

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 March 2016

**Public Authority:** Great Bedwyn Parish Council  
**Address:** 4 Foxbury Place  
Great Bedwyn  
Near Marlborough  
Wiltshire  
SN8 3PL

### **Decision (including any steps ordered)**

---

1. The complainant has made requests to Great Bedwyn Parish Council ("the council") for information about the maintenance of a memorial marker stone. The council refused the requests under section 14(1).
2. The Commissioners decision is that the council has correctly refused the requests under section 14(1).
3. The Commissioner requires no steps to be taken.

### **Request and response**

---

4. On 19 May 2015 the complainant requested the following information in respect of a letter that he had received from the council's chairman on the matter of a memorial marker stone ("the marker stone") and the complainant's associated dispute:
  1. *Closure of Correspondence:*  
*Bearing in mind that the matter was first before the PC Committee at their 14<sup>th</sup> November 2014 meeting at what meeting was the subject discussed and the decision made to close the matter, bearing in mind that the PC only hold their meeting every two months.*
  2. *Committee Meetings:*  
*If it was not brought before the committee (and we have checked all the minutes of meetings since the November meeting) I must ask*

*was there a meeting between Nov 14 and Feb 15, which the minutes seem to suggest there was not, then who made the decision and under what authority was it made.*

3. *Ownership:*

*The Chairman openly stated that the site belongs to the families in the meeting of 14<sup>th</sup> November which seems to be omitted from those minutes plus the fact that the Data Protection Act was broken in the publication of those minutes in as much as I was not speaking for myself (which the minutes refer) but on behalf of an organisation and as such the heading should not have read member of the public, but should have reflected the name of the Organisation, the name of the speaker, that persons position in the organisation and the subject matter. Which I stated quite clearly in my address to the committee. And the subject matter was a) Ownership of the site, b) Your authority to change the site.*

4. *Authority to Change the Site:*

*We stated that if you had any concerns regarding the site you should have contacted the owners to express these concerns in order that they may have the opportunity to correct the fault before anything else, in fact we were aware of the situation and was in the progress of replacing the fence before the PC acted, and our new fence is now on hold to replace the previous one we had there. What authority had you to change the site and spend public money on it having been forbidden to do so in 1993.*

5. *Authority of withholding:*

*Under what authority are you withholding the ownership back from the rightful owners when it is now established and accepted we are the rightful owners and not the Parish Council.*

6. *Authority of Threat:*

*Under what authority did the PC have to send a police constable to our homes when we had not committed any crime? We would argue that the crime of criminal damage was carried out by the PC by removing something that did not belong to them.*

7. *Vexatious Complaints Policy:*

*Correct me if I am wrong but did not the Chairman make a statement that this policy was no longer in use back in 2012?*

5. The Commissioner understands that the council responded on the same day, and whilst not issuing a valid refusal notice, did advise the complainant that it would no longer respond to requests and correspondence relating to the subject of the marker stone and the complainant's dispute.

6. On 25 June 2015 the complainant further requested:

*...copies of all written legislation you hold in respect to the following items.*

- 1. Closure of Correspondence.*
  - 2. The Minutes to the above item.*
  - 3. Ownership of the Site.*
  - 4. To change the site.*
  - 5. Withholding the site from its rightful owners.*
  - 6. Authority of Threat.*
  - 7. Vexatious Complaints Policy.*
  - 8. Spending Public Money when you were prohibited from doing so.*
  - 9. Copy of the Minutes 10/03/1993 which states that you were prohibited from spending money on this site.*
7. The council responded on 20 July 2015. It refused the request under section 14(1) and section 14(2).
8. The complainant requested an internal review on 20 July 2015.
9. The council sent the outcome of its internal review on 10 August 2015. It confirmed that it was refusing the request as repeated under section 14(2).

### **Scope of the case**

---

10. The complainant contacted the Commissioner on 10 August 2015 to complain about the council's refusal of the latter request. During the course of the investigation it became apparent that a previous request (that made on 19 May 2015) had been made which related to the request of 25 June 2015.
11. The council confirmed to the Commissioner on 24 September 2015 that it wished to withdraw its application of section 14(2) and rely solely on section 14(1).
12. The Commissioner therefore considers the scope of this case to be the determination of whether the council has correctly refused the requests under section 14(1).

## Reasons for decision

---

### Section 14(1) – Vexatious requests

13. Section 14(1) states that:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."*

14. The Commissioner has recently published new guidance on vexatious requests<sup>1</sup>.

15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

### Background to the request

16. The requests relate to a marker stone that was erected following public subscriptions in 1993. The legal ownership of this marker is unclear to the Commissioner, but it is understood that the land itself is owned by the Bedwyn Memorial Hall Charity. The status of the marker is also unclear, but the Commissioner understands that it is not formally registered as a war memorial.

17. During 2014 the council replaced the fencing around the marker stone due to this having fallen into disrepair.

18. The complainant subsequently began a course of correspondence with the council in October 2014 in order to dispute the council's authority to replace this fence.

19. During a council meeting on 14 November 2014 the complainant further disputed this action and the authority by which the council undertook it.

---

<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The council suggested that the complainant (and other interested parties) form a group to take over maintenance of the marker stone. This resulted in the formation of the 'Great Bedwyn Family & Friends Dedicated Memorial Marker Stone Group', of which the complainant is a representative.

