

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2014

Public Authority: Wolston, Brandon and Bretford Joint Burial Committee

Address: Church Farm House
Main Street
Brandon
Nr Coventry
CV8 3HW

Decision (including any steps ordered)

1. The complainants have requested information about burial procedures and associated processes undertaken by Wolston, Brandon and Bretford Joint Burial Committee (WBBJBC). WBBJBC has considered the requests as vexatious and applied FOIA section 14.
2. The Commissioner's decision is that in respect of the request dated 24 September 2010 WBBJBC has provided all the information held. In respect of the remaining requests, he finds that WBBJBC has correctly applied section 14. He notes however that section 14 was applied to some of the requests outside the statutory time limit of 20 working days and therefore WBBJBC has breached section 17(5) of the FOIA. He does not require any steps to be taken.

Background

3. The background to this case is particularly sensitive. The complainants were delivered of a premature baby over 34 years ago; the infant passed away within hours of birth. Some years later the complainants were made aware that the health authority involved had retained some of the deceased infant's tissue. The complainants wished to have the tissue interred with the remains of their deceased child. Their efforts to proceed with this process stalled when it became apparent that the Register of Burials was incorrect as it named the deceased as the father rather than the infant. This error was subsequently rectified by a

statutory declaration in 2006. The complainants did not accept this amended position and have since sought to establish whether or not the burial plot relating to their deceased child contains those remains or not.

4. The requests to WBBJBC have been made in conjunction with requests to Brandon and Bretford Parish Council and to Wolston Parish Council. The complaints are linked by their nature and by the connection between all three public authorities. Both Wolston Parish Council and Brandon and Bretford Parish Council delegate burial functions to Wolston, Brandon and Bretford Joint Burial Committee. The complaints to the Commissioner in respect of all three public authorities have been handled by the same solicitor. The Decision Notice in respect of Brandon and Bretford Parish Council is held under reference FS50533115 and the Decision Notice in respect of Wolston Parish Council is held under reference FS50529145.

Request and response

5. The complainants submitted a request to WBBJBC on 24 September 2010 for information regarding its burial procedures, structures, legal arrangements and statutory functions. Following the Commissioner's involvement in a complaint submitted at a later date, WBBJBC responded to the request on 4 March 2014. The complainants disputed that WBBJBC had provided a complete response to the request.
6. The complainants then submitted nine further requests to WBBJBC between 13 March and 24 March 2014. The requests were on the same theme as the request WBBJBC had responded to on 4 March 2014 and stem from the complainants' concerns outlined at paragraph 3. The annex to this notice reproduces the wording of the requests submitted by the complainants to the Commissioner for consideration.
7. During the course of the Commissioner's investigation WBBJBC wrote to the complainants to advise that it was applying section 14 to all requests it had received from the complainants.
8. WBBJBC does not have an internal review mechanism for decisions under the FOIA.

Scope of the case

9. The complainants contacted the Commissioner on 14 March 2014, 15 April 2014 and 17 April 2014 to complain about the way their requests for information had been handled.
10. The Commissioner accepts that the complainants have been corresponding with WBBJBC since 2006 and against that backdrop he understands the rationale behind WBBJBC's consideration of section 14 in respect of all the complaints. However he has decided that with regard to the request dating back to 2010, which had received a response which the complainants consider incomplete, in the circumstances – in particular the age of the request and the length of time taken to respond - it should be considered separately in accordance with section 1 FOIA.
11. Therefore, the Commissioner considers the scope of his investigation is to determine whether WBBJBC has provided all the information held in respect of the request dated 24 September 2010 and whether it has correctly applied section 14 to the remainder of the requests.

