

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 1 October 2019

Public Authority: St Cleer Parish Council
Address: Sports Pavilion
Hockings House
St Cleer
PL14 6EE

Decision (including any steps ordered)

1. The complainant requested information about a specified car park. Although St Cleer Parish Council ('the Council') responded, it did not initially do so under FOIA. Once it provided its FOIA response, it gave the complainant some of the requested information and said that some of it was not held.
2. The Commissioner's decision is that, on the balance of probabilities, no further information is held beyond that already provided. The Commissioner also considered whether the requested information constituted environmental information and should instead have been handled under the EIR; she finds that the Council was correct to apply FOIA to the request. However, by initially failing to recognise the request as valid under FOIA the Council has breached section 8 of FOIA.
3. As the Council has now provided a response to all parts of the request under FOIA, the Commissioner does not require it to take any remedial steps.

Request and response

4. On 5 February 2019, the complainant wrote to the Council and requested information in the following terms:

"1. Please provide a detailed break down of the cost to date and forecast TOTAL cost at completion of implementing the surface dressing of the Church car park - include in your calculation:

- St Cleer PC staff / administration (total cost.)*
- Consultant fees for setting the Invitation to Tender scope.*
- Contracted service delivery cost (please highlight any variation between original quoted cost and actual cost mindful that the accepted quote may have been time restricted by 3 months.)*
- any pre-application advice or planning application fees as may apply.*
- any other licence or permission fees which may apply to gaining consent for work on or adjacent to the Highway or in a publicly owned car park.*
- any legal or administrative costs that may apply.*
- any annual budgetary allocation to earmarked reserve for future upkeep and maintenance of the car park.*
- it is understood that £8000 is set aside by Cornwall Council which may be off-set against the total project cost, you should show this and include the date it will / has been transferred to St Cleer PC in your calculations.*

2. Please provide the date, name of Local Authority officer (or their position / department) and a brief summary of the text or conversation of any such confirmation that:

- That the PC has sought and received planning consent for the proposed works to the car park, or that no such consent is required.*
- That the PC has sought and received a Section 171 (Highways Act 1980) licence for excavation works on or adjacent to the highway or a "Car Parks Permission" from the Local Authority, or that no such consent is required.*

3. Please confirm that:

- in the absence of a properly formatted and notified Temporary Traffic Regulation Order (TTRO) or a Temporary Traffic Regulation Notice (TTRN) the highway between SX 24836 68161 and SX 24733 68127 will remain unobstructed and available for the free passage of traffic for the duration of the proposed works.*

4. You should be aware that the absence of any or all of the permissions or licences noted above (should they be required) may result in enforcement action being commenced by the Local Authority. Notwithstanding the obvious embarrassment this would cause to the PC, it could also result in financial penalties being borne by the tax payer if the contractor is delayed or prevented from undertaking the works St Cleer PC have engaged them for and it could also result in prolonged inconvenience to the general public through non availability of the car park facility.

5. I have every confidence that St Cleer PC will be content to expedite the information and confirmations requested into the public domain as a demonstration of their due diligence and public engagement and look forward to your speedy response."

5. The Council replied on 26 February 2019. However, the Commissioner notes that the response was not provided under the terms of FOIA. For part one of the request, it said the information was not available in the format requested but it nevertheless provided some of the requested information.
6. For part two, the Council said that the request for summaries of conversations is "*privileged information*" but it did not cite any exemption. It provided the names and positions of two individuals.
7. For parts three, four and five the Council responded "*Noted*".
8. The complainant contacted the Council on 27 February 2019 to remind it that he had submitted an FOIA request and of its obligations under the FOIA. He wrote further on 28 February 2019 reiterating that he required certain information within his request.
9. On 4 March 2019 the Council wrote confirming that it would now provide a response under the FOIA. That same day, it wrote to advise the complainant that it had provided all the requested information it held in relation to the request.

Scope of the case

10. The complainant contacted the Commissioner on 6 March 2019 to complain about the way his request for information had been handled.
11. On 2 April 2019 the Commissioner wrote to the Council advising that it had not issued an adequate FOIA response. In order to expedite the case, the Commissioner asked the Council to instead carry out an internal review.

12. On 17 April 2019 the Council wrote to the complainant with the outcome of its internal review. It provided responses to each of the sub-set questions in part one advising that no information was held for the total cost of Council staff/administration. For part two, in addition to reiterating the two officers' names, the Council stated that no further information was held.
13. For part three it said:

"No Temporary Traffic Regulation Order or Notice was required and no complaint received in relation to access whilst the work was conducted."
14. For part four of the request it advised:

"No issues or enforcements were envisaged nor have been received subsequent to the works."
15. It reiterated that it "noted" part five.
16. The complainant contacted the Commissioner to advise that he remained dissatisfied following the internal review and would provide further details at the investigation stage.
17. The complainant provided further details on 12 August 2019. When doing so he also raised concerns relating to a subsequent request of 6 May 2019.
18. The Commissioner is unable to consider a complaint about this later request in this notice as this notice relates to the request of 5 February 2019 only. However, the Commissioner has explained to the complainant how a complaint about that request can be dealt with if it becomes necessary to do so.
19. The crux of the complainant's complaint in relation to his request of 5 February 2019 centred round what he described as the *"inadequate response"* from the Council.
20. As the complainant has not raised any specific concerns about any part of the FOIA response provided at the internal review stage, the Commissioner has considered the following aspects:
 - Whether the requested information is environmental and therefore whether it should have been handled under the EIR rather than FOIA.
 - The Council's initial failure to provide an FOIA compliant response.

