

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 June 2022

Public Authority: Brantham Parish Council

Address: clerk@branthamparishcouncil.co.uk

Decision (including any steps ordered)

1. The complainant has requested from Brantham Parish Council (BPC) information about Brantham Leisure Centre. BPC initially refused the request on the grounds that the information was exempt under section 43 (Commercial interests) of FOIA. During the Commissioner's investigation it changed its response and argued that the request was vexatious within the meaning at section 14 of FOIA.
2. The Commissioner's decision is that BPC was entitled to rely on section 14 of FOIA to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Background

4. The initial request was submitted to BPC in the name of the complainant's father. However, the complainant subsequently explained to BPC and to the Commissioner, that it was a joint request, made by both of them in response to concerns they shared.
5. It was the complainant who, with his father's full permission, requested the internal review and corresponded with BPC regarding the request and associated matters. Much of this was copied to his father. BPC has not sought to challenge the way the request was conducted, and it corresponded with the complainant regarding it.
6. The Commissioner is satisfied from the information provided to him that the request was made by the complainant and his father, acting jointly. He is further satisfied that the complainant had the appropriate

authority to submit a complaint under section 50(1) (Application for decision by Commissioner) of FOIA, regarding it.

7. The request relates to Brantham Leisure Centre ('BLC') which BPC owns and which is currently managed by a third party management company, Brantham Management Community Interest Company. Over time, the leisure centre management appears to have gone through several incarnations and it is referred to in quoted sections below, as 'BML'. However, for clarity, the Commissioner will refer to it as 'the management company'.
8. The Commissioner understands that a number of organisations use the leisure centre as a 'base', including Brantham Athletic Football Club ('BAFC') and Anglia Sports Management ('ASM'). It being a small community, some individuals are involved in both the management company which runs the leisure centre and in the running of the individual organisations which use it.
9. BPC says that it has a landlord/tenant relationship with the management company, which is a separate legal entity. It also says it has no formal connection with the individual organisations which use the leisure centre.

Request and response

10. On 25 November 2020, the complainant wrote to BPC and requested information in the following terms:

"1) Please provide full details of the tenancy agreement between BPC and relevant party regarding Brantham Leisure Centre.

2) Please provide all information regarding the solar panels that were situated at BLC. This should include full details relating to ownership, purchase, planning applications, sale and whom financially benefitted from the electricity produced.

3) Please provide full details (date & attendees (which entity representing if different)) and minutes of meeting held between BPC representatives & BML where the financial concerns & suspicions (allegations) raised with BPC (at the start of this year) were discussed and where reassurances were received by BPC from BML. Please provide exactly details of and in which format these reassurances were received.

It would also be appreciated if you can confirm this method of investigation (basically discussing allegations direct with

persons/entities concerns were raised about) is BPC procedure considering your own Financial Regulations about protecting public funds.

4) Provide full details and minutes confirming this matter has been brought to the attention of a Full Parish meeting in a face to face meeting therefore showing that all Councillors are aware of financial concerns and suspicions raised surrounding BML, BLC, BAFC & ASM.

5) Provide Confirmation/evidence that [former BPC employee name redacted] had no conflict of Interest / direct link with any person linked to ASM, BML, BLC or BAFC."

11. BPC responded on 21 December 2020. Commenting that the tenant of the leisure centre was the management company, it said the information it held as regards parts (1) and (2) of the request was exempt from disclosure under section 43 (Commercial interests) of FOIA. It provided a free text response to the remaining parts of the request.
12. The complainant requested an internal review on 4 May 2021, referring BPC to publicly available planning documents for the solar panels which suggested that the solar panels were owned by a particular individual, and not the management company.
13. BPC wrote to the complainant on 22 May 2021 and provided the following information regarding part (2) of the request.

"In particular reference to the solar panels; [individual's name redacted] provided the capital for the purchase and installation of the solar panels that are sited on the roof of the Leisure Centre and when they were installed he was therefore the owner of these panels. You can find a copy of the planning permission for the panels on the Babergh District Council site by clicking [here](#). As the owner of the panels he was entitled to receive the Feed In Tariff payment for any excess electricity generated by the panels that was not used by the centre. The Leisure Centre was able to benefit from the free electricity generated by the panels.

The placement of the panels on the roof of the Leisure Centre did not affect the value of the building or the structure or interests of the Parish Council. The Parish Council at the time discussed this matter in open session and agreed that this decision would be of benefit to the Leisure Centre through the free electricity and therefore of benefit to the residents of Brantham.

