

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2020

Public Authority: Selby Area Internal Drainage Board

Address: 12 Park Street
Selby
North Yorkshire
YO8 4PW

Decision (including any steps ordered)

1. In two, multi-part, requests the complainant has requested from the Selby Area Internal Drainage Board ('the Board') specific Board minutes recording decisions associated with its historical treatment of piece workers, and related matters. The Board's position was that it did not hold any relevant information, which the complainant disputed.
2. The Commissioner's decision is as follows:
 - The Board breached section 1(1) of the FOIA as it advised the complainant that it did not hold any information relevant to the requests of 21 October 2018 and 17 February 2019, when it did hold some information within the scope of the requests which it had not communicated to him. On the balance of probabilities, this information is the only relevant information the Board holds.
 - The Board breached section 10(1) of the FOIA as it did not communicate to the complainant the relevant information it holds within 20 working days of the requests.
3. The Commissioner requires the Board to take the following step to ensure compliance with the legislation:
 - If it has not already done so, communicate to the complainant the information for the period up to the date of the complainant's second request that is in the document described at paragraph 35

of this notice as 'the minute document'. Because disclosure under the FOIA is effectively disclosure to the wider world, the Board should redact any of the complainant's and other people's personal data from that information before it is disclosed.

4. The Board 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.

Requests and response

Request 1 – IC-46142-Q5J6

5. On 21 October 2018 the complainant wrote to the Board and made the following request for information:

1/ I refer to the Board's Clerk's letter to the District Auditor as shown at (1). Why was the actuality of piece worker treatment omitted from the Board's minutes 1982 to 2003? Will the full Board, in full and open session, consider and decide the reason for these omissions?

2/ Prior to 1984 all in the pay of the Board enjoyed the annual "Staff" cost of living wage award. The piece workers agreed and accepted this wage award with the Board's Foreman. This constituted a verbal contract. In 84 this contract was broken in that the piece workers began to be denied any cost of living wage award whatsoever, this whilst weekly paid workers and management continued to enjoy the yearly cost of living wage award. Will the full Board, in open session, consider and decide what party authorised this discriminatory treatment, and where is this decision recorded?

3/ In the years following 84 the piece workers were allowed just five meagre, randomised, wage awards, the damaging effect of which may be easily evidenced by mathematical calculation only. Such a procedure could not be reduced to any contract form for the Board to consider or decide. As no contract could therefore exist for the Board to consider or decide, how then can the Board, as a legal entity, know of the workers' treatment from 84 to 03? Given all the above, will the Board, in full and open session, consider and decide the extent of the Board's knowledge of its contractual relationship with the piece workers 84 to 03?

4/ Will the Board in full and open session consider and decide why, when the Inland Revenue was "Brought in" in 2003, were they not

told that the piece workers had no contractual relationship whatsoever with the Board at that time, or for any of the previous nineteen years?

5/ I asked the above questions from 2003 onwards, until a hospital surgeon joined the Board and raised these same matters with all authorities. These questions, however, have never been answered. Rather, I then began to be asked to make a "Claim" of the Board as at (2) and (7). Over some two years I responded, as I do now, by asking "What party authorised this "Claim," to what does this "Claim" refer, and does this "Claim" apply to all other workers also?" How can I be expected to "Claim" without being told why I am "Claiming?" I therefore ask that the full Board, in open session, considers and decides what party asked me to "Claim" and why.

6/ I refer you to the letters at (9) from Clr [Redacted] and at (13) from the Board's solicitor. Bearing in mind that matters re persons' rights cannot be delegated, but must be considered and decided before the full Board, I ask: what decision of the Board authorised the Board's solicitor to advise Board members not to contact me, as at (9) and to tell me as at (13) not to contact Board members, on pain of legal action? What decision of the Board authorised the solicitor, as at (13) to invite me to a meeting to discuss an unspecified matter, and, that if I did not comply in this, then any further contact is forbidden? What decision of the Board authorised the solicitor to contact me in the first instance? Have my concerns re all of this ever even been the subject of open consideration and decision by the full Board? If they have been so considered and decided, what was the date, and what was the decision? I therefore ask that all of these questions be considered, decided and answered by the Board in full and open session.