- Whether, on the balance of probabilities, the Council has now provided all the information it holds in respect of parts 1 and 2 of the request.
21. The Commissioner notes that the complainant has not referred to the Council's response in respect of parts 3 to 5 of the request so these have not been considered further.
22. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is to do with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

23. The Commissioner has first considered whether the requested information constitutes environmental information.

Regulation 2 - Is any of the information environmental?

24. Information is environmental if it meets the definition set out in regulation 2 of the EIR. For example, Regulation 2(1)(a) covers the state of the elements of the environment, including water, soil, land and landscape. Regulation 2(1)(c) provides that information is environmental where it is on:

"measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (2(1))(a) and (b) as well as measures or activities designed to protect those elements"

25. The Council has explained that:

"The request for information was not dealt with in the context of any planning application. As a result there was no apparent need for any environmental [sic] assessments. The matter in hand related to tarmac being removed and tarmac being re-laid no more. Planning permission would only have been required for engineering work."

26. In both the Commissioner's and the Council's view, the information requested by the complainant does not constitute environmental information. The relaying of tarmac *per se* does not affect the environment and there is no 'measure' under Regulation 2(1)(c) because no planning permission was sought or required.
27. Therefore, the Commissioner has concluded that the requested information is not environmental and that the Council was correct to handle the request under FOIA.

Section 8 - request for information

28. Section 8 of FOIA states:

"(1) In this Act any reference to a "request for information" is a reference to such a request which-
(a) is in writing,
(b) states the name of the applicant and an address for correspondence, and
(c) describes the information requested."

29. In this case, the complainant made his request in writing, stated his name and gave an address for correspondence. Therefore the requirements of section 8(1)(a) and (b) were satisfied.
30. The Commissioner considers that a request will meet the requirements of section 8(1)(c) as long as it contains a sufficient description of the information required. Each request has to be judged on its individual merits as to whether there were sufficient indicators provided to enable the information requested to be adequately described for the purposes of section 8. As long as a request attempts to describe the information it is likely to meet the requirements of section 8(1)(c), particularly as it is always open to the public authority to seek further clarification to identify the information.
31. The Commissioner is satisfied that the request clearly and unambiguously describes the information sought by the complainant. She therefore finds that the Council should have responded to it under FOIA from the outset and that it has breached section 8 of FOIA by failing to do so. She notes that the Council's subsequent FOIA response still failed to address some parts of the request and that it was not until the internal review stage that responses to all parts of the request were provided. The Commissioner does not require any corrective step as the Council has now provided a complete FOIA response, albeit not until the internal review.

Section 1 – general access to information

32. Section 1 of FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and, if so, to have that information communicated to them.
33. In cases where there is some dispute about the amount of information located by a public authority the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to this part of the complainant's request.
34. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
35. In this case, the Council has stated that no information is held for the first sub-set question in part one of the request ie "*St Cleer PC staff / administration (total cost.)*" in relation to the surface dressing of the car park.
36. It also said that, beyond providing the names of the two relevant officers, no other information was held in respect of part two of the request.
37. The Commissioner understands that St Cleer Parish Council is a small organisation. It has explained that all current records are held in a small home office and one lap top computer. Minutes and agendas are published on its website. Historical documents that have to be retained (such as minutes) are kept in the Parish Council-owned Sports Pavilion.
38. The Council said that most of the information requested regarding the costs of the car park were available on paper file in the clerk's home office. This included the invitation to tender written by an external consultant, his invoice and the signed contract.
39. The Council bank statement folder (it advised it had no internet banking at the time of the request) sourced the exact date of the £8000 grant from Cornwall Council towards the cost of the work cleared.
40. The Council said that as this information was readily available in paper form no computer data searches were required.
41. The Council has also explained that its part time clerk is paid a monthly salary which covers all of her work and that this is not broken down into individual tasks. It advised that no search was required regarding the

requested administrative costs of the project, as these records are not held.

42. Where available, this information has already been disclosed to the applicant at internal review.
43. Whilst outside the scope of the request as it postdates it, the Commissioner has included the following update from the Council as it may be of interest to the complainant. The Council told the Commissioner that additional information was received after the request was made and this, together with the other costs incurred, has been published in the Council's minutes (posted on its website) of 27 February 2019 and 27 March 2019 as well as on social media.
44. It said that minutes have to be permanently retained by statutory requirement, as are its accounts, which are retained for seven years.
45. In relation to part two of the request, the Council told the Commissioner:

"The Council only has to produce information that it holds and not to create records to respond to an enquiry.

The Clerk had a series of conversation [sic] with [two officers' names redacted] these were not recorded. She was assured that there was no need to apply for planning permission for the surface dressing of an existing car park.

It was believed that the telephone communications held with Cornwall Council would be classed as privileged unless she had the express permission to share the details of the conversations form [sic] those that she spoke to.

In any case this is moot as there are no, nor ever have been, any written records of those conversations."

Conclusion

46. Having considered the Council's explanation, the Commissioner considers, on the balance of probabilities, that the Council does not hold any recorded information on what staff/administration costs were involved in the subject matter of the request.
47. In relation to part two, again on the balance of probabilities and taking into account the explanation given by the Council, the Commissioner does not consider that any further information beyond that already provided, is held.

Other matters

48. The Council must ensure that when it receives a request which is valid in accordance with section 8 of FOIA, it responds to it in full under FOIA, and issues a valid refusal notice where applicable. It should also ensure that each part of an FOIA request is considered and that a response is provided, or exemption cited, to all parts of the request.
49. In the case under consideration here, the Commissioner has made a record of the Council's failure to recognise a valid FOIA request.
50. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft "Openness by Design strategy"¹ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"².

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

51.

Right of appeal

52. 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@justice.gov.uk

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

53. 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.

54. 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

Carolyn Howes
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