Unfortunately the Parish Council's minutes prior to 2012 (when I became the Parish Clerk) were not held electronically. In line with guidance Parish Council Minutes should be held for 6 years after which

time they are transferred to the records office. The minutes of Brantham Parish Council prior to 2012, which will include the detail of discussion on this matter are available at Suffolk Records Office should you like to request to view them.”

14. BPC then formally communicated the outcome of the internal review of the handling of the request on 4 June 2021. It upheld the application of section 43 of FOIA to refuse parts (1) and (2) of the request.

Scope of the case

15. The complainant contacted the Commissioner on 8 June 2021 to complain about the way his request for information had been handled. He disagreed with BPC’s decision to apply section 43 to parts (1) and (2) of his request.
16. During the Commissioner’s investigation, BPC withdrew reliance on sections 43 of FOIA, and instead it applied section 14 (Vexatious request) to the request as a whole.
17. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
18. The analysis below considers whether BPC was entitled to rely on section 14 of FOIA to refuse the request.

Reasons for decision

Section 14 – vexatious request

19. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
20. However, section 14(1) of FOIA states:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.
21. Section 14(1) of FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

22. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
23. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a public authority.
24. In his published guidance on dealing with vexatious requests¹, the Commissioner considers the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
25. In that respect, his guidance advises public authorities that:

“A useful starting point is to assess the value or purpose of the request before you look at the impact handling the request would have on you”.
26. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC), (28 January 2013).
27. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering 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.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

28. The Upper Tribunal did, however, caution that these considerations were not meant to be exhaustive. It emphasised that:

"...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" (paragraph 82).

The complainant's position

29. The complainant disagreed that the request was vexatious, stating:

"I have asked simple basic questions based on financial information available to me and information known to me. I have asked simple question which I feel a Parish council should know and should be able to provide.

All I have asked for is factual readily available public information.

...

I tried to contact BPC before FOI request but unfortunately they wouldn't supply information requested. I had also heard a rumour about the solar panels and wanted it clarified as to the true ownership and financial benefactor.

It's the only FOI to BPC and have always been polite, fair but challenging to public figures / information."

30. In support of his initial complaint to the Commissioner, the complainant supplied documents which set out his historical concerns about the running of BAFC. The documents indicated that the complainant had been involved in the running of the football club and that he had left, having expressed concerns about alleged financial irregularities.
31. The football club was based at Brantham Leisure Centre. The complainant believed that there were close ties between some senior members of the football club and the leisure centre management company. He was trying to find: "...further details regarding financial matters at the club and about the close knit group of individuals involved. The same group of individuals who are official tenants of BPC and financially benefit substantially from public funds/assets."
32. He believed that this close relationship had resulted in one individual being permitted to place solar panels on the leisure centre roof and derive a financial benefit from the excess power they generated. He expressed concern that BPC had allowed a community asset to be used

for the financial benefit of one individual, rather than for the benefit of the community as a whole.

BPC's view

33. BPC summarised its position as follows:

"... having made a number of accusations about financial impropriety at the local football club, which were investigated and found to be unsubstantiated by the Suffolk FA, the English FA and the Independent Football ombudsmen, [the complainant] has pursued his vendetta by targeting bodies in a wider field who do not have a direct relationship with the Football Club. This includes Brantham Parish Council and Babergh district council.

The Parish Council has tried to be as helpful as it can by responding to the many emails, messages and social media comments from [the complainant] which represent a massive number of pages of A4 correspondence over a period of nearly 3 years. We have spent many hours of public money answering the many questions from [the complainant], which are often repeated. These answers in turn spawn many more questions. This situation has caused significant stress to the employee of the council through the personalised accusations and aggressive tone employed."

34. BPC said that it was applying section 14 on the grounds that compliance with this request would cause a disproportionate and unjustified level of disruption and distress to the parish council. Its position was based on its previous interactions with the complainant, and its belief that responding to this request would perpetuate his pattern of persistently requesting information and demanding responses on matters which had already been dealt with.
35. BPC said that in the period prior to this request, it had received voluminous and frequent correspondence from the complainant on various issues and concerns that he has about Brantham Leisure Centre, and BPC's relationship with its management company. He also raised numerous concerns about the different sporting sections at BAFC and their financial relationship with the management company, along with queries about the ownership of the solar panels on the roof at the leisure centre.
36. BPC said the complainant has repeatedly called into question the integrity of BPC, the Chair, the Parish Clerk, individuals involved in the management company and BAFC, and officers at Babergh District Council. BPC also noted that the complainant is not a Brantham resident and that Brantham is therefore not "his" parish.

