) of the FOIA on the grounds that to comply with the complainant's request would require it to expend a disproportionate effort and would be excessively burdensome. In recognition of the evidence which the complainant provided in support of the second part of his request, the Commissioner has investigated whether the Council holds copies of the minutes which he seeks. She has determined that, on the balance of probabilities, the Council does not hold the requested minutes and it has therefore complied with the requirements of section 1 of the FOIA.
3. The Commissioner requires the public authority to take no further action in this matter.

#### **Request and response**

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4. On 15 January 2016, the complainant wrote to East Stoke with Thorpe Parish Council and requested information in the following terms:

"I formally request under the freedom of information act, a copy of all emails received by you and sent by you, in any way concerning East

Stoke with Thorpe Parish Council. I would like all copies from the date you took office until the date that I am in receipt of said copies.”

5. The Council responded to the complainant’s request on 13 January, advising him that his ‘request is, in its present form, manifestly unreasonable and therefore, unless it is refined, is rejected’.
6. The complainant resubmitted your request later on 13 January.
7. On 15 January 2016, the council wrote to the complainant again: The Council confirmed that it holds some information falling within the scope of his request and it informed him that it was refusing to comply with his request by virtue of section 12 of the FOIA, where the cost of compliance exceeds the appropriate limit. The Council explained that it holds 12,909 emails on its computer system and that it had no way of ascertaining to whom they related without manually checking several hundred of them individually. The Council stated that it would take approximately 30 staff hours to make its checks, which equates to £750 at the prescribed hourly rate.
8. The complainant wrote back to the Council on 22 January. The complainant agreed with the Council that it would be time consuming and may be costly to comply with his previous request and therefore he submitted a refined request under the following terms:

“I formally request under the freedom of information act copies of the minutes dated Monday 30<sup>th</sup> November 2009 and the minutes dates 8<sup>th</sup> February 2010, these minutes detail the adoption of the camera system by East Stoke with Thorpe Parish Council. I request evidence of a formal vote by the parish council to subsequently revoke that decision.

I formally request any emails and written evidence to you and from you regarding East Stoke between the dates 1<sup>st</sup> November 2010 to 31<sup>st</sup> May 2011. These should contain evidence of the cameras being put on the asset list after they were added to the list. Or any documentation you have giving instruction to remove the cameras from the list thereby rendering them uninsured and illegal.

I request copies of all emails sent to you and by you concerning East Stoke with Thorpe Parish Council between the dates 1<sup>st</sup> May 2015 until the date I receive them.”

9. The Council responded to the complainant’s latest request on 17 February 2016. The Council advised the complainant that it holds some of the information he had requested but not all. The response letter went on to advise the complainant that the Council was refusing his request in reliance on section 12 of the FOIA. The Council informed the complainant that it holds a total of 3,039 emails on its computer system

and it restated that it would need to check each of these manually to ascertain to whom they refer. The Council estimated that it would require 25 staff hours to comply with the complainant's request, which would equate to £625 at the prescribed hourly rate.

10. The complainant wrote to the Council on 29 February 2016 asking it to review its decision.
11. The Council carried out an internal review of its handling of the complainant's refined request and, on 24 March 2016, it wrote to the complainant to inform him of its final decision. The Council's review determined that the request could not be complied with within the maximum time provided by section 12 of the FOIA and the Freedom of Information (Fees and Appropriate Limit) Regulations 2004. The Council explained to the complainant that it holds 3,039 emails and that it has no way of ascertaining their contents without manually searching several hundred of them. Again, the Council stated that to comply fully with the complainant's request, it would require some 25 staff hours.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 21 April 2016 to complain about the way his request for information had been handled. The complainant provided the Commissioner with background information which supports the complainant's purpose in making his request. The complainant also provided the Commissioner with copies of minutes which purport to be the same as those which he seeks from the Council.
13. The Commissioner has investigated the Council's reliance on section 12 of the FOIA. Additionally she has investigated whether the Council holds copies of the requested minutes.

### **Background information**

14. The complainant's information request stems from his requirement to understand why, contrary to his understanding, a number of CCTV cameras positioned around the village are not currently listed on the Council's asset register.
15. The complainant questions whether certain CCTV cameras should be included on the Council's asset register for insurance purposes. The Council's minutes of June 2009 record that, "...the Clerk has been advised by the Accountants to start and maintain "assets register".

