

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2022

Public Authority: Tibberton Parish Council
Address: (Parish Clerk's private address withheld)
Worcestershire

Decision (including any steps ordered)

1. The complainant made a three-part request to Tibberton Parish Council (the 'Parish Council') for financial information and specified terms and conditions. For part 1, the Parish Council invited the complainant to inspect five lever arch files (which he has not done) and later provided some hard copy information. Ultimately, for part 2 it maintained that the requested information was available on its website and formally cited section 21 of FOIA (information accessible to the applicant by other means) during the Commissioner's investigation. The complainant maintains that the requested information was not available on the Parish Council's website at the time of the request and, thereby, was not "reasonably accessible" to him. Although section 21 of FOIA was originally cited for part 3 of the request, the Parish Council appears to have revised its position and has provided the complainant with a hard copy of the requested terms and conditions. The complainant accepts that he has received this information but has complained that there was a delay.
2. The Commissioner's decision is that the Parish Council has not demonstrated that it has provided all the information held in relation to part 1 of the request and he has ordered a step at paragraph 3 of this notice. For part 2, the Commissioner finds that the requested financial regulations were not available on the Parish Council's website at the time of the request for the reasons set out in this notice. However, given that the complainant can now access this information online, the Commissioner has not included a step in this notice. For part 3, the Parish Council did not provide the requested terms and conditions until 21 working days after receipt of the request, thereby breaching sections 1 and 10 of FOIA. As this information has been provided, the

Commissioner does not need to issue any step for this part of the request.

3. For part 1 of the request, the Commissioner requires the Parish Council to take the following step to ensure compliance with the legislation:
 - Disclose any information from the five lever arch files which relates to the scope of part 1 of the request, redacting any personal information in line with section 40 FOIA.
4. The Parish 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 30 June 2021, the complainant wrote to the Parish Council and requested information in the following terms:
 - “...could you please send me:
 - Detailed expenditure of the village precept for the last 5 years (by year)
 - A copy of the Tibberton Parish Council financial regulations
 - A copy of the terms and conditions from Wychavon District Council in relation to the community legacy grant for the proposed village shop”.
6. The Parish Council responded on 27 July 2021. For part 1 of the request, the Parish Council said that access to view the requested information would need to be supervised and it asked for the complainant’s availability in September 2021 in order to facilitate this. For parts 2 and 3, it said the information was available on the respective Councils’ websites.
7. The complainant requested an internal review on 29 July 2021, which included his view that the Council should conduct “an independent investigation as to why an adequate response hasn’t been received within the statutory time limit”. He argued that the expenditure details could be scanned and sent electronically to him minus any personal information negating the need for him to view that information in person. He added that viewing the information in September 2021 would mean a delay beyond the 20 working days’ statutory limit for public authorities to respond to FOI requests. He also said that the financial regulations were not available on the Parish Council’s website, and that

he had not been given a copy of the requested terms and conditions but had been asked to find them himself on Wychavon District Council's website. The Commissioner notes that no URL was provided for either part 2 or 3 of the request which is a pre-requisite for information it is claiming is "reasonably accessible" online.

8. From the available case correspondence there were other email exchanges relating to the request in late July and August 2021. The Commissioner understands that the Parish Council provided the complainant with a copy of the requested terms and conditions on 30 July 2021 (part 3 of the request). Having done so, it appears to the Commissioner that it was no longer relying on section 21 of FOIA for part 3 of the request. On 5 August 2021, the Parish Council sent the complainant five attachments showing income and expenditure broken down by financial year in response to part 1 of his request.
9. In the absence of an internal review result from the Parish Council, the complainant complained to the Information Commissioner.

Scope of the case

10. The complainant contacted the Commissioner on 21 September 2021 to complain about the way his request for information had been handled.
11. On 21 September 2021, the Commissioner wrote to the Parish Council requesting it to carry out an internal review. In the absence of any response, the complaint was accepted without a completed internal review.
12. However, on 18 November 2021, the Parish Council issued its internal review result. It provided some explanatory details about the availability of the parish clerk at the time of the request and said that the financial regulations were no longer available on its website. It reiterated its offer of allowing the complainant to view five files once a suitable date had been identified, and also said it would provide a paper copy of the Financial Regulations (the latter being part 2 of the request).
13. Later that day, the complainant contacted the Commissioner to advise that he remained dissatisfied post internal review, enclosing a copy of a letter he had sent to the Parish Council on receipt of its internal review.
14. The complainant's grounds of complaint to the Commissioner as at 18 November 2021 were as follows:
 - Part 1 of request –the complainant said he had still not received the requested information. He objected to being asked to view

information in person that he considered should be “readily available to all parishioners”.

- Part 2 of request – the complainant stated that this information was not available at time of his request but had recently appeared on the Parish Council’s website.
 - Part 3 of request – the complainant stated that he received the information but after 21 rather than 20 working days.
15. The complainant had included copies of the information provided to him by the Parish Council on 5 August 2021 (in relation to part 1 of his request), with the following comments:
- FOI 2016-2017 – No balance between income or expenditure and therefore missing information
 - FOI 2017-2018 – Income & Expenditure balanced but lack of requested detail
 - FOI 2018-2019 - No balance between income or expenditure and therefore missing information
 - FOI 2019-2020 – No information given at all
 - FOI 2020-2021 – No information given at all
16. The Commissioner relayed all of the above to the Parish Council and asked it to consider this when responding to his investigation.
17. During the course of the Commissioner’s investigation, there have been further exchanges between the parties, the majority of which have been facilitated by the Commissioner with updates from one party to the other (following respective consent). On 9 August 2022, the Parish Council confirmed it wished to rely on section 21 in relation to part 2 of the request.
18. Final comments following the complainant’s views were sought by the Commissioner from the Parish Council on 22 August 2022.
19. The Parish Council responded on 2 September 2022 which led to further enquiries and exchanges between the parties. The Commissioner understands that the complainant’s FOIA complaint and the associated investigation were discussed at two Parish Council meetings, one held on 4 October 2022 and the other on 11 October 2022.
20. The Commissioner has considered all the evidence before him but did not receive any further response following the two Parish Council meetings. He did not wish to delay his investigation any further and considers that the Parish Council has had several opportunities and ample time to clarify its position.

21. In this case, the Commissioner has referred back to the complainant's stated grounds of complaint set out in paragraphs 14 and 15 above. He has determined whether all the requested information for part 1 has been provided by the Parish Council, whether the financial regulations were reasonably accessible on the Parish Council's website at the time of the request in accordance with section 21 of FOIA, and whether there was a delay in relation to the provision of the requested terms and conditions information for part 3 of the request.

Reasons for decision

Part 1 of request

Section 1 – General right of access to information held by public authorities

22. The complainant requested copies of "Detailed expenditure of the village precept for the last 5 years (by year)" in part 1 of his request.
23. On 27 July 2022, the Parish Council responded and said the complainant would need to inspect the requested information which was held within five lever arch files. It invited the complainant to arrange a mutually convenient date to inspect these files in person.
24. The complainant did not agree that he should have to view this information and wanted it to be "itemised, scanned and emailed" to him, with any personal data removed.
25. From the case correspondence, the Commissioner notes that on 29 July 2021, the Parish Council sought clarification from the complainant as to exactly what information he required in relation to "detailed expenditure of the village precept for the last 5 years (by year)."
26. In response, the complainant provided a published example from another parish council which he said should be "self-explanatory".
27. Subsequently, on 5 August 2021, the Parish Council released some hard copy expenditure information to the complainant, copies of which the Commissioner has reviewed. The complainant deemed this information to be incomplete (see paragraph 15 of this notice).
28. During the course of the Commissioner's investigation, on 2 September 2022, the Parish Council reissued the documentation previously provided on 5 August 2021 in relation to expenditure. It had amalgamated all the five previous individual attachments into one document for the complainant's "ease of perusal". The Parish Council also sent the complainant the 'thumbnail' images of the previously issued

documentation (ie the five attachments) to show that there was content in all the attachments and to evidence that parts of the information were not missing or had not been provided.

29. The complainant highlighted that he considered the information provided on 2 September 2022 to differ from that disclosed on 5 August 2021. The Commissioner has reviewed both sets of documents and can only see that the years have been added to the summary released on 2 September 2022, presumably to aid understanding of the expenditure falling within those time periods. Whilst he notes that some of the layout has altered with being presented in portrait rather than landscape format, the Commissioner is satisfied that the actual information itself (the types and amounts of income and expenditure) remains the same.
30. In its investigation response, the Parish Council has explained that the:

“Council does not keep records in the format which [the complainant] provided as his example and instead provided the nearest documents it held for the requested 5 years. Council is under no obligation to provide an enquirer with information which does not exist in a particular format or layout and did its best to accommodate [the complainant] in this regard.”

And

“Tibberton Parish Council has invited [the complainant] to contact it again if he still wishes to see the files and a mutually convenient time / date / location can be agreed for him to view the financial records for the years he identified.”

31. It also said:

“The information requested is in 5 large lever arch files and comprises the records for the past 5 municipal years. Once an audit is completed any digital records are printed out and placed in that folder. The PC [Parish Council] sent [the complainant] the nearest approximation it held of the information he asked for, allowing for the fact that it did not create documents in the same way as the example he provided of what he wanted. Council is not required to create documents in a particular format if it does not already hold information in that form and therefore could not provide exactly what he asked for. The nearest equivalent was emailed to him.

[The complainant] has been offered the option of looking at the documentation in the year files on more than one occasion. We cannot email him 5 files worth of documents when we do not hold those documents in a digital form.

To date [the complainant] has not responded to the invitation to view any documentation.”

32. The Commissioner has considered that there may have been some confusion in that the complainant had queried why the information could not be itemised, scanned and emailed to him, having received the Parish Council’s initial response. The Parish Council has told the Commissioner that the records were not held digitally at the time of the request and had “already been printed out and put into a paper year file”. The request does not specify any particular format in which the requested information should be provided; the reference to emailing the scanned information only arose as an alternative to the Parish Council’s insistence that the complainant view the information in person.
33. Following further enquiries by the Commissioner on 12 September 2022, the Parish Council explained that there are approximately 300-400 pages in each of the five lever arch files, some of which is published annually on its website. It indicated that some information would not be made available because the Parish Council deemed it to be personal information in accordance with section 40 of FOIA.
34. Further, it was agreed that the Parish Council would revisit the lever arch files and provide any previously undisclosed information to him with any redacted material being exempted under the relevant exemptions. It said this matter would be finalised at its next meeting on 4 October 2022.
35. The Parish Council failed to do this and has not formally cited any FOIA exemptions.
36. Despite a number of attempts by the Commissioner to elicit why the Parish Council was insisting that the complainant could only view or “inspect” the five lever arch files, it has failed to satisfactorily justify its stance. For example, if it was too burdensome to deal with, or some material is deemed too sensitive to disclose, then there are exemptions under FOIA which may be cited. However, it has failed to provide any further response or update to the Commissioner which would indicate that its position is as a result of such reasons.

Conclusion

37. The Commissioner considers that the Parish Council has not yet responded adequately to part 1 of the request. He considers, on the balance of probabilities, that it is unlikely that, if there are 1500 to 2000 pages within the five files, only five pages fall in scope of this part of the request.
38. The Commissioner has therefore ordered the step set out at paragraph 3 of this notice.

Part 2 of request

Section 21 - Is the information reasonably accessible to the applicant by other means?

39. The complainant requested a copy of the Parish Council financial regulations in part 2 of his request.
40. When the Parish Council responded to the request on 27 July 2022, it said that this information was available on the Parish Council's website but did not provide the complainant with any specific details as to how he might locate the information nor the link to this information. The complainant responded and advised the Parish Council that the information was not available on the website.
41. During the course of the Commissioner's investigation, the Parish Council confirmed that the financial regulations were not available on its website at the time of the request. By way of explanation, the Parish Council said:

"The PC [Parish Council] does not manage its own website but currently uses a site provided by Worcestershire County Council. The Clerk to Council ... was ... unable to access that site for a period of time in 2020-21. This coincided with lock down and with county council staff continuing to work from home due to accommodation restraints; it was further exacerbated by the fact that the section of the IT infrastructure at County which hosted parish websites is a legacy system and it seemed that no one member of staff had responsibility for the provision of service. It was therefore not easy to find someone to resolve the matter ...".

