

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 July 2017

Public Authority: Pittington Parish Council

Address: 14 South End
High Pittington,
County Durham
DH6 1AG

Decision (including any steps ordered)

1. The complainant has requested information about various issues relating to Pittington Parish Council. Pittington Parish Council did not comply with the request, citing section 14(1) (vexatious requests) of FOIA.
2. The Commissioner's decision is that Pittington Parish Council has applied section 14(1) of FOIA appropriately. However, she considers that it has breached section 10 (time for compliance) of FOIA.
3. The Commissioner does not require Pittington Parish Council to take any steps as a result of this decision.

Request and response

4. On 24 January 2016 the complainant wrote to Pittington Parish Council (PPC) and requested information in the following terms – for ease and convenience the Commissioner has numbered the various questions:

"I am emailing to submit both a FOI and DPA request:

1. I would like to see copies of all summons and minutes for all parish council meetings that are missing from the parish councils [sic] website.

2. I would like to see a copy of parish councils [sic] policy relating to Freedom of Information and Data Protection referred to in the parish councils [sic] standing order as it does not appear on the parish councils [sic] website. Specifically where does state that its members

can see and make decisions outside parish councils meeting on foI / dpa requests (not background / briefing document provide by parish clerk for a monthly meeting).

3. I would like to submit a Data Protection request to see all documentation including members / officers emails held by the parish council / individual members appertaining to the matters I have brought before the parish council including all communication between members.

4. I would like to see Andrew Sowerby resignation statement. Also the resignation statements for all other member than have resigned since the May 2013 location government election.

5. Finally in relation to the parish councils [sic] failure to call the 2015 AGM in accordance with its standing order or LGA'72 I want to know under which section of the authority's standing orders or primary legislation the parish council did not start its meeting at 6pm when no time was set. Pitlington Parish Council standing orders states "if no other time is fixed, the annual meeting of the council will take place at 6pm" which mirrors LGA'72. In addition in light of disingenuous states [sic] made by Councillor Steer on facebook that the parish council did not call a May 2015 monthly parish council meeting. Having read the authority's standing orders and approved minutes it is clear the parish council has a schedule of meetings see minutes item 168/13 which makes it clear monthly meetings take place every month except August, agenda's and minutes exists for the May monthly meetings that took place for every May until 2015, and the standing orders only allows the cancellation of a meeting in one circumstance namely "if a meeting is or becomes inquorate no business shall be transacted and the meeting shall be closed ..." I want to see the minutes of the parish council that approved the abandonment of its schedule of meetings and replaced it with a require to vote on the approval of the next monthly meeting at the preceding monthly meeting."

5. PPC responded on 8 June 2016. In response to question:

1) PPC explained that the missing agendas and minutes from its website (hosted by Durham County Council) were being placed on the server and would be available when this process is completed;

2) PPC explained that it does not have its own FOIA and DP policies but does utilise guidance regarding these policies and provided the complainant with the appropriate website address. PPC also explained that all its decisions were made at its parish council meetings;

- 3) PPC explained that all correspondence from the complainant was directed to it and not to individual council members. PPC also explained that as the clerk replies to his requests as a chain, he would already have these as a matter of course;
 - 4) PPC confirmed that it held the resignation letters for two councillors but as these contained certain personal data regarding these individuals, it considered it was unfair to disclose the letters;
 - 5) PPC confirmed that the complainant had already been provided with the information in hardcopy.
6. Following an internal review PPC wrote to the complainant on 29 June 2016. It stated that it considered his request to be vexatious under both its own policy and section 14(1) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner 2 August 2016 to complain about the way his request for information had been handled. He explained that the response from the PPC was not acceptable as all official communications can only go through the parish clerk (proper officer) not anybody else, including the chairman.
8. The complainant also complained about the data protection issues in relation to point 3 of his request. This has been dealt with separately under the Data Protection Act 1998 (DPA); therefore the Commissioner will not consider this point any further.
9. During the Commissioner's investigation, the complainant raised various issues, including accusing the PPC of committing a section 77 FOIA breach. Section 77 provides that any person is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any recorded information held by the public authority, with the intention of preventing the disclosure of all or any part of the information to the applicant. This is a criminal offence and applies to anybody who works for a public authority as well as to the public authority itself.
10. If a person or public authority is found guilty of this offence, they can be fined up to £5,000. This offence can occur under both FOIA and DPA. The complainant was dissatisfied with this and accused the Commissioner of not carrying out a proper investigation. He also alleged a section 77 offence had occurred in relation to point 3, which was dealt with under the DPA. That complaint was not upheld.
11. Furthermore, although the Commissioner explained to the complainant several times that she would be considering PPC's application of section