20. Following continued correspondence between the council and complainant, the council's chairman wrote to the complainant on 4 and 20 December 2014 on order to explain the basis on which the council had undertaken the work.
21. In January 2015, the parish clerk organised a meeting with the complainant at his request so that he could view council minutes in relation to the council's action.
22. The complainant made a request for information on 17 March 2015, in which he sought details about the authority under which the council had undertaken work on the marker stone, and an explanation of the sums spent doing so. The Commissioner understands that the council provided a response on 3 May 2015 in which it disclosed held information.
23. The complainant subsequently wrote to the council on 3 May 2015 and acknowledged this response. In this the complainant invited the council to "*stop the matter progressing*" through removing the replacement fence and "*return to the rightful owners*" the control of the marker stone.
24. The complaint made a further information request on 19 May 2015 that sought information in respect of seven different aspects of the chairman's letter of 20 December 2014.
25. Following the council refusal to comply with this request, the complaint made a further request on 25 June 2015 which appears to repeat the previous request but with the addition of two further questions.

#### The complainant's position

26. The Commissioner understands that the complainant wishes to understand the legal authority that the council holds which has allowed it to undertake maintenance work on the marker stone, and the authority by which it spent funds on this.
27. The complainant has specifically advised the Commissioner that he does not believe the council holds any authority to take the action it has, and that it cannot provide specific information in response to the request because the authority is not held. The complainant also has referred this matter to Wiltshire County Council (which the Commissioner

understands has decided no action is required) and may also choose to submit the matter to the Local Government Ombudsman.

### The council's position

28. The council has advised the Commissioner that correspondence on this matter has been ongoing between the council and the complainant since October 2014, and that the Chairman attempted to bring closure to the matter in his letter to the complainant of 20 December 2014. The Clerk has also met with the complainant in January 2015 at his request to view the council's minutes, and has provided further held information in response to the request of 17 March 2015. The council considers that the information which it holds in relation to the complainant's request is relatively straightforward to provide due to the majority of it already being available on the council's webpages; however the council considers that the complainant's concerns will not be addressed through further engagement with him, and that the complainant's desired outcome (i.e. the removal of the fence installed by the council and 'returning' the stone markers control to the group) will not be effected through responding to his information requests.
29. The council has explained that it has a long standing arrangement with the owner of the land on which the marker stone is sited to maintain the area, and it is on this basis that the replacement of the fence was undertaken. The council does not consider that its action was unlawful or inappropriate, but is aware that the complainant has sent associated complaints on this matter to the Bedwyn Memorial Hall Charity, Wiltshire County Council, and his MP.
30. The council considers that the continued correspondence and requests from the complaint has placed a significant burden on the council's resources, and has also caused distress to the council's single part-time employee, on whom responsibility for the management of the council rests.

### The Commissioner's analysis

31. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can

emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

32. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

*The purpose and value of the requests*

33. The Commissioner is aware that the requests have been made in the context of a dispute between the complainant and the council that has continued since October 2014. In response to this dispute, the chairman of the council communicated the basis of the council's actions to the complainant, and wider contextual information was subsequently provided to the complainant by the parish clerk. However it has emerged that the complainant does not believe that the council held authority to replace the fence around the marker stone, and that that one purpose of the requests is to pressure the council to confirm it did not have authority. It also appears to the Commissioner, having considered some of the complainant's remarks in his correspondence with the council that another purpose of the requests is to pressure the council to remove the fence and transfer control of the marker stone to the group, upon which the complainant has confirmed this dispute will end. When considered this context, it is reasonable for the Commissioner to conclude that the requests have not been made in order to pursue the disclosure of information, but to pressure the council into complying with the complainant's desired aims.
34. On this basis, it is evident to the Commissioner that the complainant's aims will not be met through the terms of the FOIA, and that any adjudication on this matter would need to be referred to the appropriate public authority.

*The burden on the council*

35. It is evident to the Commissioner that considerable correspondence has already taken place between the complainant and council, in addition to the disclosure of related information.
36. The public authority in question is a parish council, and as such has extremely limited public resources. To provide a response to the request would further divert the council's resources from its core business, and

the Commissioner considers that responding to the requests would be highly likely to result in further correspondence and requests by the complainant.

*The Commissioner's conclusion*

37. In the circumstances of this case, it is evident to the Commissioner that the requests relate to a wider dispute which the council has deemed to be a closed matter, and which no action has been deemed necessary by the county council.
38. The council has previously provided held information to the complainant, in addition to an explanatory letter from the Chairman that attempts to resolve the wider dispute. Whilst it remains clear that the complainant still remains in dispute with the council, the Commissioner does not consider it appropriate that the FOIA should be used to force further engagement on a matter that has been judged as closed, and which would need to be referred to the appropriate public authority for a decision to be reached.
39. The Commissioner is also mindful that the public authority is a parish council with extremely limited resources available to it, and that responding to the complainant's requests is likely to continue the dispute, but without resolving any aspect of it. Doing so would therefore divert the council's resources from its core functions whilst serving little public interest.
40. Having considered these factors, the Commissioner has concluded that the council's refusal of the requests under section 14(1) was correct.



## Right of appeal

---

41. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**