16. Prior to this meeting the Council did not have an asset register. One was subsequently produced in 2009, which showed the Council's sole asset to be a bench. In 2012 two notice boards, a seat and four dog fouling signs were added to the register.
17. The Council assures the Commissioner that the CCTV cameras have never appeared on the asset register. The matter was discussed at the Council's meeting of November 2014 and the minutes of that meeting record the following:

"The Clerk reminded members that currently East Stoke had a CCTV scheme that was provided through grants etc. The Parish Council were not financially involved. The Council currently meet the cost of the necessary broadband service, at a cost of £21.50 a month. If there currently was a need for a major expense the council would be expected to meet the cost."
18. Following the closure of the village Neighbourhood Watch scheme, a report was submitted to the Council by one of its residents. The report confirmed the possible outlay of £2500 per year in respect of the CCTV cameras.
19. The Council's current precept is £2000 per year. In order to accommodate the costs associated with the CCTV cameras, the Council's precept would need to be increased to £4500 per year, resulting in additional charges on the Council's residents.
20. The Council agreed that it would assume responsibility for the CCTV scheme as a whole until the end of its current term in May 2015.
21. When the new Council discussed the future of the CCTV scheme it decided that it was unwilling to take on the responsibility for the scheme.
22. In 2010, when the current Clerk was appointed, the Clerk made the decision to include the CCTV cameras on the Council's insurance. Later, having realized that the Council did not own the cameras, the Clerk removed the cameras from the Council's insurance. Consequently, the cameras have never officially appeared on the Council's asset list.

## Reasons for decision

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### **Section 12 – where the cost of compliance exceeds the appropriate limit**

23. Under section 12(1) of FOIA a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The cost limit is set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”) and is currently set at £450.
24. The £450 limit must be calculated at the rate of £25 per hour. This effectively provides a time limit of 18 work hours. Additionally, regulation 4(3) the Fees Regulations only allows for four activities which can be considered in relation to complying with the requests. These activities are:
- Determining whether the public authority holds the information requested;
  - Locating the information or documents containing the information;
  - Retrieving such information or documents; and
  - Extracting the information from a document or other information source.
25. The cost of redacting relevant but exempt information may not be taken into consideration for the purpose of calculating the appropriate limit.
26. Under Regulation 5(2) of the Fees Regulations requests may be aggregated for the purpose of the appropriate limit if they relate “to any extent” to the same or similar information. This will be apparent where the request relates to the same or similar information and where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.
27. In this case, the Commissioner accepts that the Council is able to aggregate the elements of the complainant’s request for the purpose of its application of section 12.
28. To support its reliance on section 12 of the FOIA, the Council has explained how it holds the information requested by the complainant.

29. The information which the complainant seeks is held by the Parish Council's Clerk.
30. The Clerk, as well as serving in this capacity for East Stoke with Thorpe Parish Council, is also the Clerk to 14 other parish councils and acting Clerk to two others.
31. The Clerk has identified that he holds 3,039 emails which fall within the scope of the complainant's refined request. These emails are held in a general folder together with emails which have been sent and received in relation to the other 16 parish councils served by this same Clerk.
32. There are an additional 66 emails which have been separated from the general folder and which are filed in a separate folder relating specifically to East Stoke with Thorpe Parish Council. The Clerk explained that the separated emails concern matters, which he has determined, are of sufficient importance to the Council. Such emails would include instances where the Council has been awarded grants, etc.
33. The Clerk has explained that the general folder is used for all emails, regardless of which council they relate to. The folder is also used for the Clerk's work as Secretary of the Nottinghamshire branch of the Society of Local Council Clerks.
34. On average the Clerk receives between 140 and 160 emails per day, many of which are deleted on receipt.
35. On 16 February, the Clerk carried out a sampling exercise in respect of 10 emails from the East Stoke and Thorpe file and the same exercise for 50 emails from the general file.
36. The time spent in locating, retrieving, printing off and copying the emails from the East Stoke with Thorpe file took 14 mins and the same activities for the general file took 29 minutes.

*The Commissioner's conclusions*

37. The Commissioner notes how the Clerk holds emails which he has sent or received in connection with 17 separate Parish Councils. She particularly notes the unstructured nature of the Clerk's filing system, whilst recognising that this appears to adequately meet the Council's needs.
38. The Commissioner has considered the sampling exercise conducted by the Clerk. She has concluded that it is likely that the Council would be able to locate and retrieve those emails relating to East Stoke with Thorpe Parish Council within the appropriate limit prescribed by the Fees

Regulations and she is obliged to point out that printing the emails and subsequently copying them are not activities which can be considered under these Regulations.

39. The Commissioner has therefore decided that the Council is unable to rely on the provisions of section 12 of the FOIA.
40. The Commissioner has gone on to consider the particularly wide-ranging scope of the complainant's request; noting that he requires 'all' the emails which the Clerk has sent and received in relating to East Stoke with Thorpe Parish Council. The complainant has not limited his request to emails which relate to the matter which is his primary concern.
41. The Clerk has identified 3,039 emails which fall within the scope of the complainant's request.
42. Whilst it is likely that these emails can be located and retrieved within the appropriate limit, it is also likely that the emails would need to be individually considered to determine whether they are subject to one or more of the FOIA's other exemptions.
43. In the Commissioner's opinion many of the emails are likely to contain the personal data of third party individuals and possibly information which has been shared with the Council in confidence. Likewise, some emails may contain information which might be subject to commercial confidentiality.
44. Consideration of whether the emails contain exempt information is an activity which is not permitted for the purpose of calculating whether the request can or should be refused in reliance on section 12 of the FOIA.
45. However, the Commissioner has decided to exercise her discretion and to consider the wider implications of the complainant's request on the Council. In this case the Commissioner has decided that it is appropriate to consider the application section 14(1) of the FOIA.
46. Under section 14(1) of FOIA, a public authority is not obliged to comply with a request for information if the request is vexatious.
47. The term 'vexatious' is not defined in the legislation, however in *Information Commissioner v Devon County Council & Dransfield*<sup>1</sup> the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of

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<sup>1</sup> UKUT 440 (AAC) (28 January 2013)



whether a request is vexatious ultimately depends upon the circumstances surrounding that request.

48. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
49. Section 14(1) may be relied on where the cost and resources required to review and remove any exempt information is likely to be so great as to place the organisation under a grossly obsessive burden.
50. The Commissioner has considered the likely burden that complying with this request would have on the Council. She acknowledges that the request is made to a small Parish Council which is likely to have limited available resources. Consequently, and in this instance, the Commissioner is able to determine that the complainant's request is such as to impose a disproportionate level of disruption to the Council's activities, to the extent that his request can properly be characterized as imposing an obsessive burden.
51. For this reason, the Commissioner has decided that the Council is entitled to refuse the complainant's request in reliance on section 14(1).
52. The Commissioner's decision is based, in large part, on the particular manner in which the Council's Clerk holds the requested information. The decision reflects the situation which persists at the time the complainant made his request.
53. The Commissioner refers the Council to her comments in the 'Other matters' section of this notice, which ask the Council to review its current practices in order to facilitate better access to the recorded information.

### **Section 1 – general right of access to information held by public authorities**

54. Notwithstanding her decision above, the Commissioner has gone on to consider the complainant's request for copies of the Council's minutes for 30 November 2009 and 8 February 2010. This consideration is necessary in view of the Council's position that it does not hold these minutes, and the evidence to the contrary which the complainant supplied to the Commissioner.



55. Section 1 of FOIA states that –

“(1) 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.

56. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the two sets of minutes. In making this determination, the Commissioner applies the civil test of the balance of probabilities which is in line with the approach taken by the Information Rights Tribunal, when it has considered whether information is held in cases which it has considered in the past.
57. The Council has made representations to the Commissioner in support of its position that it does not hold the requested minutes. It has assured her that, at the time the complainant made his request, it did not hold the minutes for the specified meetings. It has further assured the Commissioner that the minute book, which was handed to the Clerk on his appointment, does not contain the minutes for the specified dates.
58. The Council does now hold a copy of those minutes, but only by virtue of having had them provided by the complainant himself in his email of 29 January 2014. It is unable to provide an explanation with any certainty as to why the complainant holds copies of the minutes whilst it does not.
59. The Council accepts that the minutes held by the complainant are credible: They are written in a style which is consistent with the minutes ordinarily produced by the Council and they indicate attendees who would likely be present at its meetings.
60. The Council points out that the complainant's copies are not signed or dated. It has no explanation as to how the complainant's minutes came into his possession, though it does hold a copy of an agenda for a meeting on 30 November 2009.
61. The Council makes the presumption that this date was changed because the unsigned minutes of the previous meeting in August, refer to the next meeting taking place on 9 November. The next set of minutes in the minute book is dated March 31 2010.

*The Commissioner's conclusions*

62. The Commissioner has considered the representations made by the complainant and the Council. She acknowledges that the complainant holds copies of minutes which purport to be for meetings held on the dates he specified in his request, and like the Council, she accepts that they are particularly credible. These facts however do not mean that the Council holds those minutes.
63. The Council's representations are similarly credible and there is no concrete evidence to support the contention that the Council holds the requested minutes or the assertion that they should be held.
64. In this case, the Commissioner is minded to accept the bona fide assurance given by the Clerk and find that, on the balance of probabilities the Council does not hold the requested minutes.
65. The Commissioner's decision is that the Council has complied with section 1 of the FOIA by advising the complainant that it does not hold the minutes which he seeks.

**Other matters**

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66. The Commissioner has considered how the Council holds its recorded information. She has particularly considered how the Clerk holds the Council's emails in an unstructured folder, which contains emails for up to 16 other councils.
67. The Commissioner accepts that the Clerk's practice is one which appears to work well for his and the Council's purposes. Nevertheless, holding emails in a general, unstructured folder may potentially result in the public not being able to exercise their legitimate information access rights, for the reasons stated above.
68. The Council's current system appears not to be compatible with the spirit of the information access regimes which the Commissioner regulates. In the Commissioner's opinion the practice of retaining emails in an unstructured file is not appropriate. The Commissioner must impress on the Council that she would be reluctant to support an application of section 12 or section 14 in future, whereby the Council is relying on its current filing system.
69. The Commissioner strongly urges the Council to review its current arrangements to determine how best its recorded information can be managed to promote legitimate access to recorded information. She

encourages the Council to seek advice from the National Association of Local Councils with a view to establishing best practice.

## Right of appeal

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70. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

71. 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.
72. 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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