

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2015

Public Authority: Rainworth Parish Council
Address: Village Hall
Kirklington Road
Rainworth
Mansfield
Nottinghamshire
NG21 0JZ

Decision (including any steps ordered)

1. The complainant requested a set of minutes, and any associated material, from a parish council meeting held in 2009. He asked to have this information provided in an electronic format, which is how Rainworth Parish Council (the "Parish Council") has published its minutes since 2012. The Parish Council offered to either post him a hard copy, if he provided his address and covered the cost of postage, or invited him to visit its offices and obtain a free photocopy. The complainant insisted on a copy in electronic format.
2. The Commissioner's decision is that the Parish Council could readily have provided the complainant with a copy of the information in the requested format so it should have complied with the request. He therefore requires it to take the following steps to ensure compliance with the legislation:
 - provide a copy of the requested minutes, and any associated material, in electronic format.
3. It 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.

Background

4. The request can be followed on the "What do they know" site:

https://www.whatdotheyknow.com/request/agenda_minutes_and_attached_docu#incoming-603440

5. The Commissioner has previously dealt with a complaint made by this complainant about the quality of this Parish Council's publication scheme (it did not progress to decision notice). At the time of making this request that complaint remained unresolved, however, the publication scheme has now recently been updated. It is noted that the publication scheme now states that minutes such as those covered in this request are only available in paper copy on payment of a fee. This information was not available to view at the time of this request so it has not been considered here. The decision made in respect of this case does not determine whether or not the Parish Council is generally entitled to make charges for all its older minutes and to only provide them in paper copy.

Request and response

6. On 10 December 2014, the complainant wrote to the Parish Council and requested information in the following terms:

"Will you please let me have an electronic copy of the Council [sic] minutes of 8 January 2009 and an electronic copy of any documents referred to in these minutes".

7. The Parish Council responded on the same day. It stated:

"The information you have requested is only available in hard copy. If you could please supply your postal address I will happily forward the information to you. There will be a small charge to cover the cost of postage only".

8. In requesting an internal review the complainant said:

"I note that, on your website, you provide copies in Pdf format of printed documents - ie your minutes. From this I can see no reason that you are unable to provide scanned electronic copies as I requested".

9. As a response the Parish Council advised:

"... there is no valid reason to hold an internal review as you have been appropriately answered and a copy of the said minutes has been offered to you in the format to which it is available.

If you still wish to obtain a hard copy of the document requested please could you forward your postal address to me along with a payment of £2.50 to cover postage and packaging. You are of course very welcome to visit the parish office, peruse the document in person and take with you a free copy if you so wish".

Scope of the case

10. The complainant contacted the Commissioner on 9 January 2015 to complain about the way his request for information had been handled. In his view, as the Parish Council minutes are currently available online in electronic format it would be easy for it to provide the one set he has requested in that same format.

Reasons for decision

Section 11 – means of communication

11. Section 11(1) of the FOIA states that where, on making his information request, the applicant expresses a preference for communication by any one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.

12. Section 11(1) therefore allows an applicant to request a particular means by which the information is communicated to them. It does not state that the public authority must comply but it does state that a public authority must give due consideration to the applicant's preference for communication and should oblige when this is reasonably practical.

13. This section addresses the practicality of complying with an applicant's preference i.e. whether this is actually possible not whether the information itself should be disclosed. Obviously, there will be cases when it is not possible to comply because the information requested is not held in the format requested. It will then be for the Commissioner to decide whether or not it would be reasonably practical to provide the information in a different format, as is the case here.
14. It has already been established that the requested information was held at the time of the request albeit only in a hardcopy format. The Parish Council has given the Commissioner the following reasons for not complying with the request:

"Rainworth Parish Council has offered to send [name removed] the minutes he requested. We replied promptly and politely and advised in which format the information was available, the reason being that these are archived minutes as they are over 6 years old and therefore only available as a paper copy. Minutes are a formal record of official acts and decisions which are entered into a book kept for that purpose... We started to make our minutes available to the public on our website from 2012 ... any minutes previous to this are contained within a hardcopy minute book from which photocopies can be taken and this is why, as we explained to [name removed] only paper copies are available for minutes pre 2012.

We cannot create new ways of doing things for every individual FOI we get. We have asked [name removed] to supply his postal address and can only assume as he seems not to want to divulge this information that the request is possibly from someone who may be using a pseudonym".

15. When asked for further details the Commissioner was also advised:

"I convert the current minutes into PDF (anything pre 2012 is available for photocopying as it is held in hard copy within the minute book) and then send them to our IT guy who then uploads them to the website".

16. There is no question here as to whether or not the information itself should be released under the FOIA - the Parish Council has offered to post the complainant a copy of the information or has invited him to visit and make his own copy of the papers. There is also no suggestion of the process being onerous or difficult for the Parish Council to comply with as the task of converting the minutes into .pdf format is currently undertaken by the Parish Clerk. The relevant consideration here is only

whether it would be reasonably practical for the Parish Council to provide the requested information in electronic format.

17. Although the requested information is only held in hard copy, the Commissioner notes that the Parish Council's current procedure is for the Parish Clerk to personally convert the papers into an electronic .pdf format and then forward them to be added to their website. This conversion process would, in the Commissioner's view, therefore be reasonably practical for the Parish Clerk to undertake. Having done so, the information then only needs to be emailed directly to the complainant. There would be no additional cost and it would be a relatively simple task. In the Commissioner's view it would be likely to be more cost effective to do this rather than giving up time to supervise someone visiting the Parish Council offices and providing them with the free photocopying service suggested.
18. Additionally, whilst the Commissioner accepts that it would be practical for the Parish Council to copy and then post a hardcopy of the information to the complainant, this process would necessarily involve the exchange of address details and possibly the raising of an invoice and the associated record-keeping to cover the postage / packaging costs suggested. This again is likely to be more onerous than actually converting the papers into .pdf and emailing them to the complainant.
19. Taking the above into consideration, the Commissioner finds that the Parish Council should have complied with the complainant's preference for communication in accordance with its obligations under section 11(1) of the FOIA, as it was clearly reasonable for it to do so. He has therefore decided that the Parish Council has breached section 11(1) of the FOIA and it is now required to provide the requested information to the complainant in an electronic format.

Other matters

20. The Parish Council is reminded that it has already been advised in an earlier decision¹ that it will be expected to comply with the complainant's preference for communication in accordance with section 11(1) of the FOIA *if* a preference of communication is specifically stated

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1005744/fs_50536873.pdf

in the initial request made to it *and* it is reasonably practical for it to do so.

21. The Commissioner has produce guidance on the application of section 11(1) and this can be accessed via the following link:

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/means-ofcommunicating-information-foia-guidance.pdf

22. Although he has seen no evidence to suggest that the complainant is using a pseudonym, the Commissioner would like to draw attention to his views on this matter, ie if a requester has used a pseudonym then their request will be invalid. If the Parish Council does have such suspicions he would suggest that it reads his guidance on this matter².

² <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

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:

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

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