

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 December 2017

Public Authority: Walberswick Parish Council
Address: Rose Farm Cottage
Mutton Lane
Brandeston
Suffolk
IP13 7AR

Decision (including any steps ordered)

1. The complainant has requested information from Walberswick Parish Council which is associated with its community playing fields.
2. The Commissioner has decided that the Council has provided the complainant with all of the recorded information it holds which is relevant to his request for information. She is satisfied that the Council holds no further recorded information than that which it has already provided. The Council's provision of recorded information relevant to the complainant's request as satisfied the duty to do so provided by section 1 of the FOIA. The Commissioner has also decided that the Council has breached section 10 of the FOIA by failing to provide the complainant with a response to his request within the twenty working day compliance period.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 7 February 2017, the complainant wrote to Walberswick Parish Council ("the Council") and requested information in the following terms:

"I request the following information / documentation under the FOI Act and the Environmental Information Regulations:-

- a. *A copy of the 2009 lease / agreement between WPC and WCLT, including a clear demarcation of the area covered.*

- b. *Information / documentation that defines WPC responsibility for gorse clearance, particularly outside the perimeter fence.*
 - c. *Information / documentation that defines WPC responsibility to deal with fences, bearing in mind that WCLC seems to be barred from erecting permanent fences.*
 - d. *A copy of WCLT response to WPC following the meeting that considered the resolution made at the WPC meeting 23 November 2016.*
 - e. *If a WPC S106 application has been made by Mrs Forster, or anyone else connected with WPC, please provide a copy of it, together with SCDC's response. You will be aware that there is no authority for a WPC application for S106 money to be submitted to SCDC.*
 - f. *If an unauthorised WPC application for S106 money has been submitted and then been supported by third parties, please provide copies of the documentation.*
5. The Council responded to the complainant's request on 19 May 2017 by sending him a copy of a lease agreement which the Council said, "contains a clear map with an outline of the extent of the area I hope helps to answer some of your questions".
 6. On 23 May, the complainant wrote to the Council to complain about its response to his request and to ask it to conduct an internal review. The complainant pointed out that the Council had not provided any information in respect of his request, other than to send him information it considered is relevant to item 'a'. The complainant said that the document the Council had sent him, "...is clearly not a lease agreement" and "I find it difficult to believe that such a document would be produced by a professional firm even as an early draft". The complainant also disputed the Council's claim that the document contains a clear map.
 7. Additionally, the complainant asked the Council to provide him with a copy of the Council resolution backing the 2009 'Agreement' between WPC and WCLC and "Was the document you are purporting to be a lease / agreement generated by WPC or WCLT and who acted for the other party? Can I please have information you have that might put flesh on this early draft?"
 8. The Council wrote to the complainant on 24 May 2017 and responded to each item of his request as follows:
 - a. You have already received this.
 - b. Included in item a).
 - c. Included in item a).
 - d. Attached
 - e. You are wrong about the authority – the application was made by post however I have included over and above your request and sent the supporting document and the grant acceptance form and email.

- f. This was not an unauthorised application.
- 9. On 5 June 2017, the Council wrote to the complainant having completed its internal review. The Council's review was limited to its failure to respond to the complainant's request within the 20 working day compliance period.

Scope of the case

- 10. The complainant contacted the Commissioner on 19 June 2017 to complain about the way his request for information had been handled. The complainant specifically complained about the Council's failure to respond to his request within the statutory timescale, its failure to provide him with recorded information relevant to his request and its failure to undertake a proper internal review
- 11. The Commissioner has considered the documentation supplied by the complainant and also the matters he has complained about. She resolved that her investigation should be concerned with how the Council handled the complainant's request, and specifically, she would determine what information was held by the Council at the time the complainant submitted his requests.

Reasons for decision

Section 1 of the FOIA

- 12. Section 1 of the FOIA states that
 - “(1) Any person making a request for information to a public authority is entitled—
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
- 13. The Commissioner has sought to determine whether the Council holds any information which meets the terms specified by the complainant in his request. To make this determination the Commissioner applies the civil test which requires her to consider the question in terms of 'the balance of probabilities': This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.

14. The Commissioner has investigated whether the Council holds recorded information relevant to the complainant's request by asking the Council questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.
15. The Council has advised the Commissioner that it searched for information relevant to the complainant's request. A report was created and minuted and these were provided to the complainant and the public, albeit not within the twenty working days required by section 10 of the FOIA.
16. Extensive research was carried out by the Council and the results of this research was discussed and minuted in a Council meeting at which the complainant was in attendance. The research was published on the Council's website along with relevant attachments.
17. The Council's searches included everything associated with the playing fields, including "old paper documentation, newspaper clippings and interviews with old residents, letters and the like".
18. The Council informed the Commissioner that any information held in respect of the complainant's request would have been old paper-based documents rather than electronic records. The searches carried out by the Council yielded only the report referred to above and its associated attachments. It is this information which was subsequently published on the Council's website.
19. The Council advised the Commissioner that its records are currently held in the Heritage Hut and Village Hall. The Council has resolved to move older records to the Suffolk County Archive and its intention is to sort and refile its records from January 2018 onwards.
20. In response to the Commissioner's enquiry, the Council has advised her that it holds no further recorded information relevant to the complainant's request other than the information which has been provided to the complainant and displayed on its website.
21. The information sent to the complainant, and relevant attachments, are as recorded in the minutes of the Council's Meeting of 17 July 2017¹.

¹ <http://walberswick.onesuffolk.net/assets/Parish-Council/Minutes/Minutes-2017/Minutes20170717.pdf>

22. The Council accept that it failed to respond to the complainant's request within the twenty working day period required by section 10 of the FOIA. It explained that, "one of the main reasons for the delay [...] is that the Council had had no opportunity to look at and understand the old files related to the issues of the playing fields and the fence". These files are concerned with "extremely old issues in the village, going back more than 60 years", and "there are few records as the management and assets, such as they are, are deeply rooted in the community and have been managed by cooperative arrangements and goodwill for nearly all this time".
23. In the Council's opinion, the complainant is disappointed in the Council's response because the information he seeks does not exist.
24. The Council explained that the complainant has, for some time now, disagreed with the Council's provision of and maintenance of playing fields for the community. The Council contends that the complainant has chosen to ignore the Council's and other village organisations legitimate decisions.
25. In making his request for information under the FOIA, the Council considers that the complainant has sought to use FOI and other means to distract and cause expense and difficulties for the Council and the Clerk.
26. To support this position, the Council drew the Commissioner's attention to a previous request made by this same complainant, which the Commissioner found to be vexatious².
27. Notwithstanding the Commissioner's decision in the previous case, the Council understands that the complainant's behaviour does not absolve the Council of its duty to meet valid FOI requests which the complainant might submit.
28. In respect of the complainant's current request, the Council informed him that it was researching the information he had requested and that it would provide the information as soon as possible.
29. The Council provided the Commissioner with the minutes of its meeting of 17 July 2017. These minutes record an oral report given by Councillor Bassinette on behalf of the Council at that meeting.

² Case FS50459125

30. It is the Council's view that Councillor Bassinette's report addresses the situation in relation to the playing fields and its fencing, which the Council itself determined needed to be answered. This is especially so, given the lack of documentation, clarity and long-standing nature of many of the actions associated with these matters. The Council asserts that Councillor Bassinette's report addresses all of the complainant's questions as far as possible.
31. The Council has informed the Commissioner that the complainant has corresponded repeatedly about the playing fields to express his disagreement with the conclusions of some of the research and the decision of the Council.
32. The Council has advised the Commissioner that the complainant continues to write letters to the Clerk and Councillors which contain personal and derogatory statements in relation to this issue and other actions by the Council.

Part 'e' and 'f' of the request

33. The Council has advised the Commissioner that the history of the section 106 application was also unclear at the time of the complainant's request.
34. Subsequent to the complainant's request, the s106 application and the South Coastal District Council's approval was made available to the public and was viewed by the complainant in person in July during the Audit Review.
35. The Council has informed the Commissioner that it found no record in the minutes of its meetings where the Council resolved to submit the application. Nevertheless, the application was signed by the Chair and submitted by the former Clerk.
36. Although this information was provided to the complainant, the Council concede that it was past the compliance period required by the FOIA.
37. The Council has found no further information on this matter. It has been informed that this will be raised in the BDO³ Issues Arising Report for 2016/7 and will be addressed by the Council to ensure that any future decision of the Council is made at a properly convened meeting and is authorized and recorded in the Council's minutes.

³ BDO plc – the Council's auditors.

38. To date, the BDO Report has not yet been received by the Council. The Council has advised the Commissioner that the BDO report will be made public when it has been received.
39. The report made by Councillor Bassinette, which was provided to the complainant, confirmed that there was no record in the Council's minutes of a resolution on the License extension in 2009.
40. The Council made public copies of the 1982 Licence and the 2009 renewal and provided the complainant with an explanation of the actions taken in relation to the report recorded in the minutes of its meeting. The Council advised the Commissioner that it holds no further information which is relevant to parts 'e' and 'f' of the complainant's request.
41. The Council considers that it has provided the complainant with information on the generation of the License, as evidenced by the Law Firm information on the License and the signatures of the License itself, and by additional information in the Report as reported in the minutes of the Council's meeting
42. The Council advised the Commissioner that the information required by the complainant is old and historical, and it was not readily available. The 2009 Licence was readily available and this was provided to the complainant in a timely manner despite the complainant having sent the Council "multiple and often derogatory letters", making it difficult to handle his requests in the required compliance period.

The Commissioner's decision.

43. The Commissioner has decided that Walberswick Parish Council has breached section 10 of the FOIA by failing to properly respond to the complainant's request within the twenty working day compliance period.
44. The Commissioner has noted the Council has already accepted that it has breached section 10. She trusts that the Council will take all reasonable measures to ensure that it responds to future requests within the required twenty working days.
45. Notwithstanding the above, the Commissioner has also decided that, on the balance of probabilities, the Council has provided the complainant with all the recorded information it holds, which is relevant to his request. In providing the complainant with this information, the Council has satisfied the duty to do so under section 1 of the FOIA.

Other matters

The Council's internal review

46. The Council has explained why it limited its internal review to its failure to respond to the complainant's request within the FOIA compliance period. This was because the Council considered that it had provided the complainant with "such fulsome information in the Report" and in good faith, that it assumed that the internal review needed only to concentrate on why it had missed the FOI deadline.
47. Notwithstanding this, the Council maintain the position that this was its only failure in respect of its handling of the complainant's request and it assures the Commissioner that the Council repeatedly informed the complainant that it was working on a review and would share it with him and the public as soon as practical.
48. The Commissioner notes what the Council has said in respect of its limiting the internal review to the breach of section 10 of the FOIA. In future, the Commissioner would expect the Council to address all aspects of a requester's complaint, which are relevant to a request for recorded information, when it undertakes an internal review.

Right of appeal

49. 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

50. 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.
51. 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

Alun Johnson
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