Reasons for decision

Section 1 – General right of access

12. Section 1(1)(a) and 1(1)(b) of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
13. In considering cases such as this the Commissioner will consider whether, on the balance of probabilities, the requested information is held. In order to reach a decision on this the Commissioner will ask the public authority detailed questions as to the nature of the requested information and the searches it has carried out. He will then consider the context of the case, the nature of the requested information, the authority's responses, the arguments provided by the complainant and any evidence to suggest that the information in question is held.
14. The complainants had, on 24 September 2010, requested information from Wolston Parish Council regarding the relevant authority involved in commissioning, making and verifying the amendments to public records dated 12 July 2006. Wolston Parish Council had replied advising that it

did not hold information within the scope of the request but if it were held it would be held by WBBJBC.

15. On 4 March 2014 a response to the request was sent to the complainants by WBBJBC's solicitor. The complainants were provided with a copy of a Statutory Declaration of the former clerk to WBBJBC together with copy exhibits. They were also provided with a copy resolution which was passed on 12 July 2006 authorising the amendment to the register of burials.
16. The complainants have asserted that the response does not provide the requested information.
17. The Commissioner has considered the scope of the request and the documents provided. Whilst the complainants have also asserted that these documents cannot be considered legal authorisation for activity which took place on 3 June 2006, the Commissioner notes that the original request did not mention activity dated 3 June 2006, but requested information about the authority for amendments to records made on 12 July 2006.
18. In considering this request, the Commissioner is satisfied that on the balance of probabilities, the documents provided are the only documents held falling within the scope of the request. In reaching this conclusion the Commissioner has compared the scope of the request to the scope and content of the information provided to the complainants and concluded that it is unlikely anything further is held.

Section 14 – vexatious requests

19. Section 14(1) FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
20. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (information Rights) recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

¹ GIA/3037/2011

21. 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.

22. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

23. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress

24. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

Harassment to the public authority

25. The FOIA is generally considered to be applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made or any evidence the applicant has imparted about the purpose behind their request. In this case, the request is made against a backdrop of other communication with WBBJBC.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

26. WBBJBC employs a clerk to deal with administrative issues; the hours vary from week to week but the clerk generally works around four hours per week.
27. The clerk asserts that the time and cost of handling the requests submitted by the complainants is difficult to determine exactly, but that over the years, since 2006, expenses claimed directly related to handling their correspondence amounts to around 25% of the total expenses claimed. The associated costs would be more significant, it is submitted, were it not for the fact that the solicitor handling this on behalf of WBBJBC does not charge a fee.
28. Previous dealings with the complainants has led to the clerk handling correspondence on behalf of the complainants from their MP, their solicitor, The Department for Constitutional Affairs, the Local Government Ombudsman and the local Diocese, including the office of the Archdeacon. More recently, the clerk estimates that she has spent at least half an hour each week dealing solely with the complainants' requests which represents an eighth of her available working time. The clerk asserts that this takes her away from other duties which necessarily suffer as a result.
29. In its submission to the Commissioner, WBBJBC has described the dealings with the complainants as psychological warfare and has stated that it has taken its toll on the clerk who feels sick each time she recognises the complainants' writing on an envelope waiting for her in the post. WBBJBC asserts that the cost in heartache and worry to the clerk cannot be calculated. The clerk has acknowledged the sensitivity of the complainants' circumstances and describes initially feeling a lot of sympathy but that over time and as a result of what she considers to be the complainants' vindictive and verbally abusive campaign against her, she feels that she has become their victim.
30. The Commissioner has seen correspondence from the complainants to Wolston Parish Council naming the clerk of WBBJBC and describing her and the authority as "*inappropriate, unethical disrespectful and dishonest*".
31. A solicitor's letter was sent to the complainants on 5 August 2011. The letter described the correspondence and communications received by Wolston Parish Council and WBBJBC as very extensive. The letter then set out the position regarding the error made on the Register of Burials. An apology was offered in respect of the error and in terms of any distress caused. The letter addressed the fact that the complainants had subjected Wolston Parish Council and Wolston, Brandon and Bretford

Joint Burial Committee to "*protracted correspondence which, if it continues may amount to harassment*".