37. It said BPC had worked hard to provide detailed responses that were appropriate and courteous:

"The Parish Council has responded to the same queries on numerous occasions and have [sic] spent many hours of Parish Council, Parish Clerk and Chairman time on this. Parish Councils are funded from Council tax and it is the view of the Parish Council that to spend more time on this issue would not be in the public interest."

38. As regards the complainant's professed concerns about financial irregularities at BAFC, BPC said he had complained to the Suffolk Football Association ('FA'), the English FA and the Executive of the FA. As a result, BAFC had funded an independent audit of its finances, covering a three year period, at a cost of over £3000. BPC said that no misappropriation was identified, and BAFC was exonerated. BPC said despite this, the complaint continued to repeat his allegations of wrongdoing on social media and on his personal website.
39. Referring to the information requested in part (3) of the request, BPC said that in January 2020, the complainant made allegations of malpractice at the football club, to BPC. The Chair of BPC held a telephone conversation with the complainant about these allegations and answered some queries. An informal meeting was offered at this time as a means to answer any further questions.
40. In March 2020, the complainant emailed BPC again, stating that his questions hadn't been answered and suggesting that, in its position as owner of the leisure centre, BPC should actively scrutinise the organisations and businesses which used it. The complainant also sent BPC a seven page letter which it said included various accusations and "implied threats". BPC said it sent numerous, lengthy emails responding to the concerns and questions raised therein.
41. In June 2020, BPC responded again to the complainant's concerns with a comprehensive response, clarifying the landlord/tenant relationship between BPC and the management company. It says the complainant responded with a five page letter, stating that he did not accept the landlord/tenant relationship was as detailed by BPC.
42. BPC sought further information on the concerns raised by the complainant from the management company, which informed it:
- "The Football Club funded a Comprehensive independent audit through Independent Accountants at a cost of over £3000 for a Three Year period covering the Time Of [the complainant's] allegation. I am pleased to report that no misappropriation was determined and the Club were completely exonerated."

43. In September 2020, the complainant sent a four page letter to BPC which included more accusations and continued questioning of the relationships between organisations which used the leisure centre and BPC. He then brought his concerns to the attention of Babergh District Council, with the complainant reportedly informing it that BPC was "part of the problem". Babergh District Council declined to take up the matter.
44. In October 2020, BPC held a meeting to review the actions it had taken to date regarding the complainant and the concerns he had expressed. Although it was satisfied with its previous responses, it established a working group to review the issues raised and to identify learning points for the future.
45. In November 2020, the complainant submitted the FOIA request which is the subject of this decision notice. BPC inferred from part (5) of the request an accusation of wrongdoing, which it said was totally unfounded.
46. During November 2020, the complainant also contacted BPC to query the process for raising questions at parish council meetings. During that communication, the complainant asked about the personal relationship of the Parish Clerk as regards the leisure centre and BAFC.
47. BPC felt the complainant was calling the Parish Clerk's integrity into question, with no basis, and that the question was wholly inappropriate. It noted that the complainant never subsequently attended a parish council meeting to raise the question he said he was enquiring about.
48. In December 2020, BPC made a full response to the FOIA request, with clarification that there is no formal relationship between BPC and BAFC:

"We have repeatedly stated that Brantham Parish Council have no relationship with BAFC and provide them with no financing or public money. The allegations mentioned in question 3) have been investigated, and rejected, by the correct governing body for BAFC, the Football Association."
49. In May 2021, the complainant requested an internal review of the request. He circulated to parish councillors 25 pages of email attachments and five pages of texts which included further accusations. He again challenged the landlord/tenant relationship between BPC and the management company. He provided a link to his website, which was focussed on the concerns outlined above, and which he described as "One man's Crusade". BPC opined that this suggested a personal vendetta on his part. It said the website includes unfounded accusations, conjecture and conspiracy theories.

