

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2024

Public Authority: Old Somerby Parish Council
Address: Rimini
School Lane
Old Somerby
Grantham
Lincolnshire
NG33 4AG

Decision (including any steps ordered)

1. The complainant requested copies of correspondence between Old Somerby Parish Council (the Council) and its external auditors PKF Littlejohn (PKFL). The complainant subsequently requested a copy of a risk assessment and associated communications, communications between the Council and the Lancashire Association of Local Councils (LALC) and the identity of the Council's locum Clerk. The Council refused the requests under section 14(1) of the FOIA as it considers the requests to be vexatious.
2. The Commissioner's decision is that the requests are vexatious, and the Council was therefore entitled to refuse them under section 14(1) of the FOIA. He does not require the Council to take any steps.

Request and response

3. On 16 June 2023, the complainant wrote to the Council and requested information in the following terms:

"Please provide copies of all communications between yourself/OSPC and PKFL (including phone calls in respect of which you will have made a

file note) that relate to their costs, as well as any such communications you/OSPC may have had since with them”.

4. The Council issued a refusal notice on 12 July 2023 stating that it considered the request to be vexatious, and as such, it was applying section 14(1) of the FOIA.
5. On 24 July 2023 the complainant requested an internal review of the Council’s handling of the request.
6. The Council acknowledged the internal review request on 13 August 2023 and advised that it was endeavouring to provide the outcome within 40 working days. The Council also referred to other matters concerning its complaints procedure and risk assessment within this communication.
7. On 15 August 2023 the complainant wrote to the Council again relating to the other matters referred to by the Council. They confirmed that they would be prepared to wait “a little longer” for the internal review response. In this communication, the complainant made a new request for information in the following terms:

“I note [name of Clerk redacted] refers to a risk assessment. Please provide a copy of it together with copies of any communications relating to it (including phone calls in respect of which file notes will have been made).

Please also provide copies of all communications with LALC (Lancashire Association of Local Councils) also including notes of phone calls) in connection with the amended complaints procedure to which [name of Clerk redacted] also refers in his letter.

He also makes reference to a locum clerk. Please identify who that person is and provide their contact details”.

8. Various exchanges between the complainant and the Council took place in August and September 2023 in relation to both the information requests, its complaint procedure and its internal review process.
9. The Council provided the outcome of its internal review on 9 October 2023. The internal review referred to both information requests and confirmed that the Council considered both requests to be vexatious, and as such it was relying on section 14(1) of the FOIA.

Scope of the case

10. The complainant initially contacted the Commissioner on 29 August 2023 concerning the delay in receiving the outcome of the Council's internal review response in relation to their request dated 16 June 2023. The complainant also contacted the Commissioner on 15 September 2023 regarding the delay in the Council responding to their request of 15 August 2023.
11. The complainant contacted the Commissioner again on 11 October 2023 following the Council's internal review response to confirm that they were dissatisfied with the handling of their requests.
12. The scope of the Commissioner's investigation is to determine whether the Council correctly relied on section 14(1) to refuse the two requests.

Reasons for decision

Section 14 – vexatious requests

13. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
14. The word "vexatious" is not defined in FOIA. However, as the Commissioner's guidance on section 14(1)¹ states, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
16. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

17. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
18. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
19. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
20. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

The complainant's view

21. The complainant contends that their requests are not extensive or complicated and relate to a particular event. The complainant explained that they had made an objection in respect of the Council's Annual Governance & Accountability Return (AGAR) for 2021/2022. The complainant further explained that the basis for the objection is contentious as it includes concerns that the Clerk and councillors had acted improperly in certain matters.
22. The complainant made the objection to the Council direct initially. They advised the Commissioner that they warned the Council that if it did not consider the objection in an open and transparent manner and the matter was then referred to the Council's auditors PKFL for

²<https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

consideration, the Council might incur costs if PKFL determined issues needed to be actioned. The complainant advised that the Council ignored this warning and proceeded to discuss their objection in closed session. As a result the complainant had no option but to refer the matter to PKFL. They stated that PKFL determined that issues needed to be considered and charged a fee to the Council for their work.