32. The position with regard to the correspondence was reiterated in a further solicitor's letter to the complainants on 18 June 2012. The letter outlined the fact that Wolston Parish Council and WBBJBC had been advised not to answer any further communication from the complainants but to forward it to the solicitor's office. The letter explained that this did not necessarily mean that a reply would be issued.
33. The prevailing situation of continual requests, their nature and the adverse effect they were having on the clerk to the council meant that WBBJBC took the decision to apply section 14 to the requests.

Purpose and value of the request

34. When assessing whether a request, or the impact of dealing with it, is justified or proportionate, it is helpful to assess the purpose and value of the request. The Commissioner has considered the case thoroughly in respect of this request, its background, purpose or value and impact on WBBJBC.
35. The lengthy correspondence and requests under the FOIA were prompted as a result of the discovery of a clerical error. The burial certificate which had been issued following the infant's death recorded the name of the deceased as the father when in fact he was the person registering the burial. The records show that the father was granted the exclusive right of burial and that he had paid the burial fee of £25. He could not therefore be the deceased. Once identified, the error was rectified by a Statutory Declaration dated 17 June 2006. On 12 July 2006, a meeting of the Burial Committee authorised the amendment to the Register of Burials. Solicitors acting on behalf of the three public authorities have explained that the original Statutory Declaration with exhibits was sent to the complainants on 13 July 2006, the day after the records were corrected. A copy of the Statutory Declaration and the resolution dated 12 July 2006 was sent to the complainants again on 4 March 2014 in response to a request made to WBBJBC. Writing to the complainants on 5 August 2011, the solicitors for the three public authorities expressed regret for the clerical error and any ensuing distress on behalf of Wolston Parish Council and Wolston, Brandon and Bretford Joint Burial Committee.
36. The Commissioner is satisfied that concerns expressed initially by the complainants have been addressed as fully as is possible by the public authorities involved and that being the case, it is difficult to identify the

purpose and value of these subsequent requests to WBBJBC other than to satisfy a personal agenda on behalf of the complainants.

37. The Commissioner is in no doubt that the particular circumstances of this case mean that as far as the complainants are concerned, the requests have a serious value and purpose. The complainants have a strong interest in the matters about which they are pursuing information. However, the Commissioner also acknowledges that there is only a limited public interest in the matters pursued by the complainant, which essentially relate to their private dispute with the public authority. Indeed, during the course of his investigation, the complainants have talked at length on the telephone about their circumstances with a member of the Commissioner's staff. The Commissioner notes that, whilst their particular circumstances are deserving of a sympathetic and compassionate approach, his role is solely to make an objective analysis of the requests and responses to determine if the FOIA has been correctly applied by WBBJBC.
38. It is clear to the Commissioner that the volume of requests submitted by the complainants in a short period will create a burden on the authority's resources, particularly given it is a small public authority and has limited resources. This view is strengthened by the arguments provided by WBBJBC about the impact upon the workload of the clerk. However, the question for the Commissioner to consider here is whether the purpose and value of the requests justify the impact upon the authority.
39. The burden on the public authority has been significant, has detracted from other areas of work and has caused significant harassment, annoyance and stress to the public authority and more specifically to the clerk, who feels she has been victimised.
40. The Commissioner has considered the purpose of this request in the context of extended communication with WBBJBC; he finds that the effect is to harass and annoy the public authority and that they lack serious value or purpose. He also finds that the request represents an inappropriate and improper use of a public procedure. The complainants had been advised previously (in 2011 and 2012) that continued communication may amount to harassment but the complainants continued to correspond with WBBJBC, submitting requests under the FOIA. Having been advised that continued correspondence may be considered harassment and that they may not necessarily receive a response to any further correspondence, the Commissioner considers that the complainants must have known the requests were futile.
41. WBBJBC is a small public authority which, the Commissioner accepts, cannot reasonably accommodate the burden on resources presented by

the volume of requests received. It has only three paid employees, the clerk and two groundsmen. Whilst smaller public authorities are, like larger authorities, bound by the Freedom of Information Act, it is important to consider that the impact of any significant resource issue is wholly dependent on the limit of the resources available which in the case of a very small public authority such as this is extremely significant.