7/ I also refer you to the submission made by Clr [Redacted], as at (8) at the above reference, in which he asked for all of the above matters to be considered by the full Board, to the end that restitution should be made to the piece workers for the damage suffered. Why was this submission not put before the full Board, and what party placed this "In the hands of the Board's solicitor," where it presumably remains to this day? I ask that this be considered, decided and answered by the full Board in full and open session.

8/ As aforesaid, between 84 and 03 the piece workers were allowed only five meagre wage awards at randomised intervals. The District Auditor at (4) describes this treatment as being that the Finance Committee considered "Requests for increases by contractors and piece workers when they were made." This describes the actuality of our situation as workers, in that we actually had to beg for any wage increase when times became really hard. Here the District Auditor

describes the treatment of serfs, rather than free men. This raises the question "What attribution of employment status is given to a serf?" And, as follows "What act of consideration and decision of the full Board attributed what employment status to the Board's piece workers 84 to 03?" The piece workers treatment here can also be evidenced by the workers themselves and the Board's present Foreman. I ask that this be considered, decided and answered by the full Board in open session.

9/ Given the treatment of the piece workers as described above, how could the Board, as a legal entity, either agree a contract with or attribute any employment status to these workers between 84 and 03? Will the full Board, in open session, consider and decide as to what should have been the proper attribution of employment status to the piece workers 84 to 03?

10/ In 2004, the District Auditor sent a list of questions to the Board's Clerk, this as at (14). According to the Auditor, these questions were distributed to all Board members. These questions were never answered. Were these questions sent to every Board member? If these questions were not sent to every Board member, what was the reason for this? I ask that this be considered, decided and answered by the full Board in open session.

11/ Over the past fifteen years I have myself sent many questions to all Board members and management for consideration and decision, many of these via Nigel Adams MP. Why were none of these questions ever answered? I ask that this question be considered, decided and answered by the full Board in open session."

6. On 26 December 2018 the complainant requested an internal review as he had not received a response to this request.
7. On 3 January 2019 the Board wrote to the complainant and asked him to clarify his request ie provide details about the specific documents to which he wished to have access.
8. The complainant provided a response to this on 9 January 2019. He said the first document he wanted was:

"...the minuted reference to the Board being told of piece worker treatment at some time subsequent to 2003."

He then asked only for his FOI questions to be answered fully.

9. On 21 January 2019 the Board again asked the complainant to clarify what documents he was seeking.

10. On 21 May 2019 the Commissioner wrote to the Board and instructed it to provide a response to the complainant's request.
11. On 22 May 2019 the Board provided the complainant with a response to this request and a subsequent one, discussed below. It advised that it did not hold the minutes for the period 1984 to 31 December 2002. The Board provided the complainant with general some information about Board meetings at which his information request had been discussed.
12. The complainant requested an internal review on 16 June 2019 and the Board provided one on 16 July 2019. It advised that it had answered the complainant's information requests; that it had offered to meet him to discuss his concerns and it asked him to clarify what documents it was that he wanted.

Request 2 – IC-46193-N9P2

13. On 17 February 2019 the complainant wrote again to the Board and requested information in the following terms:

1/ The decision to appoint your firm of solicitors to act for the Board in providing relevant documents.

2/ The 1984 decision to begin to deny the piece workers any annual cost of living wage award, this whilst the weekly paid workers and management continued to enjoy such an award. The randomised treatment which followed this decision, as described below, could not be reduced to any contract form for the Board to consider, therefore there was no contract to ratify, and neither the Board nor any other party can know of the piece workers' treatment.

3/ The decision taken at fourteen meetings between 84 and 03 to deny the piece workers any wage award whatsoever.