23. At its meeting on 21 March 2023, the Council discussed the objection to the AGAR which the complainant had raised, and the outcome of PKFL's investigation. The Council stated in this meeting that it had received an invoice from PKFL for £4260 inc VAT, but the fee had been reduced to £1278 inc VAT following "a successful appeal by the Clerk". The complainant considers that it is in the public interest in terms of the "grounds put forward by the Clerk/RFO and in terms of the value of the service provided by PKFL". The complainant has alleged that as the reduction in the fee (around 70%) is so significant they consider that some explanation should be given by the Council. Hence their reason for the request dated 16 June 2023.
24. In its internal review response the Council explained to the complainant that the reduction in the fee was secured following a telephone discussion between the Clerk and PKFL. It confirmed that no written or digital record of the phone call was held, but advised that the original invoice and credit note now formed part of the Council's accounts and was approved for payment on 7 April 2023.
25. In their complaint to the Commissioner, the complainant pointed out that even if the Council did not hold a record of the phone call between its Clerk and PKFL, they believed it reasonable to expect the Council to make a post dated note of the call, or otherwise explain the substance of the discussion with PKFL which resulted in the reduced fee payable.

The Council's position

26. The Council explained that the complainant in this case has submitted requests and has been raising issues with the Council since 2019. It provided a summary of emails, letters and requests it had received and confirmed that, since 2019 it has received 67 emails from the complainant, consisting of 661 paragraphs and 64 attachments to emails, which includes audio clips.
27. The Council advised that the complainant has raised a number of issues and concerns, some of which are repeated throughout their contact since 2019. The issues include allegations of conspiracy and collusion on the part of the Clerk and the Internal Auditor, failure to declare interests, allegations that the Council is holding informal meetings and that meetings are invalid as they have not been properly called, and

allegations relating to the electorate's approval of a Neighbourhood Plan several years ago.

28. The Council explained that the complainant had a prior involvement in the Neighbourhood Plan. However, disagreements emerged in respect of proposals which were being developed by the Council and the complainant was subsequently no longer involved. The Council advised that the Neighbourhood Plan was developed, subject to public consultation and a public hearing, and was approved in a public referendum in May 2021.
29. The Council also advised the Commissioner around the same time that the Neighbourhood Plan was being developed, its former Clerk was prosecuted and convicted in 2021 for theft of money from a number of parish councils, including Old Somerby Parish Council. The current Clerk of the Council was formerly a councillor and Chair of the Council at the time its former Clerk was investigated for theft.
30. The Council advised that it is very small, consisting of 5 councillors, none of whom claim any allowances and its Clerk does not receive a salary. The expected time for the Clerk to carry out Council work is 2-2.5 hours a week. However, as a result of the volume of correspondence it receives, the Clerk is spending in excess of 50 hours a year just dealing with matters relating to correspondence received from the complainant. The Council's Internal Auditor also undertakes their role in a voluntary capacity.
31. In addition to the volume of correspondence the Council has received from the complainant, it advised the Commissioner that the complainant has submitted objections to its External Auditors in relation to its AGAR for three consecutive years – 2020/21, 2021/22 and 2022/23.
32. The request which is the subject of this notice relates to the complainant's objections to AGAR for 2021/22. These objections include:
 - 1.0 "Investigation of former clerk's Embezzlement
 - 2.0 The former clerk's complicity in falsifying the OSPC record
 - 3.0 Notice of evidence of conspiracy having been put to OSPC
 - 4.0 The current clerk's conflict of interest
 - 5.0 Allegations from the floor
 - 6.0 Denial of natural justice
 - 7.0 Review of the neighbourhood plan
 - 8.0 Recent statement of accounting methodology".
33. The Council advised that none of the objections were upheld by the External Auditor for a number of reasons. Either the objections were considered "outside the period under review" or that they did not relate to 2021/22 AGAR. The Council published the outcome of this objection

with the minutes of its meeting on 21 March 2023 in the interests of openness and transparency. The Council also confirmed that its accounts are regularly checked by its lead Councillor for Finance and its internal auditor. The Council publishes its AGAR return each financial year, along with associated documents on noticeboards and its website.