Context and history

42. The Commissioner notes that the underlying issue is the question over remains in a particular plot of land. The question has arisen because of an administrative error which has been rectified by a statutory declaration. Previous correspondence with WBBJBC and Wolston Parish Council prompted the issue of two solicitor's letters to the complainants. Notwithstanding the issue of those letters the complainants have continued to correspond with both public authorities, making requests under the FOIA. The Commissioner is satisfied that the history and context of the complainants dealings with Wolston Parish Council, Brandon and Bretford Parish Council and Wolston Brandon and Bretford Joint Burial Committee mean that their continued use of the FOIA has become unjustified.
43. In considering this case, the Commissioner has taken account of the background, the nature and volume of requests, the protracted communication with WBBJBC and the impact on its day to day running. In conclusion he finds that FOIA section 14(1) is engaged.

Other matters

44. Having failed to issue responses to the requests within the statutory timescale of 20 working days, WBBJBC has breached sections 1 and 17(5) FOIA. The Commissioner does not require any further steps to be taken other than to note the statutory timescale for responding to any future requests.
45. The Commissioner notes that the complainants have alleged that, in response to their requests, they have been provided with a "doctored" version of the amendment activities of 12 July 2006. WBBJBC have stated that the documents provided were exact copies which had not been altered in any way. As the complainants have offered no supporting evidence in respect of their allegation, the Commissioner accepts the position of WBBJBC.

Right of appeal

46. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

47. 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.
48. 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

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

Annex

Requests to Wolston Brandon and Bretford Joint Burial Committee

1. On 24 September 2010 the complainants requested information of the following description:

"RE WOLSTON PARISH COUNCIL PUBLIC AUTHORITY BURIAL AUTHORITY RE BURIAL COMMITTEE DYERS LANE CEMETERY, BURIAL GROUND MANAGER'S AND BURIAL RECORD KEEPER'S ADDITIONS AND AMENDMENTS TO PUBLIC BURIAL RECORDS 12.07.2006.

WHILST WE ARE STILL AWAITING THE PROMISED FORTHCOMING REPLY OF 02.03.2007 PLEASE KINDLY PROVIDE INFORMATION AS TO WHO AUTHORIZED BY LAW THE ADDITIONS AND AMENDMENTS OF 12.07.2006 TO THE PUBLIC RECORDS.

UNDER WHOSE AUTHORITY BY LAW WERE ADDITIONS COMMISSIONED FOR THE PUBLIC RECORDS. WHO WERE THE ADDITIONS COMMISSIONED FROM. WHO PRESENTED THEM.

UNDER WHOSE AUTHORITY BY LAW WERE DECISIONS AND AND ACTIONS THEN TAKEN BY THE COMMITTEE REGARDING THE CONTENT OF THE ADDITIONS.

UNDER WHOSE AUTHORITY BY LAW WERE THE CONTENTS OF THE ADDITIONS VERIFIED AS ACCURATE. UNDER WHOSE AUTHORITY BY LAW WERE THE CONTENTS SUBSTANTIATED.

UNDER WHOSE AUTHORITY BY LAW WERE THE COMMITTEE AUTHORIZED TO MAKE DECISIONS AND TO TAKE ACTIONS REGARDING PRESENTED/COMMISSIONED ADDITIONS".

2. On 13 March 2014 the complainants requested information of the following description:

"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION.

PLEASE SUPPLY (IN PRINTED PAPER FORMAT/HARD COPY) INFORMATION AS TO WHO WBBJBC'S PRINCIPAL AUTHORITY IS".

3. On 15 March 2014 the complainants requested information of the following description:

"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION.

