

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2016

Public Authority: Quainton Parish Council
Address: c/o 13 Church Street
Quainton
Aylesbury
Buckinghamshire
HP22 4AW

Decision (including any steps ordered)

1. The complainant has requested information in relation to points he had raised with Quainton Parish Council, which explained that it did not hold any further recorded information.
2. The Commissioner's decision is that the complainant was asking for his own personal information and therefore that it should have been withheld under section 40(1) (personal information) of the FOIA. The Commissioner also considers that Quainton Parish Council has breached sections 1(3) (clarification of a request), 17(1) and 17(7) (refusal of a request).
3. The Commissioner does not require Quainton Parish Council to take any steps as a result of this decision.

Request and response

4. On 22 February 2015 the complainant wrote to Quainton Parish Council (QPC) and requested information in the following terms:

"I am requesting copies of all correspondence held by the Parish Council or Councillors, including all written correspondence between Councillors which relate to my concerns listed in my email of January 27th 2014"

under the Freedom of Information Act 2000 and a copy of the Parish Councils complaints procedure."

5. On 23 February 2015 QPC responded and asked the complainant to confirm that he accepted that his suitably redacted email would be published as part of the FOI response if needed. QPC also explained that it would suspend its response until it received this clarification.
6. QPC made further contact on 13 March 2015. It explained that it considered that the complainant already had all of the correspondence held by it in relation to his concerns of 27 January 2015 and offered to resend the information to him. QPC also explained that the information was restricted to the complainant and the council as it had not been disclosed to the general public.
7. Following an internal review QPC wrote to the complainant on 10 April 2015. It upheld its original decision but explained that it had two email exchanges which had already been covered in an earlier email to him of 9 February 2015 (which predates the present request). QPC offered to send these to the complainant, suitably redacted, as there was third party personal information. Although QPC did not explain which exemption it was applying it did explain that it considered that disclosure would not be in the public interest and that disclosure would cause unwarranted distress.

Scope of the case

8. The complainant contacted the Commissioner on 20 April 2015 to complain about the way his request for information had been handled. He specifically complained that QPC had refused to provide information held in non-work personal email accounts that related to official business of QPC. The complainant also complained that QPC had not disclosed emails written between the parish clerk and councillors and expressed concerns about QPC's understanding that if this information related to QPC business, it could be disclosed under the FOIA.
9. In addition, the complainant complained that QPC had not explained why it was not disclosing certain information and had suspended the time frame for dealing with his request for a reason unrelated to either identifying or locating information.
10. The complainant also complained that QPC had failed to respond to him in the format he had requested and had not advised him of his right of appeal under the FOIA. He also expressed concerns about whether QPC had a retention/disposal schedule and whether information had been deleted.

11. During the Commissioner's investigation he asked QPC whether it had disclosed the information it had referred to in its correspondence with the complainant of 10 April 2015. QPC disclosed this information to the complainant on 13 July 2015, redacting personal information under section 40(2) (personal information) of the FOIA. The Commissioner contacted the complainant about scope of his complaint following the disclosure. The complainant explained that he had asked for any correspondence from QPC to be sent in Arial 14 font but did not complain about the application of section 40(2).
12. The Commissioner considers that the complainant is asking for his personal information; consequently, section 40(1) (personal information) of the FOIA is relevant. He will also consider the way in which QPC handled the request for information.

Reasons for decision

Section 40 (Personal information)

13. Section 40(1) of the FOIA states that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".

14. Under section 40(1) of FOIA, requested information which constitutes the applicant's 'personal data' is exempt information. As section 40(1) is an absolute exemption there is no need to consider the data protection principles or conduct a public interest test.

Is the requested information personal data?

15. The definition of personal data is set out in section 1(1) of the Data Protection Act 1998 (DPA). This provides that for information to be personal data it must relate to an individual and that individual must be identifiable from that information.
16. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
17. In this case, the Commissioner is satisfied that, given that the complainant has requested information relating to concerns he raised previously with QPC, that information constitutes his 'personal data'.

18. The Commissioner therefore considers that it would have been appropriate for QPC to have applied section 40(1) and withheld any information falling within the request.

