Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 January 2019

Public Authority: Old Somerby Parish Council
Address: The Orchards
School Lane
Old Somerby
Grantham
Lincolnshire
NG33 4AG

Decision (including any steps ordered)

1. The complainant requested information about records relating to accuracy of the minutes of Old Somerby Parish Council ("the Parish Council") meetings including emails between / among parish councillors and the Clerk of the Parish Council. The Parish Council applied section 12(1) to the request, as compliance would exceed the appropriate limit. The Commissioner's decision is that the Parish Council has correctly applied section 12(1) to the request. She does not require any steps to be taken.

Request and response

2. On 24 April 2018, the complainant wrote to the Parish Council and requested information in the following terms:

   "The accuracy of the minutes of Parish Council meetings continues to be of concern.

   "Please supply a copy of records relating to this matter including emails between / among Parish Councillors and yourself (including those who have recently resigned) which have been generated since my request for information as made on 27 November, 2017. Included in this will be a copy of the audio recording which you made of the Parish Council meeting of 10 January 2018 which you will have retained in order to be able to confirm the content of your draft minutes of that meeting.

   "Please regard my request for the above as an FOI request."

3. The Parish Council responded on 24 April 2018 and provided some information within the scope of the request. It also stated that:

   "The matter regarding the accuracy of the minutes November 2017 will be addressed when a new parish councillors have been elected and co-opted. The audio recording is no longer available as once the minutes have been signed off this is erased. This is in lines with the guidance provided by LALC. There is no requirement to keep such recordings."

4. On 17 September 2018 the Parish Council provided some further information.

5. On 28 September 2018 the complainant requested an internal review of the Parish Council's handling of the request, stating that not all the information requested had been released.

6. The Parish Council provided the outcome of its internal review on 24 October 2018. At this stage it cited section 12 – exemption where the cost of complying with the request exceeds the appropriate limit.

Scope of the case

7. The complainant contacted the Commissioner on 11 October 2018 to complain about the way his request for information had been handled.

8. The scope of the Commissioner's investigation into this complaint is to determine whether the Parish Council correctly applied section 12 of the

FOIA to the request. She has also considered whether the Parish Council met its obligation to offer advice and assistance, under section 16.

Reasons for decision

9. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.

10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") at £450 for non-central government public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Parish Council.

11. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

    - determining whether the information is held;
    - locating the information, or a document containing it;
    - retrieving the information, or a document containing it; and
    - extracting the information from a document containing it.

12. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

13. On 13 November 2018, the Commissioner asked the Parish Council to respond with details of its estimate of the cost of the complainant's request. The Parish Council's response was inadequate and the Commissioner gave one further opportunity to provide an explanation.

14. On 6 December 2018, the Parish Council submitted further reasoning for its cost estimate.

15. The Parish Council advised that in order to identify the information relevant to the request, it would involve searching *"various computer files"* and *"hard copies"*. The Parish Councillors had recently been elected to the post due to resignations of previous parish councillors and had no knowledge of the issues involved within the scope of the request.

The Parish Council had contacted the previous councillors in order to ascertain if information was held by any of them, if information could be located and retrieved.

16. The Parish Council has not conducted a specific sampling exercise in order to determine whether compliance with the request in this case would exceed the appropriate limit. This was not possible as each item of information was unique and no sampling would be relevant or similar in scope.

17. On considering the arguments put forward by the Parish Council the Commissioner has taken into account the amount of information which would be required to be reviewed manually in order to determine what recorded information is held relevant to the request. This included reading many emails as some information was located within a string of emails.

18. The Commissioner is satisfied that the Parish Council has provided an explanation for why compliance with the requests would exceed the appropriate cost limit. The Parish Council estimated time taken to carry out activities to determine in detail what relevant information was held, including "seeking out the various computer based files and also hard copy files relating to the request" which "covered a considerable period of time". This also would entail contacting parties no longer within the Council. The Parish Council estimated this action would take 9 hours and it highlighted that the current councillors had no prior knowledge of the request. The Parish Council estimated it would take a further 9 hours to find information requested within those files and this "required identifying the relevant emails and whether or not contact details should be protected for data protection purposes". The Commissioner notes this is a time consuming task but she rejects costs associated with redacting personal data, as this activity would not be amongst those listed in the Fees Regulations and set out above at paragraph 11.

19. A further task the Parish Council included is to prepare a bundle with relevant emails and documents including preparing for photocopying. In addition to photocopying of over 200 A4 sheets, the Parish Council also prepared the bundle in date order, and presented this in a presentation file. The Parish Council stated that "for the sake of complete accuracy the file was passed to the other 4 councillors for checking purposes". It estimated these tasks would take approximately 10 hours.

20. The Commissioner accepts some parts of the estimate given by the Council, but does not accept other parts. As covered above, the Commissioner does not accept the part of the cost estimate relating to redaction of personal data. She also rejects the part of the estimate relating to Councillors checking the information, as it is not clear why it

would be necessary to undertake that step to comply with the request. Overall, the Parish Council estimated it would take 31 hours to comply with the request for information. Whilst the Commissioner does not accept all the elements of the cost estimate given by the Council, from the information the Parish Council supplied, she finds the explanation given by the Council relating to activities that are covered by the Fees Regulations sufficiently convincing that she accepts that the Council did estimate reasonably that complying with the request would exceed the appropriate limit. Therefore, the Commissioner is satisfied the Parish Council correctly applied section 12(1) and so it was not obliged to comply with the complainant's information request.

21. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")[1] in providing advice and assistance, it will have complied with section 16(1).

22. The Commissioner's view in this case is that it is unlikely that the complainant's request could have been refined to the point that it could have been complied with within the cost limit. Therefore, there was no meaningful advice and assistance on this point that the Council could have provided and so no breach of section 16(1) occurred.

[1] https://www.gov.uk/government/publications/freedom-of-information-code-of-practice

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

    First-tier Tribunal (Information Rights)
    GRC & GRP Tribunals,
    PO Box 9300,
    LEICESTER,
    LE1 8DJ

    Tel: 0300 1234504
    Fax: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.

25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed .....

Ben Tomes
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