

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2016

Public Authority: Rothbury Parish Council

Address: rothburyparishcouncil@hotmail.com

Decision (including any steps ordered)

1. The complainant requested information relating to the employment of a clerk by Rothbury Parish Council (the Council). The Council did not respond to these requests on the basis that section 17(6) of the FOIA provided that it was not obliged to do so.
2. The Commissioner's decision is that section 17(6) did apply and so the Council was not obliged to respond to the complainant's requests.

Request and response

3. On 2 September 2015 the complainant wrote to the Council and requested information in the following terms:

"Please provide documented evidence confirming the following:

(1) the date of closure of the employed position of the council's former clerk [name redacted], believed to be during or after February 1998.

(2) the date in or around 1998 on which [name redacted] assumed duties as Rothbury parish clerk, whether by formal appointment or informally

(3) copy of the legally authorised resolution of the council, prior to 25th June 2015 confirming selection and appointment of [name redacted] to a permanent employee position as Rothbury parish clerk.

(4) the date on which a formally authorised contract of employment, as an employee of the council was issued by the parish council to [name redacted], and the date on which this was accepted back by the

council, duly authorised.

(5) a copy of the pro-forma contract for the role of Rothbury parish clerk, unsigned or with signatures redacted.

(6) that the employee position of Rothbury parish clerk and RFO has, prior to 25th June 2015, been subject to job evaluation, confirming its position as ranked within a recognised job grading system, as endorsed by a dated formal council resolution,

(7) the council's expectation of its employee, in the form of a job description or similar definition of duties and responsibilities, endorsed by a dated resolution of the council

(8) the most recent date, prior to June 25th 2015, on which the council had assessed and formally endorsed job performance of the clerk.

(9) the most recent evidence formally endorsed by the council, prior to June 25th 2015, confirming that the council had conducted within its annual risk assessment or otherwise an annual review of the clerk's employment.

(10) the date of which [name redacted] assumed the role of Clerk to Rothbury joint burial committee, whether a formal separate contract of employment exists as clerk to the burial committee, or if this is from a legal standpoint, a service provided under the employees contract of employment with Rothbury Parish Council."

4. The Council did not respond to these requests.

Scope of the case

5. The complainant contacted the Commissioner on 1 October 2015 to complain about the failure by the Council to respond to his requests. The Council later confirmed to the ICO that it had not responded to these requests as it believed that they were vexatious and that section 17(6) of the FOIA provided that it was not obliged to respond. The following analysis covers whether the requests above were vexatious and whether the Council was correct that section 17(6) provided that it was not obliged to respond to these requests.
6. During the investigation of this case the complainant was contacted and asked if he wished to continue with this case in light of the previous decision notice that is referred to below. The complainant responded and indicated that he did wish to proceed with this case.

Reasons for decision

Sections 14 and 17

7. This analysis covers the following main points:
- Were the requests above vexatious?
 - Did section 17(6) provide that the Council was not obliged to respond to the requests?
8. As to whether these requests were vexatious, the Commissioner previously issued a decision notice in relation to earlier requests made by the complainant¹. In that decision notice the Commissioner concluded that the requests were vexatious.
9. The Commissioner adopts similar reasoning in this case as set out in the previous decision notice. In particular, he notes the number of requests made by the complainant to a public authority of very limited resources and the lack of discernible value to the requests. The Commissioner also doubts that compliance with the requests above would result in a resolution of the complainant's dealings with the Council.
10. The following wording from paragraphs 20 and 21 of the previous decision notice applies again in this case:
- "[the Commissioner's] view is that the number of requests made by the complainant to a public authority of very limited resources meant that they did have the potential to cause disruption to that authority. As to whether that disruption would be disproportionate, the Commissioner has taken into account that he does not believe that these requests are either of particular value, or that complying with them would be likely to resolve the complainant's wider issue with the Council.*
- For these reasons, the conclusion of the Commissioner is that complying with the complainant's requests would result in a disproportionate and unjustified level of disruption to the Council."*
11. For similar reasons, the Commissioner's finding in this case is that the requests set out above were vexatious.
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¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1433013/fs_50584415.pdf

12. Turning to whether the Council was obliged to respond to the complainant with a written refusal of his information requests, section 17(6) provides that a public authority is not obliged to respond to a request where:

"(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further [refusal] notice..."

13. Subsection (a) is clearly covered; the Council is relying on a claim that section 14(1) applies. Subsection (b) is also covered; the complainant did previously receive a notice stating that earlier requests were refused under section 14(1) of the FOIA.
14. As to whether it would have been unreasonable to expect the Council to have issued a further refusal notice, whilst not a specific requirement of section 17(6), the Commissioner expects a public authority to have warned a requester that any future related requests will not be responded to prior to relying on this section. The Council met this requirement in this case; when informing the complainant that his earlier requests were refused under section 14(1) he was also informed that any future related requests would not be responded to.
15. The Commissioner's view is that the requests set out above were related to the complainant's previous requests in that they stem from his wider issues with the Council. Having warned the complainant that future related requests would not be responded to, the Commissioner believes that it would have been unreasonable to expect the Council to issue a further refusal notice in response to these requests. This third condition was, therefore, satisfied and so the Commissioner finds that section 17(6) provided that the Council was not required to issue any response to this request.

Right of appeal

16. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

17. 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.
18. 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
Senior Case Officer
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