4/ The decision taken at five meetings between 84 and 03 to allow the piece workers a meagre wage award.

In 2003 both Board and Inland Revenue were told that the piece workers were contractors, this despite the fact that their randomised treatment, which began in 1984, denied them any contract status whatsoever.

I therefore ask to see.

5/ The decision to tell the Inland Revenue that the piece workers were contractors.

6/ The decision taken in 2003 to abolish contractor piece work, something which had not even existed since 1984.

As a result of this decision the piece workers were put from their work for nine months without pay. In 2004 they were allowed to return to work, but without any explanation or apology. The Inland Revenue ruled that some piece workers had always been self employed in status, and others were employees, whereas in fact they all, at that time, had no employment status whatsoever.

I therefore ask to see.

7/ The decision in 04 to allow the piece workers to return to work, without giving them any explanation or apology, and for their pay rates to be based on those of the late 1980s, as they are to this day.

8/ The decision made in 04 to offer the piece workers a contract for the first time since the 1984 decision to deny the piece workers a contract.

9/ The decision to ask me to "Put in a "Claim" for "The Board" to consider, as conveyed to me by two consecutive Board members, as at (2) and (7), and to not offer any explanation as to why this "Claim" was necessary.

10/ The decision to place [Name redacted] submission, which asked for piece worker treatment to be considered by the full Board, to the end that restitution should be made to them for damage suffered as at (8) "In the hands of the Board's solicitor" rather than be placed before the full Board.

11/ The decision made in 2004 not to answer the District Auditor's questions as at (14) which asked all questions as asked here fifteen years ago.

12/ The decision to distribute these questions to all Board members.

13/ The multiple decisions made to ignore submissions to the Board re piece worker treatment made by myself and Nigel Adams MP.

14/ The decision to advise Board members not to contact me, and to tell me not to contact Board members, on pain of legal action.

15/ The decision to appoint a solicitor to contact me as per the above decisions.

16/ The decision, as at (13), to authorise the solicitor to invite me to a meeting to discuss an unspecified matter, and, that if I did not comply in this, that any further contact would be forbidden on pain of legal action."

14. On 9 May 2019 the Commissioner wrote to the Board and instructed it to provide the complainant with a response to this request.
15. On 22 May 2019 the Board provided him with a response to the request, which has been detailed above. The Board provided an internal review on 16 July 2019, again which has been detailed above.

Scope of the case

16. The complainant first contacted the Commissioner on 5 April 2019 to complain about the way his requests for information had been handled.
17. In the course of the Commissioner's investigation a small amount of information was identified that falls within the scope of part 1 of Request 2. That information was included at point 147 of the minutes for the Board's meeting on 29 November 2018¹. That information is already accessible to the complainant as it is published on the Board's website. As such the Commissioner has removed part 1 of Request 2 out of the scope of her investigation.
18. The Commissioner's investigation has focussed on whether the Board has complied with section 1 and section 10 of the FOIA in its handling of the remaining valid parts of the complainant's requests of 21 October 2018 (taking account of the 'clarification' of 9 January 2019) and 17 February 2019.

Reasons for decision

19. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the

¹ <https://www.shiregroup-idbs.gov.uk/wp-content/uploads/2020/05/2018-11-29-IDB-Meeting-Minutes.pdf>

information communicated to him or her if it is held and is not exempt information.

20. In correspondence to the complainant dated 1 November 2019, the Commissioner asked if he would let her know what specific, recorded information it was that he was expecting to receive from the Board when he submitted his two requests to it. In a response to the Commissioner of 3 November 2019, the complainant did not address this point.
21. In the absence of clarity from the complainant the Commissioner reviewed the two requests in question and on 30 October 2020 she wrote to the complainant by email. She first explained that the FOIA does not oblige a public authority to provide explanations, give opinions, carry out instructions or answer general queries. The FOIA concerns only information an authority may hold in recorded form at the time of a request for it.
22. The Commissioner also explained that the FOIA does not concern information that is the applicant's own personal data – such information must be handled under the data protection legislation and not the FOIA. She advised the complainant that some of the information he has requested in his two sets of requests is for his own personal information ie it is information about him personally. That information, if held, would be exempt from disclosure under section 40(1) the FOIA.
23. In her 30 October 2020 correspondence the Commissioner summarised her understanding of what recorded information the complainant was seeking. She considered that the complainant's valid FOIA requests were as follows:

