Freedom of Information Act 2000 (FOIA)
Decision notice

Date: 12 August 2020

Public Authority: Irby Upon Humber Parish Council
Address: clerk.irbyparish@gmail.com

Decision (including any steps ordered)

1. The complainant requested various information from Irby Upon Humber Parish Council ("the Council") relating to the Council’s contract with IG Compliance Ltd, Council meeting minutes and other information. The Council refused the request under section 14(1) (vexatious requests) of the FOIA.

2. The Commissioner’s decision is that the Council was not entitled to rely upon section 14(1) of the FOIA to refuse to comply with this request.

3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
   - Issue a fresh response to the request which does not cite section 14(1) of the FOIA.

4. The Council 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.

Request and response

5. On 17 October 2019 the complainant wrote to the Council and requested information in the following terms:
"In light of the Parish Council's response surrounding my data protection concerns, it appears your organisation have since entered into a written contract with Mr Robson or IG Compliance Ltd, which sets out the understanding of controller and processor responsibilities and liabilities etc. I would be grateful if a full and complete copy of this written contract, together with full and complete copies of any pertinent background papers, are provided to me.

The Parish Council also state:

"Steps are in place to mitigate any future incidents of this nature."

I would be grateful if full and complete copies of the information pertaining to these steps, together with full and complete copies of any pertinent background papers, are provided to me.

The Parish Council are aware that any complaint they receive can only be processed by them at a properly convened meeting of either the full council or of a committee tasked with investigating the matter. I would be grateful if full and complete copies of the meeting minutes and agenda of the meeting which took place in respect of my complaint are provided to me.

The Parish Council are also aware that a complainant will be invited to attend the meeting at which the complaint would be considered, and be offered the opportunity to be accompanied by a representative, if required. I would also be grateful if the Parish Council could provide me with a full and complete copy of their reasoning behind their decision not to invite me to that meeting along with the names of the members who made that particular decision.

The Parish Council are also aware they will provide the complainant with copies of any documentation upon which it wishes to rely at the meeting and shall do so promptly, allowing the opportunity to read all material in good time for the meeting. I would also be grateful if full and complete copies of this documentation is provided to me."

6. The Council acknowledged this request on 17 October 2019.

7. On 8 November 2019, the Council wrote to the complainant and refused this request citing section 14 of the FOIA (vexatious or repeated requests). It stated the following:
"In your email of 17.10.19 you have stated that you are aware that the Council have now entered into an agreement with IG Compliance (Agreement adopted on 23.09.19) and have requested a copy of this and any background papers pertaining to it. Since the only way you could have been aware of the Council adopting this agreement (draft minutes from the meeting of the 23.09.19 had not been released at the date you sent your email) is to have seen it on our website, where it is available in full to read. Therefore, we consider this request to be Vexatious under Section 14 of the Freedom of Information Act.”

"In light of this and the recent events which have led to the involvement of the Police, relating to behaviour causing harassment, alarm and distress to members of the Council and its staff we feel that we have no other option than to implement Section 5 of the Councils Policy when dealing with Vexatious and/or Repeated Requests (FoIA Section 14). Section 5 of our policy allows the Council to restrict or withdraw contact with a member of the public or a group of people.”

8. The Council had previously informed the complainant that it does not have an internal review procedure and therefore no internal review was requested. As such, this issue is not covered further in this notice.

Scope of the case

9. The complainant contacted the Commissioner on 19 November 2019 to complain about the way his request for information had been handled.

10. The scope of this case and the following analysis is to determine if the Council was entitled to rely upon section 14(1) of the FOIA in order to refuse this request.

Reasons for decision

Section 14(1) – Vexatious requests

11. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

12. The term “vexatious” is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail 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.

13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is 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.

14. 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).

15. 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.

16. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests\(^2\). 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.

17. The task for the Commissioner is to decide whether the complainant’s request was vexatious in line with the approach set out by the Upper Tribunal. In doing so she has taken into account the representations of the Council and the evidence that is available to her. In this decision notice, the Commissioner will also refer to her published guidance on defining and dealing with vexatious requests.

\(^1\) [https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/](https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/)

\(^2\) [https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf](https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf)
The complainant’s position

18. In submitting his complaint to the ICO, the complainant expressed his view that, “I now believe the Parish Council’s decision to engage the exemption at section 14(1) was designed to inappropriately lend credence to their decision to limit my future contact with them, and thereby causing me unwarranted and considerable frustration, annoyance and distress”.

The Council’s position

19. In her correspondence to the Council the Commissioner explained her approach to investigating the application of section 14(1). She asked the Council to provide detailed representations in support of its position that the request in this case was vexatious. In line with her standard approach, she asked the Council to provide:

- details of the detrimental impact of complying with the request
- why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value, and
- if relevant, details of any wider context and history to the request if the Council believes that this background supports its application of section 14(1), including relevant documentary evidence to support such a claim.

20. By the date of this notice, the Council had not provided any submissions in response to the ICO’s investigation letter of 18 February 2020.

21. The Commissioner has written to the Council on several occasions since 18 February 2020 but has not received any written reply regarding this investigation. The Commissioner has also attempted to contact the Council via telephone on several occasions over this period of time without success.

The Commissioner’s position

22. As the Council has not provided any submissions to the Commissioner’s investigation, the Commissioner has only considered the information available to her at the date of this notice.

23. As the Council has provided no arguments in support of its position, the Commissioner’s decision is that the Council was not entitled to rely upon section 14(1) of the FOIA as a basis to refuse to comply with this request. The Council is therefore now required to take the step ordered as outlined above at paragraph three.
Other matters

24. The Council has demonstrated a lack of engagement with the Commissioner during the course of this investigation. We would advise the Council to reconsider the way in which it engages with the Commissioner and be prepared to present its case if any further complaints about the Council are made to the ICO.

25. The Commissioner acknowledges that the Covid-19 pandemic may have impacted the Council’s ability to respond to this investigation. However, the Council were advised of the flexible approach the ICO were taking towards public authorities during this time. If the Council were struggling, or did not have the capacity to respond to this investigation, it should have responded to any of the Commissioner’s various communications to advise of this.
Right of Appeal

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

27. 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.

28. 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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