50. BPC said that further emails and social media comments were received from the complainant relating to the relationships between BPC and BAFC, the leisure centre and the management company and the ownership of the solar panels. BPC responded to them all, and in doing so it referenced the fact that the same response had already been made several times previously.
51. BPC felt the complainant's correspondence frequently contained an accusatory and/or threatening tone. For example:
- "I will keep challenging you as a public body and I will publish everything to make residents aware of this 'situation'"
- "I believe BPC have been very unhelpful, dismissive and secretive"
- "A dangerous position a few people have found themselves in. We will get to the bottom of it!"
52. In June 2021, the parish council agreed a final response to the request and it informed the complainant as follows:
- "Having been unsuccessful in your dealings with the proper governing body for BAFC, the Football Association, you have elected to pursue this correspondence with Brantham Parish Council. BPC have made strenuous efforts to engage for some 18 months, and well beyond all reasonable requirements. The Parish Council is elected to make decisions acting within its powers. It is not required to justify or defend those legally made decisions, many dating back to 2007.
- Brantham Parish Council now regard this correspondence as vexatious under the meaning of the FOI Act, and in our own right.
- We will therefore not be responding to you further regarding these matters."
53. BPC said that following this, the complainant failed to modify his behaviour and continued to send correspondence which contained the same unfounded accusations and allegations, demanding a response.
54. It noted that throughout this period, the complainant has often commented on unrelated parish council social media posts with sarcastic and accusatory comments which it felt undermine BPC and the work that it does. It gave as an example a social media post advertising a quiz night to raise funds for a village hall, on which the complainant allegedly commented: "Put some solar panels on the roof and generate income for the village to offset repair costs? I very much doubt a local Council would agree to such a bizarre deal (that benefits a private individual who contributes nothing for rent or use of public property) and then

refuse a FOI request, providing incorrect refusal reasons knowing full well who actually owns them!?”.

55. BPC provided evidence that this was a long-running matter which had already been considered in detail by the parish council and other organisations, over several years. It said that its limited resources had already been stretched by the complainant’s demands and it was unreasonable to continue to divert them from dealing with its day-to-day requirements:

“...when taking into consideration the amount of correspondence already received on this issue which has required a detailed response and the fact that Brantham Parish Council is a small Council with only a part-time Clerk employed to undertake the work of the Parish Council this further request is considered to be burdensome and impractical.

...

Each time [the complainant] has received a response from the Parish Council this has been countered with additional emails and messages with a number of questions and lengthy text. The Parish Council believes that it is highly likely that responding to this request will result in further requests, comments and accusations being received from [the complainant].

The majority of these emails have required a significant amount of follow-up correspondence it is likely that complying with [the complainant’s] request will create further queries and requests that will place a significant burden on the Parish Council and its member of staff.”

The Commissioner’s decision

56. As discussed in the Commissioner’s guidance on dealing with vexatious requests, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it.
57. The Commissioner’s guidance considers that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
58. When considering this issue, the Upper Tribunal in Dransfield asked itself:

“Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?”
(paragraph 38).

59. In his guidance, the Commissioner recognises:

“The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:

- holding public authorities to account for their performance;
- understanding their decisions;
- transparency; and
- ensuring justice.”

60. The Commissioner acknowledges that the subject matter of parts (1) and (2) of the request relates to use of a public asset and therefore they are matters of public interest. Set against this, he notes that the public interest in transparency and accountability has been addressed insofar as the complainant has already been given most of the information requested at part (2).

61. However, the remaining points of the request relate to matters concerning BAFC and the management company, which do not directly relate to BPC.

62. Furthermore, the complainant has previously brought his concerns about financial misappropriation to various independent bodies with scrutinising functions, and no wrongdoing has been identified. On that point, the Commissioner’s guidance notes:

“In such cases the requester may be demonstrating unreasonable persistence by seeking to re-open the matter, or their request may have become futile in light of the matter having already been conclusively resolved.”

63. The Commissioner therefore finds that these parts of the request have little value and their purpose appears to be to try to re-open matters which BPC is entitled to consider have been dealt with. He therefore finds there to be little objective public interest in pursuing this information.

64. The issue for the Commissioner to determine is whether complying with the request would impose a grossly oppressive burden on BPC which outweighs any value or serious purpose the request may have.

