

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2015

Public Authority: Longstanton Parish Council
Address: The Village Institute
24 High Street
Longstanton
CB24 3BS

Decision (including any steps ordered)

1. The complainant made three separate information requests on 16 July 2014, 13 August 2014 and 24 September 2014 requesting information in relation to the council's insurance policy and an insurance claim. Longstanton Parish Council (the council) provided the complainant with some information and advised that no claim was made and therefore no claim details were held.
2. The Commissioner's decision is that the council does not hold any claim details, and on the balance of probabilities, he has determined that no claim was made. However the Commissioner has determined that the council does hold further information falling within the scope of the complainant's request of the 16 July 2014.
3. He has determined that the council holds correspondence between itself and the insurance company, recorded as minutes, which were made during a disciplinary investigation about the previous clerk.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Either; provide the complainant with a copy of these minutes, identified in paragraph 3 above, or issue the complainant with a fresh response under the FOIA.
5. The public authority must take these steps 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

6. On 16 July 2014 the complainant wrote to the council and requested the following:

"...I need a listing of all Chairs and their dates of acceptance of office (or dates elected) from 2005 to present day.

I believe these may be in register form so trust this is not too difficult.

From Longstanton Life June/July 2014 (Community Concerns) I have noted the Chairman's comments re Insurance Cover.

Please provide me with a copy of the insurance claim (proposal) if any, correspondence with insurers, if any, and the name and contact details of the Insurance Company Assessor."

7. The council wrote to the complainant on the 21 July 2014. It stated that it was willing to send a copy of the insurance details but asked for a reason as to why he wanted the information.
8. The complainant responded on the 22 July 2014 advising it was so that he could fill in the gaps and show that the council acted responsibly in reporting the matter to its insurers.
9. He wrote to the council again on the 13 August 2014 thanking it for providing him with the minutes and other information. He then requested the following information from the council:

"I have now passed those insurance details on to the relevant authority and must now ask for a copy of the claim form ref. BH/3/76913. Perhaps you could scan and send that to me in the next day or so."

10. The council wrote to the complainant on the 16 August 2014. It advised before it could respond it needed to know in what capacity he had forwarded a copy of the insurance details to the relevant body and who is this?
11. On 19 August 2014 the complainant wrote to the council explaining that he was acting in neither an official or unofficial capacity but merely as a parishioner doing research following the cessation of the 28 March 2014 forensic audit.
12. The complainant wrote to the council again on the 29 August as he had not heard back since his last email and to advise that he had still not

received the requested claim form. The complainant advised that he was now requesting it under the FOIA.

13. The council responded on the 2 September 2014. It apologised for the delay and recalled that it wanted to know who the relevant authority was that he had sent a copy of the insurance document to. It also advised that it would deal with the FOI request at the next full council and respond afterwards.
14. The complainant advised the council on 4 September 2014 if it is not discussed at the 8 September 2014 meeting, then the October one would be fine.
15. On the 12 September 2014, the council responded to the 13 August 2014 FOIA request. It advised that *"...the opportunity of a claim being pursued for losses incurred, was discussed with the Loss Adjustor at the time. The advice received from them was that there would be no likelihood of a successful claim, therefore, no claim for was provided by them in this regard."*
16. The complainant wrote back to the council on 15 September 2014. He advised that he did not consider that it had met the requirements of the FOIA. He considered that a copy of the claim form could be obtained from the insurers.
17. With regards to the statement that the matter was *"discussed with the Loss Adjustor at the time"*, the complainant stated that he has previously requested the name and contact details of this person and remains perturbed that the council does not have this information.
18. However, he advised that the Loss Adjustors have already been stated to be Cunningham Lindsey. So he considered that the council will be able to obtain the information from them.
19. The complainant wrote again to the council on the 24 September 2014, enclosing a copy of your correspondence sent to it on 15 September 2014. The 24 September correspondence requested:

"A copy of the Longstanton Parish Council's insurance policy 11/AC/05277347/06 and claim number BH/3/76913 showing full details of the claim and any follow up notes.

I am also advised that the loss adjusters were Cunningham Lindsey and need to know who the particular loss adjuster was, his or her contact details and their further comments in relation to this claim."

20. The council responded on the 29 September 2014. It advised that the information requested is not held by the council. It stated that it has provided the complainant with as much information as it is able to.
21. It also stated that as the request is repeatedly similar, it considered the request vexatious. It stated that if he were unhappy with the response, to contact the Information Commissioner.
22. On 2 October 2015 the complainant advised that the person the council needs to speak with is [name redacted], Operations manager of Aon. He provided his contact details. And on 5 October 2015 he wrote to the council stating that he did not consider the request to be vexatious.
23. On 7 October 2014 the council wrote to the complainant stating that the council has provided him with:

"Minutes dated 13 Feb 2012

Minutes dated 15 May 2012

[name redacted] External Audit Report 2010/2011

Email from [name redacted] & Co dated 5 February 2013

Letters from [name redacted] dated February and April 2014

Insurance Details

List of Chairman since 2005

Minutes from November 2007 to March 2009

Draft Minutes from Annual Parish Meeting 2014"

24. It repeated that it considered the request to be repeated and considers it to be vexatious. It stated that it has no need to speak with [name redacted] as there was no claim made as the advice given was that there was no likelihood of the claim being successful.
25. It advised it was no longer going to continue communications with the complainant on this matter.
26. On 10 October 2014 the complainant wrote to the council and stated that it is unfortunate that it has been unable to obtain and provide the details as previously requested concerning the original insurance claim lodged by the council. He advised that he has received an email from [name redacted] of Aon in which he advises that he has spoken to the clerk and advised her to contact Allianz for these details. The complainant repeated his request of the 24 September 2014 and stated

that it can contact Allianz direct for the information or alternatively provide him with a letter of authorisation to obtain it himself.