Request 1 – 21 October 2018

- 2/ A Board minute from 1984 that records the decision to change piece workers' terms and conditions

Request 2 – 17 February 2019

- 1/ A Board minute that records the decision to appoint a firm of solicitors to manage FOIA requests sent to the Board
- 3/ A Board minute from between 1984 and 2003 that records the decision to change piece workers' terms and conditions
- 4/ A Board minute from between 1984 and 2003 that records decisions made about the piece workers' pay award
- 5/ A Board minute from between 1984 and 2003 that records the decision to tell the Inland Revenue that piece workers were contractors

- 6/ A Board minute from 2003 that records the decision to stop contractor piece work
 - 7/ A Board minute from 2004 that records the decision that piece workers return to work with pay rates based on those of the late 1980s
 - 8/ A Board minute from 2004 that records the decision to offer piece workers a contract for the first time since 1984
 - 10/ A Board minute that records the decision to put 'Mr [Redacted]'s' submission to a solicitor rather than to the Board
 - 11/ A Board minute from 2004 that records the decision not to answer District Auditor's questions
 - 12/ A Board minute that records the decision to distribute the District Auditor's questions to all Board members
 - 13/ Board minutes that record the decision not to act on submissions to the Board made by Nigel Adams MP
24. The Commissioner advised the complainant that she would progress the investigation on her above understanding of the valid requests unless she heard from the complainant to the contrary. She did not receive a response from the complainant and has proceeded on that basis.
25. The above requests concern decisions recorded in Board minutes. The complainant has referred to the period 1984 to 2004 for the majority of the requests. Where a date is not given – parts 10, 12 and 13 of Request 2 - the Commissioner will assume, in the circumstances, that the period of interest is between 1984 and 2004. This includes the 'clarification' of 9 January 2019. The Commissioner considers that it is reasonable to assume that the time period in that clarification ie '*subsequent to 2003*' is up to the end of 2004 and that this request is a repeat of part 3 of Request 2.
26. Along with his correspondence of 3 November 2019 the complainant sent the Commissioner a copy of a letter from the Board to the 'Audit Commission' in Leeds, which is dated 21 January 2004 – the letter the complainant refers to in part 1 of Request 1. In this letter the Board discusses meeting minutes from 1989 to 2003 in which it had identified some references to piece workers. The Board goes on to say that a full search of the Board's Archive for other minutes would be a considerable job and that it destroys accounting records following discussion with District Audit after a period of seven years.
27. The complainant appears to have provided the Commissioner with a copy of this letter as he considers that it supports his view that the Board should have approved [pay] awards for piece workers but appears not to have. The complainant considers that the Board should hold relevant minutes detailing Board decisions about pay awards relating to

piece workers and queries whether the Board has destroyed these "...with the rest of the evidence".