Section 1 – general right of access to information

19. The complainant complained that QPC informed him that it was suspending the time for compliance with his request, until he confirmed that he accepted that his email would be suitably redacted and published as part of the FOI response, if needed.
20. Section 1(3) of the FOIA states that if a public authority reasonably requires further information in order to identify and locate requested information and informs the applicant of this, it is not obliged to comply with the request until it has received the information in question.
21. The Commissioner considers that in the present case, QPC was not asking for further information in order to identify and locate further information in order to comply with the request. Therefore, he considers that QPC breached section 1(3) in that it asked for clarification which was not related to the identification and location of the requested information. However, the Commissioner also notes that QPC did respond to the complainant within 20 working days.
22. In relation to the complainant's request for QPC's complaints procedure, it provided the complainant with a copy of this.
23. The complainant also complained that QPC refused to disclose information to him without explaining why, including why it would not be in the public interest for it to be disclosed. He also pointed out that QPC had not advised him of his right of appeal.

Section 17 – refusal of a request

24. Section 17(1) requires a public authority to issue a refusal notice if it is going to withhold information. The refusal notice should state that it is going to withhold information, which exemption is being applied and if not apparent, explain why the exemption applies. In the present case, QPC explained that it could not either confirm or deny if it held additional information requested by the complainant.
25. The Commissioner notes that QPC did not explain which exemption it relying on when it stated that it could neither confirm nor deny whether it held additional information. The Commissioner therefore considers that QPC has breached section 17(1).
26. Section 17(7) provides that a refusal notice must explain an applicant's right of appeal to the Commissioner.

27. The Commissioner notes that in its refusal notice QPC explained that the complainant could ask for a review but did not inform the complainant of his right of appeal to the Commissioner. Therefore, he considers that QPC has breached section 17(7).

Other matters

28. The complainant has complained that QPC did not respond to him in the font he had requested. The Commissioner notes that the complainant explained that he had eyesight difficulties. As a matter of good practice, the Commissioner would expect a public authority to be able to disclose information in the font requested by the complainant, as long as it is a reasonable request. The Commissioner notes that the complainant asked QPC to respond to him in Arial 14 TT font and considers that this is a reasonable request.
29. In an email from the complainant to QPC regarding whether its response arrived in Arial 14 TT font, the complainant explained that when he opened the email it appeared to be in Arial 13.5 font, but as he could read it he would accept it for what it was supposed to be.
30. The Commissioner also notes that in its response of 13 March 2015, QPC explained that it considered that it had already disclosed the requested information to the complainant previously. It offered to send copies of that correspondence to the complainant again. QPC also informed the complainant that the information was restricted between them as it had not been released to the general public.
31. The Commissioner considers that disclosure under the FOIA is to the world at large. Therefore, if a public authority is going to disclose information under the FOIA access regime, it cannot put any restrictions on what an applicant does with that information. However, if a public authority decides to disclose information outside of the FOIA, the Commissioner considers that this must be clear to the applicant and any restrictions about use of the information should also be clarified.
32. The Commissioner considers that an internal review allows a public authority to reconsider its original response. In support of this, the Commissioner notes the comments of the Information Tribunal in the case of [McIntyre v the Information Commissioner and the Ministry of Defence \(EA/2007/0068\)](#), which was considered under FOIA:

"....the Act encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under s50. Parliament clearly intended that a public authority should have the

opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made ...".

33. The Commissioner notes that in its review, although QPC identified that there was third party information which needed to be redacted, it did not specify which exemption it was relying on. Given that an internal review allows a public authority to reconsider its original response, if a public authority is going to apply new exemptions the Commissioner considers that it should provide the same level of detail that it would be required to provide in a refusal notice.
34. With regard to advising an applicant of his right of appeal, in his guidance '*Refusing a request: writing a refusal notice*,¹ the Commissioner explains that a refusal notice must advise the requester of their right to make a complaint to the Commissioner and should include the relevant contact details for the ICO.
35. The Commissioner also notes the complainant's concerns about whether QPC understood that information contained in non-work personal email accounts that relate to official business could be disclosed under the FOIA. During his investigation the Commissioner contacted QPC about this. It explained that its interpretation of what emails should be held may have been incorrect but that with ICO guidance it had a much clearer understanding, which has led to a formalised retention policy. In the same correspondence, QPC confirmed to the Commissioner that it had disclosed all of the requested information to the complainant.
36. The Commissioner also notes the complainant's complaint that QPC asked him why he wanted the information. The Commissioner considers that the FOIA regime is applicant blind and purpose blind and therefore considers that an applicant does not have to explain in a request for information why he wants the information.

¹ https://ico.org.uk/media/fororganisations/documents/1211/refusing_a_request_writing_a_refusal_notice_foi.pdf

Right of appeal

37. 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

38. 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.
39. 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

Jon Manners
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