27. On the 13 October 2014 the complainant advised the council that a claim was made and the claim number is BH/3/76913.
28. The council acknowledged receipt of the 13 and 10 October 2014 correspondence and advised it would be filed.
29. On 31 October 2014 the complainant contacted the council suggesting to set up an appointment with the council to go through the insurance file together and confirm what is there and what is missing. Then this would enable to the council to write to the insurers advising which papers are missing from the file to request copies from them.
30. On 7 November 2014 the council advised the complainant that it has sourced the insurance documents and can forward them on once payment for postage had been received. Then it wrote again on the 10 November 2014 advising that it will not be proceeding with the request and asked him to not pay the postage fee.

Scope of the case

31. The complainant contacted the Commissioner on the 25 November 2014 as he was not satisfied because the council had not provided him with the information requested.
32. He requested an internal review on the 15 January 2015 setting out the 24 September 2014 request as the information being what is required:

"A copy of the Longstanton Parish Council's insurance policy 11/AC/05277347/06 and claim number BH/3/76913 showing full details of the claim and any follow up notes.

I am also advised that the loss adjusters were Cunningham Lindsey and need to know who the particular loss adjuster was, his or her contact details and their further comments in relation to this claim."

33. He also advised in this review request that he had been advised by the clerk that she was in possession of the documents and they would be forwarded on following receipt of payment for postage. Also he stated that he had been advised by Allianz that they had been instructed by a councillor not to release any information or to discuss the policy or claim further.

34. The council provided its internal review on the 13 February 2015. It advised that the information is not held by the council and it will not be writing to Allianz.
35. The complainant wrote to the council on the 3 March 2015, stating that he is seeking access to the file and he will be accompanied by a parishioner to witness it. The council responded again on the same day reiterating that there was no claim made and therefore there is no claim form. Also there is no letter of authority and it is not going to create one. The complainant wrote back asking for a date to be arranged to inspect the file.
36. During the Commissioner's initial investigations the complainant was provided with the name of the Loss Adjuster. Also the council has advised that it will provide him with a copy of the insurance policy following receipt of payment. It has made it abundantly clear that the insurance policy does not include an insurance claim. The complainant has advised the Commissioner in a telephone conversation that he will email and make payment to the council for the insurance policy outside of this decision notice.
37. The Commissioner considers the scope of the case is to determine whether the council holds information in relation to the reference number BH/3/76913 requested on 13 August 2014 and 24 September 2014 or any other correspondence held by the council between it and the insurance company as requested on 16 July 2014.

Reasons for decision

38. Section 1 of the FOIA states that a person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to him.
39. Where there is a dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
40. Therefore the Commissioner must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
41. To add some context to this case, the council has explained to the Commissioner that a previous clerk had embezzled money from the

council during their employment and to which there was a disciplinary investigation, which the council has confirmed is public knowledge. The council had hoped to be able to make a claim against this on its insurance policy. However, following a meeting with the loss adjuster, it was made clear to the council that it would be very unlikely that the insurance company would support a claim as the previous council had not adhered to their own policies.

42. The council has told the Commissioner that with regards to the reference number BH/3/76913, this is not a claim number, this is simply a reference number provided to the council by the insurance company as a telephone log for the initial contact. It was the chair and vice chair who contacted the insurance company in this instance.
43. The council has confirmed it holds an insurance policy, but as there was no claim made, it does not hold any claim details.
44. The council has stated to the Commissioner that it is a legal requirement that insurance documents are kept by the council.
45. The Commissioner is aware that the complainant has contacted the insurance company directly to try and obtain further information from it. The insurance company has refused to provide information to him. The Commissioner notes that a request to the insurance company directly falls outside the Commissioner's remit to investigate and has also made the complainant aware of this.
46. However, on viewing the email responses the complainant received from the insurance company, the Commissioner does not see any indication that there was an insurance claim made by the council.
47. The council are clear that the reference number BH/3/76913 is merely a telephone log reference and it seems plausible to the Commissioner that the council chose not to make a claim following advice from the loss adjuster.
48. Also, the people who were in office at the council at the time of this event are still in office today so it is highly probable that if a claim were made and/or pursued by the council, then these people would have a distinct recollection of it given the nature of what the claim would have been for.
49. On this basis, the Commissioner finds that on the balance of probabilities, the council does not hold details of an insurance claim or form in relation to the requests.
50. However, following the Commissioner's investigations, the council has explained that although no claim was made it does hold correspondence

in the form of minutes between itself and the insurance company. This being made during a disciplinary investigation about the previous clerk.

51. The complainant's 16 July 2014 request specifically asked for '*correspondence with insurers*'. The Commissioner considers that the correspondence with the insurance company, recorded as minutes by the council, completed during the disciplinary investigation would fall within the scope of the complainant's 16 July 2014 request.
52. The Commissioner has spoken with the council about this and it has not argued that this information does not fall within the scope of the complainant's 16 July 2014 request.
53. On this, the Commissioner requires the council to carry out the steps as per paragraph 4 and 5 of this decision notice.

Right of appeal

54. 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

55. 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.
56. 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

Andrew White
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