14(1) to his present request, he refused to accept this. The complainant also requested a copy of the draft of the present decision notice stating:

"In light of the time taken and the malicious allegations made against me in communications sent to the ICO and CDALC by PPC. I would like to see the draft decision notice so that I am given an opportunity to challenge these false statements before the Decision Notice is issued."

12. The Commissioner explained that this was not possible.
13. The Commissioner will consider PPC's application of section 14(1) and the length of time taken to deal with the request.

Reasons for decision

14. 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.
15. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (UT) considered the issue of vexatious requests in the *Information Commissioner v Devon CC & Dransfield* (UKUT 440 (AAC), 28 January 2013).¹ It commented that:

"vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure".

16. The UT's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
17. The UT also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of:

"... adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).

18. The Commissioner has published guidance on dealing with vexatious requests², which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
19. When considering the application of section 14(1), the relevant consideration is whether the request itself is vexatious rather than the individual submitting it. A public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

“The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies”.

20. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner’s guidance states:

“In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress”.

Evidence from the parties

21. The complainant explained that PPC had made him personally “vexatious” and that it was not allowed to do this. He also complained about correspondence he received from the Chairman of PPC and said that this was not allowed as any correspondence should be from the parish clerk.
22. PPC explained that there was a history of receiving requests from the complainant. The requests started when he tried to acquire land for a burial plot next to his family, from West Rainton Parish Council. However, the plots in question had already been allocated. A councillor from PPC had attended the meeting when the cemetery issue was discussed; he was also the chairman of PPC at the time.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-.pdf>

23. PPC explained that the parish clerk only works 12 hours a week and responding to the complainant's requests takes up a lot of her time.
24. PPC also explained that in total since October 2014 it had dealt with 267 emails regarding the complainant. It provided the Commissioner with an example: in June 2014 the complainant requested information that was to do with how PPC councillors received their correspondence in relation to, for example, minutes and agendas. He cited section 99 of the Local Government Act 1972, which deals with meetings and proceedings of local authorities. PPC explained to the complainant that its standing orders allowed for such communications. Its chairman had contacted the Department for Communities and Local Government and established that this was an acceptable approach by it.
25. PPC explained that the complainant was dissatisfied with its response and sent numerous emails to the parish clerk. All of the council members at the time were involved including chairman, vice chairman and the then parish clerk. PPC also explained that it had spent many hours on it including involvement from the County Durham Association of Local Councils. This went on until the end of October 2014, when the complainant moved on to another topic.
26. Furthermore, PPC explained that the complainant had sent various emails to the parish clerk when she was newly appointed, offering his personal assistance. PPC provided the Commissioner with copies of these. She notes that the emails covered various aspects relating to PPC including requests for information and how they should be dealt with.
27. PPC also explained that it considered that the complainant was using an alias to submit further requests as it was receiving requests from an applicant with a different name but the wording in his requests and responses are very similar to the ones it had received from the complainant; the email addresses used by the complainant and the other requester were very similar and provided the Commissioner with copies of both.
28. The Commissioner considers that the PPC's explanations above, relate to the 'burden on the authority' set out in her guidance. This is where the effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.
29. PPC also explained that it had received various requests from the complainant which it considered to be harassing, vexatious and bullying. It provided the Commissioner with some examples: PPC responded to a request from the complainant in October 2014. The complainant demanded a full unreserved apology from it for anxiety and distress caused and called for the resignation of all members who were involved.

In another example PPC pointed to the wording in a later request of 11 May 2015:

"Let me be extremely blunt there has been an abuse of public trust by members behind closed doors to prevent public scrutiny (ultra virus) [sic] ... It would appear that a concerted effort has being [sic] made to obstruct and/or prevent public scrutiny of this public authority. What else is being covered up?"

30. PPC explained that it had tried to answer all of the complainant's requests and had offered to meet with him to discuss his concerns, but the complainant refused to do so.
31. The Commissioner considers that PPC's explanations about harassing, vexatious and bullying requests from the complainant relate to the 'intransigence' indicator set out in her guidance. This is where the requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.
32. The Commissioner also notes that the complainant has refused to accept that her remit regarding his present complaint, is to consider whether PPC has applied section 14(1) appropriately.
33. Furthermore, PPC explained that a harassment order has been served against the complainant, preventing him from contacting the parish clerk directly. It confirmed that the complainant had been provided with a replacement postal address to forward any correspondence to.

The Commissioner's view

34. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates the issues. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
35. As the UT in *Dransfield* observed:

"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a

disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”.

36. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
37. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
38. The Commissioner recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
39. In addition, the Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
40. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous information requests between the parties. Clearly in this case, PPC considers that the context and history of previous requests received, strengthens its argument that the present request is vexatious.

Was the request vexatious?

41. The Commissioner has considered the complainant's and PPC's arguments regarding the information requested.
42. The Commissioner notes the complainant's argument that it is the request that is vexatious as opposed to the applicant. She notes that in its internal review, PPC explained that it considered that under its own vexatious policy and with reference to the Commissioner's guidance on vexatious requests it considered the complainant's request to be vexatious. However, in the same correspondence, PPC also explained that it considered the complainant to be "habitual and vexatious complainant".
43. Section 14(1) FOIA sets out that it is the request which is vexatious. The Commissioner also makes this point in her guidance. However, she does not consider that this confusion affects her consideration of whether the present request is vexatious for the purposes of section 14(1).

44. Clearly in this case, PPC considers that the context and history strengthens its argument that the request is vexatious.
45. The Commissioner considers that, viewed in isolation, the request in this case may not seem to impose an unreasonable burden and is arguably not without a serious purpose. However, she also notes that the complainant has stated in his request that a councillor made "disingenuous state[ment]s" on facebook regarding PPC not calling a May 2015 monthly parish council meeting. She considers this wording is meant to cause annoyance.
46. The Commissioner recognises that the complainant may have reasons for pursuing information from PPC: the complainant is clearly not satisfied with how PPC conducts itself. She also notes that the complainant submitted the present request against a background of other requests and correspondence.
47. On the basis of the evidence provided and taking into account the findings of the UT in *Dransfield* that an holistic and broad approach should, be taken in relation to the application of section 14(1), the Commissioner is satisfied that the present request is a manifestly unreasonable and improper use of FOIA such as to be vexatious for the purpose of section 14(1).
48. The Commissioner is therefore satisfied that PPC has applied section 14(1) appropriately.
49. The Commissioner will go on to consider the length of time taken to deal with the request

Procedural matters

50. The complainant submitted a request on 24 January 2016 and PPC responded on 8 June 2016.
51. Section 10 of the FOIA states that

"(1) a public authority must comply with section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt."
52. The Commissioner therefore considers that PPC has breached section 10, as it took approximately 6 months to respond to the complainant's request.

Other matters

53. The Commissioner notes the complainant's argument about who should respond to requests. Under FOIA, a request for information is made to a public authority as opposed to an individual member of its staff. She is therefore satisfied that it is up to a public authority to decide who responds to any requests it receives.

54. The Commissioner also notes the particular circumstances of this case, i.e. that a harassment order has been served on the complainant. She understands that this means that he cannot contact the parish clerk directly. She is satisfied with PPC's explanation that it provided the complainant with alternative contact details.

Right of appeal

55. 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

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

56. 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.

57. 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

**Jon Manners
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