28. In further correspondence dated 14 February 2020, the complainant again appears to refer to the 21 January 2004 letter as being evidence that information about decisions that were made about pieceworkers should be recorded in minutes that the Board would hold.
29. In its initial submission to the Commissioner the Board first advised that it has been managing correspondence and complaints from the complainant about treatment of piece workers/self-employed persons since August 2003. It provided the Commissioner with a copy of a letter to the complainant dated 16 September 2003 which the Board considered properly clarifies the position in that regard. In the 16 September 2003 letter, the Board confirms the situation regarding its responsibilities as an employer prior to and following an Inland Revenue decision.
30. The Board went on to say in this submission that during the intervening 16 years the complainant has repeatedly written to the Board, to the Board's solicitor and to the Clerk to the Board raising the same questions that are contained in his two series of requests to the Board that are the subject of these current complaints to the Commissioner. The Board told the Commissioner that on each occasion it has provided, either directly or through its solicitors, the same response.
31. The Board confirmed that it is not able to produce any minutes which deal with [the subject of] the requests the complainant has made and that this has been made clear to him on numerous occasions. The Board said that, furthermore and notwithstanding the fact that it is unable to produce the relevant minutes, the complainant has repeatedly been offered the opportunity to attend the Board's solicitors' offices to discuss his concerns but on each occasion he has refused. The Board considered that, instead, the complainant prefers to repeatedly raise the same questions, the answers to which do not change.
32. Regarding the individual matters raised in his multi-part request to the Board of 21 October 2018 (Request 1) the Board initially confirmed that it is unable to comment on this request which relates to a period between 16 and 37 years ago. It said that it considers that each of the 11 parts of the request are not requests for information but are instead requests that the Board should take particular action as requested by the complainant. From her review of this request above, the Commissioner agrees that this is largely the case. She has identified that only part 2 of Request 1 can be categorised as a request for recorded information and notes that, in any case, this request is broadly repeated in part 3 of Request 2.

33. Regarding the complainant's request to the Board of 17 February 2019 (Request 2) the Board confirmed in its initial submission that, as it has previously explained to the complainant, it had conducted searches but had been unable to discover any information that deals with his request/complaint. This was in spite of searches made across the Board's electronic and manual database. The Board said it was unable to find any reference to the treatment of piece workers at the relevant time. It says it tends to keep documentation for a minimum of seven years.
34. The Board confirmed to the Commissioner that it is willing to meet the complainant to try and deal with his grievance regarding the historical payment of piece workers.
35. Following further correspondence with the Commissioner however, on 3 February 2020 the Board advised her that it had undertaken further searches and identified information it holds that it considered to be relevant. The Board described this information as "*Minutes in respect of the meetings at which the issue of the piece workers terms and conditions were discussed after 2002*" ('the minute document'). The minute document is titled 'Selby Area IDB Minutes Summary' and includes a selection of minutes from various Board meetings for the period 28 May 2003 to 28 November 2019. The recorded minutes concern matters associated with piece workers and the complainant's information requests.
36. Of relevance here is any minutes for the period 1 January 2003 to 31 December 2004. A number of the minutes contained in the minute document cover that period and concern the matter of piece workers' terms and conditions. As such that information is broadly within the scope of the complainants' requests. The FOIA provides access to information and not to the documents containing the information, per se. The complainant has requested Board minutes on a specific matter and the minute document itemises particular minutes that fall within the scope of the complainant's request. The Commissioner therefore considers that some information in the minute document addresses one aspect of the majority of the parts of the complainant's requests ie relevant information for the period 1 January 2003 to 31 December 2004.
37. The Commissioner notes that the Board cannot have held the minute document at the time of either of the complainant's requests as some of the information in that document post-dates the requests. However, it must have held some of the information requested – ie specific minutes for the period 1 January 2003 to 31 December 2004 – because subsequently it was able to include this information in the minute document. The Commissioner makes the observation that, given its

stated retention policy is seven years, she would not have expected the Board to still hold minutes from 2003 and 2004, at the time of the requests.

38. With regard to Board minutes for the period 1984 to 31 December 2002 the Board has advised the complainant and the Commissioner that it does not hold that information. This is because of the length of time that has now passed since 1984 and 2002 (34 years and 16 years respectively) and because any minutes would have been destroyed in line with the Board's retention schedule of seven years.

Summary and conclusion

39. The Commissioner notes that in part 1 of Request 1 the complainant refers to "the actuality of piece worker treatment *"...having been omitted from the Board's minutes 1982 to 2003?"*". He appears to be acknowledging himself that the information he is seeking (regarding particular Board decisions about piece workers) is not held in Board meeting minutes for the period 1982 to 2003. This may be because the Board had previously advised him that it did not hold such information ie minutes from that period, rather than the Board holding such minutes and those minutes not containing the information the complainant is seeking.
40. The Board has confirmed that it does not hold full Board minutes from the time period that is the focus of the complainant's requests: 1984 to 2004. It has found, however, that it did hold some information that the complainant is seeking – specific minutes that concern the treatment of piece workers for the period 1 January 2003 to 31 December 2004. These minutes are included in the minute document. But the Board's position is that, because it does not hold any Board minutes for the period from 1 January 1984 to 31 December 2002, it does not hold any other information relevant to the majority of the parts of the complainant's requests as summarised at paragraph 23.
41. Having considered all the circumstances of the complainant's two complaints, and having made a reasonable interpretation of the requests concerned, the Commissioner is satisfied, on the balance of probabilities, that the Board has now identified all the information it held that falls within the scope of the parts of the complainant's requests that are the focus of this notice.
42. The Commissioner is satisfied because of the historical nature of the complainant's substantive complaint to the Board about pieceworkers (first raised in 2003), the fact that the majority of the information, if it had ever been held, would have been held in Board minutes that were destroyed in line with the Board's retention schedule, and the fact that

the Board has repeatedly searched for relevant information in its electronic and manual files and has identified only the information that it included in the minute document.

43. Further information that the complainant is seeking may or may not have been held during the period 1 January 1984 to 31 December 2002. But at the time of the complainant's requests between 34 and 16 years had passed. If it had ever been held, given that the Board has indicated its policy is to destroy information such as Board minutes after seven years, that information would not have been held in 2018 and 2019.
44. However, the Board breached section 1(1) of the FOIA with regard to parts of the complainant's two requests for decisions recorded in minutes as it did hold some relevant information which it did not communicate to the complainant.

Section 10 – time for compliance

45. Section 10(1) obliges a public authority to comply with section 1 promptly and within 20 working days following the date of receipt of the request.
46. The complainant submitted his first request on 21 October 2018 and his second on 17 February 2019. Having advised the complainant that it held no relevant information, the Board then identified, on 3 February 2020, that it did hold some information falling within the scope of the requests. It had held information that it was subsequently able to include in the minute document. As such the Board again breached section 10(1) of the FOIA because it did not communicate this information to the complainant within the required timescale.

Other matters

50. As has been noted in this decision notice, the FOIA concerns only information a public authority may hold in recorded form. The FOIA does not oblige an authority to provide explanations, give opinions, carry out instructions or answer general queries. If it is the case that the complainant wishes to submit a further request for information to the Board in the future, the Commissioner recommends that the complainant first reviews her published guidance on making effective information requests². If a future request again concerns Board
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² <https://ico.org.uk/your-data-matters/official-information/>

minutes, the complainant is advised to first review the Board minutes published on its website, before submitting such a request.

51. However, the Board has, more than once, offered to meet the complainant to discuss his concerns and the complainant has declined to take up that offer up to now. Once the Coronavirus pandemic is over and it is safe to do so, meeting the Board may, in the Commissioner's view, be a good way for the complainant to resolve his substantive concern about how piece workers were treated historically. The complainant has been corresponding with the Board for over 15 years about that matter. He is therefore likely, at this point, to want the matter concluded to everyone's satisfaction without any further delay. Taking up the Board's offer of a meeting may be the quickest way of achieving that.
52. Turning to the Board, whilst she acknowledges that the FOIA requests in this case were not well framed, the Commissioner does not consider that the Board handled them particularly well. The Commissioner advises the Board to review her published guidance on handling FOIA requests, which includes dealing with requests that are not clear. And with a view to any FOI requests it may receive in the future, the Board may also find it helpful to assess its FOI performance, using the Commissioner's published [FOI Self Assessment Toolkit](#)

Right of appeal

47. 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

48. 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.
49. 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

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