34. One of the objections that was raised in relation to the 2021/22 AGAR was the Council's decision to impose restrictions on the complainant's contact with the Council, in accordance with its "Abusive, Persistent or Vexatious Complaints" policy. The External Auditor determined that it did not relate to the AGAR. This objection relates to the Council's decision in August 2019 to apply the policy in question to the complainant's communications. The Commissioner understands this decision includes an instruction for all communications from the complainant to be made via the Clerk. Despite this decision, the Council advised that the complainant has continued to send emails to all councillors. The Council also confirmed that it has reviewed its decision to impose this restriction regularly since it was made, and the decision has been to continue to implement the policy.
35. The Council also advised the Commissioner of an altercation that took place involving the complainant at one of its public meetings. The Commissioner is unable to go into detail of this incident as to do so would potentially allow identification of the complainant. However, the Commissioner understands that as a result of this incident the Council undertook a risk assessment in relation to future public meetings.
36. The Council considers that the issues that the complainant continues to raise date back several years and advise that the issues have been addressed. In relation to the complainant's allegations of conspiracy, collusion and conflicts of interest on the part of the Clerk and councillors, the complainant has demanded that the Council discusses the allegations in open meetings. The Council stated that as the allegations relate to individuals or office holders, such matters are discussed in closed session.
37. In summary, the Council considers that the applicant is "undertaking a campaign of burdensome attrition to bring the parish council to a standstill and incurring extra costs by submitting Freedom of Information requests and the other allegations to the external auditor". The Council considers that the complainant's actions constitute a "manifestly unjustified, inappropriate, or improper use of Freedom of Information Act" and the requests are vexatious in accordance with section 14 of the FOIA.

Commissioner's conclusion

38. In reaching a decision in this case, the Commissioner has taken into account that section 14(1) of the FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. He also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve them absorbing a certain level of disruption and annoyance.
39. The Commissioner has considered both the complainant's position and the Council's arguments regarding the information requests in this case. He has been assisted by the submissions and supporting documents provided by both parties in reaching his decision.
40. The Commissioner notes that the complainant has sent a large volume of correspondence to the Council, including multiple information requests and emails. The Commissioner recognises that the Council is a small organisation with limited resources and that the Clerk works limited part-time hours. Whilst the Commissioner accepts that complying with the requests in this case, in isolation, may not impose a significant burden on the Council, as the Council is a small public authority with limited resources, he considers that the aggregated burden of dealing with the complainant's overall correspondence will have placed a significant burden on the Council.
41. Furthermore, whilst the complainant may have had a genuine issue when they began contacting the Council, the Commissioner considers that the complainant has pursued the issues well beyond the point of reasonableness. He therefore considers that it is unlikely that compliance with the request in question would resolve the complainant's concerns. On the contrary, he believes it would likely result in further correspondence and information requests from the complainant. This would place a further burden on the Council and its limited resources.
42. Taking all the above into account, the Commissioner is satisfied that the Council has demonstrated that the requests in this case are part of a wider pattern of requests, complaints and challenges made by the complainant. When viewed in that context, they go beyond what it would be reasonable to expect a small parish council, with limited resources and a member of staff who works 2.5 hours a week, to absorb in the name of transparency and accountability. He considers that the Council has shown that it is having to spend disproportionate amounts of time and resources in dealing with the complainant's approaches to it and that this risks undermining its ability to carry out its core functions.

Reference: IC-259298-K0W4



43. Accordingly, the Commissioner is satisfied that the Council was entitled to apply section 14(1) of the FOIA

Right of appeal

44. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF