

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2019

Public Authority: Mistley Parish Council
Address: c/o the Clerk
White Gates
The Street
Bradfield
Manningtree
Essex
CO11 2UU

Decision (including any steps ordered)

1. The complainant requested various information from Mistley Parish Council (the Council) concerning the installation of a public toilet, the resurfacing of a particular road and the erection of stiles.
2. The Commissioner's decision is that the Council has incorrectly relied upon section 14(1) of the FOIA in relation to the complainant's request.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - The Council must issue a fresh response to the request which does not rely on section 14(1), in accordance with the FOIA.
4. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 November 2017, the complainant wrote to the Council and requested information in the following terms:

"The Public Toilets

When and how was the need for a public toilet arrived at? What survey was carried out to establish the need for these toilets for outsiders?

Why and when was the PC told that TDC would fund the running of the toilets? I need documentary proof of correspondence and the contract details and the name of the person at TDC who agreed to this.

When did the PC know that TDC was not funding the running of the toilets?

When the PC knew that the toilets were not going to be funded by TDC, why did it go on paying TDC or their agent? Why wasn't the job immediately put out to contract?

What survey has been done to see how many people use the toilet during non-event days?

What is the total cost so far for installation and running of these toilets? (cost of installation can be estimated by the builder)

Has the job now been put out to contract? If so how much? It looks as though the costs are now being hidden by including the cleaning costs in with the costs for cleaning the Village Hall. Is this true and if so, when did it start?

The Stiles

Horses have been a problem on Furze Hill for a long time. A sub-committee was formed to look into the matter.

When did this sub-committee meet?

When was the report from this sub-committee put on to any Agenda?

What report was made by the sub-committee to the PC and what did it say?

When did the PC take a vote on the erection of the stiles?

Who made the decision to erect the stiles?

From whom were the quotes obtained for the erection of the stiles?

What was the cost for the erection of the stiles?

I also note that the stiles had to be altered ... Why was this done and who paid?

Shrubland Road

In the first ... letter to residents, why did it state that ambulances (NOTE PLURAL) had refused to come down Shrubland Road? Who at the Ambulance Service told you that Shrubland Road was off limits? Why was a second letter needed?

Why was the statement that ambulances had refused to come down Shrubland Road omitted in the second letter?

Was the footpath official at Essex CC consulted? [name redacted] if not, why not?

Why was the whole of Shrubland Road resurfaced to vehicular standard when the bottom third needed no attention? What was the purpose of resurfacing the bottom one third? You stated at a PC meeting that no public money would be used. Was any public money used?

Was the PPP scheme involved in funding?

Who was consulted at Essex Highways, TDC, Fire and Ambulance Services and Essex Police? I require names and dates and the written correspondence.

Other Matters

With regards to your keenness for surveys, I will be interested to see the results of the toilet survey.

When was the last survey of dogs off leads on the playing surfaces on Furze Hill carried out? The PC made this rule. Is it checked regularly? If so what are the findings?

When was a vote taken to place a new seat on The Green?"

6. The Council responded on 1 December 2017. It refused to comply with the request in accordance with section 14(1).

7. Following an internal review the Council wrote to the complainant on 20 December 2017. It confirmed that it was maintaining its original position.

Scope of the case

8. The complainant contacted the Commissioner on 9 January 2018 to complain about the way his request for information had been handled. Specifically, he disputed the Council's decision to refuse his request as vexatious.
9. The scope of this decision is to determine whether the Council correctly refused to comply with the request under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) - Vexatious requests

10. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
11. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering 4 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.

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunaldecision-07022013/>

13. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed 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 a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.*"
14. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests, these are set out in her published guidance². 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.

The complainant's position

16. The complainant explained that he has been involved in many local projects; his request relates to decisions made by the Council regarding local issues where he believes that public money has been wasted.
17. The complainant has told the Commissioner that he is trying to expose, what he believes to be, the Council's wrongdoing by asking it relevant questions under the FOIA.
18. He claims that the Chairman is responsible for both procedural and financial irregularities. He says:

"I genuinely believe in the democratic process, even at Parish Council level. It is my belief that Standing orders have not been complied with, decisions have been taken by the Chairman without the knowledge or approval of the Parish Council as a whole (no agenda item, vote or minute).

It appears that these actions have been taken with the full knowledge and agreement of the Parish Clerk. Some of the

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

decisions involve the expenditure of public money. Therefore the Parish Clerk is likely to be complicit in these actions. I am questioning in some cases, decisions which have NOT been made by the Council, but by the Chairman, with the full knowledge of the Clerk, without following due process."

19. The complainant acknowledges that he has made previous, related requests and that this request contains a considerable number of questions. But he attributes this to both his own inexperience with the FOIA and the Council's failure to provide him with the information, or with satisfactory answers to his questions. He does not feel that his questions have been given serious consideration. He states that "*several of the questions have been asked more than once as comprehensive and relevant answers are not forthcoming*" and as a result he is asking the questions again.
20. In his complaint to the Commissioner, he set out his motives for making the request as follows:
 - *"To ensure proper accountability by those in public office.*
 - *To confirm compliance with the published MPC Standing Orders.*
 - *To ensure the legitimacy of financial decisions.*
 - *To ensure that there are correct auditable decisions made by Councillors*
 - *To confirm that the Nolan Principles are adhered to at all times."*

The Council's position

21. In its initial refusal notice to the complainant, the Council advised him that it had concluded that the request was vexatious as it considered he was abusing his rights of access to information by using the legislation as a means to express his opposition to decisions made by the Council.
22. It also advised the complainant "*you are asking similar questions about the public toilet to which you insist that the Parish Council has not provided answers to your satisfaction.*" It added that under the FOIA he was only entitled to receive recorded information held by the Council and that it was under no obligation to "*answer a question if this would mean creating new information or giving an opinion or judgement that is not already recorded.*"
23. The Council has also provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA. In doing so, it has

considered the history and context leading up to this request being made.

24. The Council has told the Commissioner that the request formed part of a personal grudge the complainant has against the Chairman, Vice Chairman and the former Clerk. Although it has not provided any further comments or evidence to substantiate this statement.
25. The Council explained that the complainant submits frequent correspondence about the same issues. It provided the Commissioner with a chronology of the complainant's requests. He submitted seven requests between 5 August 2016 and 10 November 2017. The Council explained that this request was similar to his previous requests, relating to the public toilet, Shrubland Road and the stiles on Furze Hill.
26. The Council has also highlighted the length of this request, which contains over 30 questions, it deems this to be "*excessive with an intention to cause disruption and upset.*"
27. It has told the Commissioner that the complainant is abusing his rights of access to information by using the legislation to vent his anger at a particular decision, or to harass and annoy the authority, by requesting information which the authority knows him to possess already. It states that it has "*furnished [the complainant] with information previously and have nothing more to give, despite the alternative and creative ways he finds to request them again.*"
28. It believes that when the complainant disagrees with decisions made by the Council he makes requests in an attempt to try and prove that they are in some way acting unlawfully. It believes that the complainant is simply using the FOIA as a tool to make his case where he cannot otherwise get the answers he wants.
29. The Council has demonstrated to the Commissioner, by providing copies of some of its previous responses to the complainant, that it has already provided information in relation to the public toilet. The Council does not believe it is in the public interest to utilise further resources to provide the complainant with information which has already been provided to him.
30. The Council states that the complainant refuses to accept the information which it has provided in response to his previous, related requests. It believes that no response under the FOIA would satisfy him. It considers that complying with the request would have a detrimental impact as it would only serve to provoke further correspondence and requests from the complainant on the same subject matters.

31. It has determined that complying with the request would be an excessive and unreasonable drain on both its resources and time, particularly as it has just one member of staff.

The Commissioner's decision

32. The Commissioner has carefully considered both the complainant and the Council's arguments and reviewed all of the information and evidence presented to her by both parties in order to reach her decision.

33. In its submissions, the Council makes reference to a number of indicators taken from the Commissioner's guidance, including:

- Personal grudges
- Frequent or overlapping requests
- Unreasonable persistence
- Burden on the authority
- Deliberate intention to cause annoyance
- No obvious intent to obtain information

34. However, the Commissioner's guidance also emphasises that the indicators are not a list of qualifying criteria. Public authorities should not simply try to fit the circumstances of a particular case to the examples in her guidance. The Commissioner is not convinced that all of the indicators the Council has cited are applicable in this case.

35. With regards to the number and frequency of requests, which the Council has relied upon in its arguments, the Commissioner notes that prior to this request the Council received six requests from the complainant. Of those six requests only four were on related subject matters to this request; two relating to the public toilet, two relating to Shrubland Road and one relating to the stiles at Furze Hill. The Commissioner recognises that the Council is a small public authority with limited resources but she does not consider this to be a particularly extensive number of related requests.

36. While the request in this case is lengthy, the Commissioner notes that the Council did not provide specific details or evidence of the burden of dealing with this request, such as an estimation of time.

37. The complainant has argued that the Council should provide him with "*meaningful and comprehensive answers*" and does not accept that it should be able to state that no information is held in response to a request. However, section 1(1) of the FOIA states that any person

making a request for information is entitled to be informed by the public authority whether it holds that information and, where information is held, to have that information communicated to them; it does not require the creation of answers to questions.

38. Turning to the value and purpose of the request, it is clear that the complainant wants to ensure that decisions involving public money have been made following the proper processes. The Commissioner agrees that there is some wider public interest in relation to the decisions made by the Council around the spending of public money. She also considers that the complainant has legitimate motivations for making his request as he has communicated in his submissions.
39. However, the Commissioner notes that it is also reasonable to take into account that the complainant's concerns should be referred to the Council through its formal complaints process, or otherwise referred to the relevant body with the authority to consider such matters. The complainant has explained that he now realises that he should report financial concerns to the External Auditor, although he is out of time to report the matters covered in his information request. He has also told the Commissioner that he has now reported some of his other concerns to the local District Council.
40. The Commissioner acknowledges that section 14 is designed to protect a public authority's resources from burdensome or vexatious requests. However, it is important to keep in mind that all information requests will impose some burden and public authorities must accept this in order to meet their underlying commitment to transparency and openness.
41. The Commissioner considers this is a finely balanced case but, taking account of all the circumstances, she does not consider that the burden on the Council in complying with the request would be disproportionate.
42. The Commissioner is not persuaded that the current request can be categorised as vexatious and her conclusion is, therefore, that section 14(1) did not apply in this case. At paragraph 3 above the Council is now required to issue a fresh response to the request that does not rely on section 14(1).

Right of appeal

43. 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

44. 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.
45. 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

**Ben Tomes
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