PLEASE SUPPLY (IN PRINTED PAPER FORMAT/HARD COPY) INFORMATION AS TO HOW MUCH WBBJBC HAVE SPENT, 04.03.2014, OBTAINING 3RD PARTY INFORMATION HANDLING SERVICES FROM A 3RD PARTY RE INFORMATION ABOUT WBBJBC'S ACTIVITIES CIRCA 2006".

4. On 16 March 2014 the complainants requested information of the following description:

"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION

PLEASE SUPPLY (IN PRINTED PAPER FORMAT/HARD COPY) INFORMATION AS TO WBBJBC'S EXPENSE CLAIMS CIRCA 2006-2007".

5. On 17 March 2014 the complainants requested information of the following description:

"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION.

PLEASE SUPPLY (IN PRINTED PAPER FORMAT/HARD COPY) INFORMATION AS TO WBBJBC'S CLERK'S EXPENSES CLAIMS CIRCA 2006-2007".

6. On 18 March 2014 the complainants requested information of the following description:

WE WRITE TO MAKE A REQUEST UNDER FOI LEGISLATION.

PLEASE SUPPLY (IN PRINTED PAPER FORMAT/HARD COPY) INFORMATION AS TO WHO WBBJBC'S SOLICITORS ARE, INFORMATION AS TO WHEN YOU BECAME YOUR SOLICITORS CLIENTS AND INFORMATION AS TO HOW MUCH YOUR SOLICITOR CHARGE WBBJBC FOR ANSWERING FOI REQUESTS ON WBBJBC'S BEHALF".

7. On 19 March 2014 the complainants requested information of the following description:

"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION RE WBBJB'S PARTICIPATION IN ACTIVITIES WITH 3RD PARTIES FOLLOWING WPC'S PROCEEDINGS/ACTIVITIES OF 24.06.2011 PERTAINING TO OURSELVES.

PLEASE PROVIDE (IN PRINTED PAPER FORMAT/HARD COPY) EVIDENCE (INFORMATION THAT PROVES) THAT IT WAS LEGAL FOR WBBJBC REPRESENTATIVES TO PARTICIPATE IN ACTIVITY/ACTIVITIES WITH 3RD PARTIES, PERTAINING TO OURSELVES FOLLOWING WPC'S PROCEEDINGS/ACTIVITIES OF 24.06.11 PERTAINING TO OURSELVES.

8. On 20 March 2014 the complainants requested information of the following description:

"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION RE WOLSTON PARISH COUNCIL'S (WPC) DECISION/DIRECTIVE OF 24.06.2011

PLEASE PROVIDE THE NAMES OF THE TWO WBBJBC REPRESENTATIVES, WHO ATTENDED MEETINGS/APPOINTMENTS/DISCUSSIONS WITH REPRESENTATIVES FROM WPC AND BRANDON AND BRETTFORD PARISH COUNCIL (B&BPC) AND A 'OTHER' 3RD PARTY, AND WHO HELD DISCUSSIONS AND MADE DECISIONS, REGARDING OURSELVES AND OUR CORRESPONDENCE, BEHIND OUR BACKS, WITHOUT OUR PRESENCE, WITHOUT OUR KNOWLEDGE AND WITHOUT OUR PERMISSION.

9. On 23 March 2014 the complainants requested information of the following description:

"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION.

PLEASE PROVIDE INFORMATION AS TO HOW MANY DEATH CERTIFICATE COPIES WBBJBC HAS TAKEN CUSTODY OF.

PLEASE PROVIDE INFORMATION AS TO HOW MANY TIMES WBBJBC HAS REQUIRED CUSTODY OF DEATH CERTIFICATE COPIES".

10. On 24 March 2014 the complainants requested information of the following description

"WE WRITE MAKING A FOI REQUEST UNDER FOI LEGISLATION.

PLEASE SUPPLY INFORMATION AS TO WHO WBBJBC'S INTERNAL AUDITORS ARE AND INFORMATION AS TO WHO WBBJBC'S EXTERNAL AUDITORS ARE".