

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2019

Public Authority: West Felton Parish Council
Address: 5 Newtown Gardens
Baschurch
Shrewsbury
SY4 2HF

Decision (including any steps ordered)

1. The complainant requested information about the clerk's quarterly expenses. The Council refused to comply with the request under section 14(1) FOIA as it considered it to be vexatious.
2. The Commissioner's decision is that the Council has correctly applied section 14(1) FOIA to the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 13 September 2018, the complainant wrote to the Council and requested information in the following terms:

*"I have been casually browsing through information published on the Parish Council's website and have come across reference to a payment entitled Clerk's quarterly expenses amounting to £206.43.

However, I have been unable to ascertain how and for what purpose such 'expenses' were incurred. The accounts do not appear to refer thereto. Therefore, with respect, can you please enlighten me?"*
5. The Council did not respond to the complainant.

6. Following the Commissioner's intervention on 23 October 2018 the Council confirmed that it was treating the request as vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 3 October 2018 to complain that he had not received a response to his request dated 13 September 2018 despite reminding the Council on several occasions that a response was outstanding.
8. In correspondence with the Commissioner the Council explained that it considered the request to be vexatious within the meaning of section 14 of the FOIA.
9. The complainant had previously been informed that any further requests received from him relating to Council business would be deemed vexatious and not responded to.
10. The Commissioner has considered whether the Council correctly applied section 14(1) of the FOIA to the request and if so, whether the Council was entitled by section 17(6) of the FOIA not to issue a refusal notice.

Reasons for decision

Section 14 – vexatious requests

11. Section 14(1) of the FOIA states that section 1(1) of the FOIA does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
12. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon County Council & Dransfield¹. The Tribunal commented that the term 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.

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly 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. The Commissioner has published guidance on dealing with vexatious requests². The guidance includes a number of indicators that may apply in the case of a vexatious request. 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 or not a request is vexatious.
16. In light of this, the Commissioner would need to be persuaded that the Council have considered the impact on themselves against the purpose and value of the request.
17. The Council consider that responding to the request will be "likely to lead to a lot of additional work for the part time Clerk" and it believes that any further responses would increase the workload of the Council. They also refer to the "impact on the Clerk in terms of stress and anxiety". The concern for the Council is driven by a number of resignations of past clerks due to the high volume of correspondence received from the complainant, and its ability to retain a clerk in post.
18. The Council employed a new parish clerk on 19 March 2018 and to date the clerk had received a total of 268 emails from the complainant. The Council also believed the tone of the emails to be offensive and personal. This has previously been detailed in the decision notices

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

FS50670558³ issued by the Commissioner on the 25 May 2017 and
FS50687228⁴ issued by the Commissioner on the 17 October 2017.

19. The Council also referred to the Tribunal decision EA/2013/0212⁵ which relates to a previous FOIA request from the same complainant to the Council and to its letter of 3 July 2014 in which it considered section 17(6) of the FOIA engaged. It said that "*no communication will in future take place as a result of continuous vexatious requests*".
20. Taking into consideration the evidence provided by the Council, the 268 emails sent to the new clerk since her appointment in March 2018 and also the reasons given by the Tribunal in EA/2013/0212, the Commissioner is satisfied that the above request was vexatious under section 14(1) of the FOIA.

Section 17 – refusal of request

21. Section 17(6) of the FOIA allows a public authority to refuse to issue a refusal notice in instances when:
 - a) the public authority is relying on a claim that section 14 applies,
 - b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
22. The Commissioner will usually only consider it unreasonable to expect a public authority to issue a further notice when it has previously warned the requestor that it will not respond to any further vexatious request on the same or similar topics.

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014169/fs50670558.pdf>

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172661/fs50687228.pdf>

⁵ [http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1238/Lovell,%20Lionel%20Christopher%20EA.2013.0212%20\(19.03.14\)%20Prom%20date%2020.03.14.pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1238/Lovell,%20Lionel%20Christopher%20EA.2013.0212%20(19.03.14)%20Prom%20date%2020.03.14.pdf)

23. The Council issued a refusal notice on 3 July 2014 citing section 14. In that correspondence, when referencing 17(6) of the FOIA, it told the complainant that it would not provide any further responses to requests of a similar nature.
24. The Council maintained its position throughout the Commissioner's investigation that whatever response issued to the complainant, it would result in more correspondence.
25. Taking into account the Council's arguments, the Commissioner has decided that it was reasonable for the Council to rely on the previously issued refusal notice to not correspond with the complainant.

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@hmcts.gsi.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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Wycliffe House
Water Lane
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