The negative impacts of the request - burden, motive and harassment

65. As in many cases which give rise to the question of whether a request is vexatious, the evidence in this case shows a history of previous engagement between the parties. BPC considers that the particular context and history of this engagement strengthens its position that, at the time of the request, it was vexatious. BPC's arguments referred to the cumulative burden of dealing with previous approaches for information on the same or similar subject matter, combined with the burden imposed by this request, and the likelihood of further requests.
66. In other words, the burden in this matter arises from the resources and staff time that it has already spent on dealing with the complainant's similar approaches and the likelihood that this pattern of behaviour, namely, submitting numerous and regular correspondence on a matter which has already been addressed, will continue.
67. The Commissioner is satisfied that the request in this case, although not obviously vexatious on its own, does form part of a wider pattern of requests and interaction between the complainant and BPC, on the subject of BAFC, the management company and other organisations which use the leisure centre.
68. As regards further requests, the Commissioner notes BPC's evidence that the complainant has continued to correspond on the same subject, despite being told that BPC regards the matter as closed. From the evidence he has seen, the Commissioner gives weight to the argument that responding to this request would be likely to result in the complainant submitting further requests on the subject. It would impose a burden which BPC would be unable to absorb without diverting resources away from dealing with other matters which also need its attention.
69. It should be borne in mind that BPC is a very small public authority with limited resources. The Parish Clerk is contracted part time. The threshold at which the burden of complying with the request becomes grossly oppressive will be lower than for a larger public authority with greater resources. Dealing with the complainant's repeated approaches on matters which have already been dealt with uses resources which would otherwise be spent attending to core parish council business, for the benefit of the community as a whole.
70. The Commissioner acknowledges that BPC considers the underlying motive of the requester is to pressure BPC, as landlord, to scrutinise BAFC, the management company and the business interests of individuals associated with both, in light of a grievance it believes he has with BAFC.

71. The Commissioner has also had regard to the complainant's stated concern, that an individual profited from placing solar panels on a public building. Against that, he notes that the fitting of the panels did not affect the value of the building and that the leisure centre was the primary beneficiary of the power they generated, with the individual only accruing the benefit of any excess (which was presumably offset against his costs, at least initially).
72. As to the tone of the correspondence, which BPC has characterised as "threatening" and "accusatory", the Commissioner considers that the complainant's strength of feeling is evident in the tone of his correspondence. Whilst, from the evidence he has seen, it stops short of "threatening", the Commissioner accepts that the complainant's refusal to accept the central matter as closed could be regarded as unreasonably persistent and intransigent. Furthermore, he considers the questioning of the Clerk's personal relationships to be inappropriate and that it could be perceived as harassing.
73. He considers the presence of these factors to lessen the value of the request quite significantly.

Balancing the value of the request against those negative impacts

74. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect of complying with it on the public authority.
75. He has also considered, in light of the nature and degree of the dealings between the complainant and BPC, whether, at the time, the request crossed the threshold of what was reasonable.
76. The complainant says it was a reasonable request, stemming from legitimate concerns he has about lack of transparency. In contrast, BPC has characterised the request as a 'fishing expedition': a means for the complainant to pursue a personal grievance against BAFC through a more circuitous route. His particular allegations about BAFC have previously been considered by the appropriate, independent bodies, with no evidence of wrongdoing found. BPC considers the complainant's repeated criticisms of it as regards the arrangements between the management company and the owner of the solar panels, to be unfounded and unreasonable.
77. The purpose of section 14 of FOIA is to protect public authorities and their employees in their everyday business. In his guidance, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or

answering legitimate requests. These requests can also damage the reputation of the legislation itself.

78. In this case, when balancing whether the limited objective public interest the Commissioner has identified can justify the negative impact of complying with the request, the Commissioner has paid particular attention to the following:
- the purpose of the request (ie, that it appears to have been made in furtherance of an ongoing grievance the complainant has with an unrelated third party);
 - that the allegations and accusations as to misappropriation have been considered by the appropriate, independent authorities and dismissed, but the complainant nevertheless continues to pursue them;
 - BPC's limited resources;
 - the considerable amount of time and resources BPC has already allocated to dealing with the complainant's previous questions and approaches to it about this matter; and
 - the likelihood that compliance with the request will result in the complainant submitting further requests for information on the same subject matter, which BPC will be required to expend further resources on dealing with.
79. Having considered the value of the request against the above factors, the Commissioner is not satisfied that the detrimental effect of dealing with the request is justified by its limited purpose and value.
80. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that the negative impact of complying with the request significantly outweighs its limited purpose and value. BPC was therefore entitled to consider the request vexatious and to rely on section 14(1) of FOIA to refuse to comply with it.

Right of appeal

81. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

82. 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.
83. 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

Samantha Bracegirdle
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