

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2018

Public Authority: Potto Parish Council
Address: 34 The Birches
Coulby Newham
Middlesbrough
TS8 0UA

Decision (including any steps ordered)

1. The complainant has requested a copy of legal advice which the Parish Council had previously announced an intention to seek, along with details of the individuals contacted to supply the advice.
2. The Commissioner's decision is that Potto Parish Council ("the Parish Council") held no information within the scope of the request at the time the request was made and has therefore complied with its duty under Section 1 of the Freedom of Information Act ("the FOIA").
3. The Commissioner does not require the Parish Council to take any further steps in relation to this request.

Background

4. The minutes of the Parish Council's meeting of 16 August 2017, included an entry as follows:

*"The complaint against the Clerk by a member of the public was discussed, it was agreed that this complaint constitutes the continued harassment of an employee of Potto Parish Council by this member of the public, which is wholly inappropriate and unacceptable. **It was resolved to take legal advice on how to proceed.**"* [Emphasis added]

Request and response

5. On 15 December 2018, the complainant wrote to the Parish Council and, referring to the entry in the minutes quoted above, requested information in the following terms:
 - # *"Please provide me with a copy of all the information, of whatever nature, that you have sought or received from third parties in accordance with this resolution 'to take legal advice'.*
 - # *Please include the names or identities of each of the third parties contacted in accordance with this resolution within your response."*
6. The Parish Council responded on 28 December 2018. It stated that: *"the situation is currently on-going and as such there is no further information available."*
7. Following an internal review the Parish Council wrote to the complainant on 17 January 2018. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 5 February 2018 to complain about the way his request for information had been handled.
9. The Commissioner considers that the scope of her investigation is to determine whether any information relevant to the request was held at the time the request was made.

Reasons for decision

10. Section 1(1) of the FOIA states that:

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.*

The Parish Council's view

11. The Parish Council states that it has carried out appropriate searches of its records which would have located the requested information – if it were held.
12. The Parish Council has informed the Commissioner that it held a meeting with Yorkshire Local Councils Associations (YLCA) to discuss the matter and seek advice on how to proceed. This meeting took place on 13 March 2018 and was subsequently recorded in the Parish Council minutes. As such, any information created as a result of that meeting could not have been held at the time the request was made.

The Commissioner's view

13. The Commissioner agrees with the Parish Council that it did not hold any information within the scope of the request at the time it was made.
14. The “legal advice” was sought in a meeting the Parish Council had with YLCA which took place on 13 March 2018 – some 3 months after the request was made. Therefore information within the scope of the first element of the request (the content of the advice) could not have existed – let alone been held by the Parish Council – at the time of the request.
15. In relation to the second element of the request (identities of those contacted), the Commissioner considers that the scope of this element would include any recorded information identifying third parties contacted relating to the scheduling of the YLCA meeting. She also considers that any information which a public authority creates or acquires within the period between receiving a request and responding to it should be considered to be within the scope of that request.
16. In this case, the Commissioner has satisfied herself that the contact between the Parish Council and YLCA in relation to the March meeting did not begin until after the request had been responded to. Therefore the Parish Council is correct to say that it held no information within the scope of the request. As it stated this, to the requestor, in its response, it has therefore discharged its duty under Section 1(1)(a) of the FOIA and thus there are no further matters which the Commissioner need consider.

Right of appeal

17. 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

18. 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.
19. 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
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