42. It also said:

'The Financial Regulations can be found on the PC's website and have been there since the PC was able to re-access its website last summer. This information was provided to [the complainant]. In addition, in its letter to him of 11th October 2021, the Parish Council offered to provide a paper copy of the financial regulations to [the complainant] if he so wished. Final paragraph of that letter, which I have attached read: "Council is more than willing ...to provide you with a paper copy of its Financial Regulations and would ask that you contact it in order to make arrangements." Council confirms that to date [the complainant] has still not made contact to make arrangements.'

43. The Commissioner understands that the financial regulations were available on the Parish Council's website again from August 2021 (and are currently still available). The Parish Council has neither provided the

complainant nor the Commissioner with the link to this information and only formally cited section 21 of FOIA (information accessible to applicant by other means) on 9 August 2022 in the course of the Commissioner's investigation.

44. Following his enquiries, the Commissioner accepts that the requested financial regulations became available online from August 2021 and he considers that the Parish Council could legitimately have directed the complainant to this information at any point up to, and including, the internal review. However, the Parish Council did not provide the complainant with any specific details as to how the financial regulations could be accessed; this did not happen even when the Parish Council formally cited section 21 during the Commissioner's investigation.
45. Having considered all the available evidence, the Commissioner has concluded that the requested financial regulations were not available on its website at the time of the request. Whilst the Commissioner accepts that this information is now available on the website, he must consider the position at the time the request was made.

Conclusion

46. As the requested financial regulations were not reasonably accessible to the complainant at the time of his request, the Commissioner has concluded that the Parish Council was not entitled to rely on section 21 of FOIA.
47. Although the Parish Council has breached section 21 of FOIA, the Commissioner has not ordered a step as a result of this notice given that the information is now reasonably accessible (on page 2) via the following URL¹.

Part 3 of request

Section 10 - Time for compliance

48. The complainant has complained that the information requested at part 3 only (namely the terms and conditions from Wychavon District Council in relation to the community legacy grant for the proposed village shop) was provided late.

¹ <https://e-services.worcestershire.gov.uk/MyParish/Publications.aspx?ParishID=174&PostCode=WR97NP&Prop=148585&partner=wdc&MarriedTo=0>

49. Section 1(1) of FOIA states that upon receipt of a request a public authority must confirm or deny whether or not the information is held and, if that information is held, it must be communicated to the requester.
50. Section 10(1) of FOIA states that:
- “(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”
51. In this case, the Parish Council originally responded to each part of the request on 27 July 2021 which is 18 working days following receipt of the request.
52. Although the Commissioner notes there was ongoing correspondence between the complainant and the Parish Council following its response, the Commissioner is satisfied that the Council had responded to all parts of the request by 27 July 2021. At that point, it was seeking to arrange a mutually convenient time for the complainant to inspect the files held in relation to expenditure (part 1) and had said that the information requested at parts 2 and 3 could be found on the two Councils’ websites.
53. The complainant does not dispute that he has been provided with the requested terms and conditions at part 3 of his request. However, his complaint is that he did not receive this information until 30 July 2021.
54. The Parish Council has explained that it :
- “... had no access to its paper documentation during its Clerk annual leave/time off which covered the 21-day period – therefore the information was provided a day late...
- The parish does not have an office, it is far too small to require that the expense of maintaining an office could be justified on a charge to the taxpayer via the precept, therefore the PC [Parish Council] could not access the paper files while the Clerk was not at work”.
55. The Parish Council also provided the Commissioner with details of its arrangements for when there is an emergency, or for longer periods of absence. It also said that the Chairman had explained to the complainant that the Clerk was on leave within the original email correspondence.

Conclusion

56. Notwithstanding the above explanation, as the Parish Council did not communicate held information to the complainant within 20 working

days it breached sections 1(1)(a) and 10(1) of FOIA for part 3 of the request. However, as the requested information has been released to the complainant on 30 July 2021, no step is required.

Other matters

57. The Parish Council should familiarise itself with how section 21 of FOIA works in practice; the Commissioner's section 21 guidance² is available on his website.
58. Although the complainant did not complain about the late internal review in this case, the Commissioner has made a record of it.
59. Part 5 of the section 45 Code of Practice³ (the Code) states that it is best practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Code states that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
60. The Commissioner is concerned that it took almost four months for an internal review to be completed.
61. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy⁴ 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 our FOI and Transparency Regulatory Manual⁵.

² <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

⁴ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁵ https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf

Right of appeal

62. 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

63. 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.

64. 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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