

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

### **Decision notice**

**Date:** 7 August 2019

**Public Authority:** Horncliffe Parish Council  
**Address:** Morven  
11 Springhill Lane  
Tweedmouth  
Berwick-upon-Tweed  
TD15 2QN

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

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1. The complainant has requested information in relation to negotiations between a developer and the council into the purchase of a section of land. The council argues that the request is vexatious and applied section 14 of the FOI Act.
2. The Commissioner's decision is that the council was not correct to apply section 14 to refuse the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To issue a fresh response to the complainant's request as required by section 1 of the FOI Act, without relying upon section 14 of the Act.
4. The public authority 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

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5. On 16 August 2018, the complainant wrote to the council and requested information in the following terms:

*3. I am therefore writing to make an Open Government Request for all the information to which I am entitled under the Freedom of Information Act 2000.*

*4. Please send me a copy of:*

*(a) each substantive communication received by or on behalf of the Parish Council from [name of individual redacted] with respect to the dispute;*

*(b) each substantive communication sent to [name of individual redacted] from or on behalf of the Parish Council with respect to the dispute;*

*(c) each substantive communication between the Parish Council and Northumberland County Council with respect to the dispute;*

*(d) the DVS valuation report;*

*(e) the instruction to DVS commissioning the DVS valuation report;*

*(f) the legal advice received by the Parish Council from "[name of lawyer redacted]", and*

*(g) the instruction to [name of lawyer redacted] to provide legal advice.*

*5. By "substantive" I mean those communications that comprise advice, discussions, offers, counter-offers or rejection or acceptance of offers; I do not mean communications to confirm receipt of communications, or similar communications of a trivial nature.*

*6. I would like the above information to be provided to me as electronic copies delivered by email."*

6. The council responded on 14 September 2018. It in a letter entitled 'Fees Notice'. It offered to provide the information but warned the complainant that it may cost him up to £900 to receive the information.

7. Following further correspondence the council wrote to the complainant on 13 October 2018 and applied section 14 (vexatious requests) due to the burden which would be imposed by responding to the request.
8. Following further correspondence, on 13 October 2018 the complainant wrote again to the council amending and narrowing his request. He requested :

*"(a) The substantive communications between [name of individual redacted] and HPC with respect to the dispute. (These are [name of individual redacted] offers to HPC and HPC's response to those offers.) I note that in the Notice provided by HPC you refer to selected parts of a letter from [name of individual redacted] dated 16 June 2018, so you obviously have no difficulty retrieving information when it is in your interest to do so. (b) The [redacted] advice and the instructions to [redacted].*

*(c) The DVS report and the instructions to DVS...*

*... 8. Please note that I no longer need HPC's substantive communications with NCC. I have contacted NCC directly. I would, however, appreciate sight of any document (such as an agreement of sale) that supports HPC's repeated public assertion that it did not covenant with NCC to erect a fence."*

9. On 26 November 2018 the complainant wrote again pointing out issues he has with the council's version of events over the negotiations. He said:

*"It is this seemingly endless contradiction as to matters of fact and the resulting suspicion that the facts have been misrepresented to the public that is the reason that I have made requests under the Freedom of Information Act."*

10. The council responded on 13 December 2018 and said that it would not be able to provide the following information:

*"Substantive communications between [name of individual redacted] and HPC in respect of the current dispute or any document between HPC and NCC regarding the erection of a fence. The DVS report.*

*Our reasons are:*

*1) Details of offers made and received by HPC are available on the Parish Council website i.e. Minutes and statements/updates read out at meetings*

*2) Questions/discussions at Parish Council meetings regarding the DVS report suggest that yourself and others have knowledge of the contents of the report.*

*3) The deed of sale between HPC and NCC, together with any covenants is available from HM Land Registry for a small fee.*

*The following documents are not in the public domain, but we are willing to inform you of the information contained therein once you have confirmed that the above is acceptable to you.*

*a) Initial brief to [name of lawyer redacted] and the subsequent advice received from [name of lawyer redacted].*

*b) HPC's brief to the DVS. "*

11. It further said that if the complainant did not accept the offer then it would declare the request vexatious under section 14 of the FOI Act.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 29 January 2019 to complain about the way his request for information had been handled.

13. He argued that the council has resorted to:

*"the setting of conditions which, if accepted, meant that I would not receive the information I had requested and which, if not accepted, would, in its opinion, give it no alternative but to regard my request as vexatious."*

and,

*"With respect to the provision of the initial brief to [name of individual redacted] and the advice received from [name of individual redacted], and HPC's brief to DVS, Horncliffe Parish Council has no right within the word or the spirit of the Freedom of Information Act to make the partial fulfilment of the request conditional upon the acceptance of partial non-fulfilment of the request".*

14. The Commissioner therefore considers that the complaint is that the council was not correct to withhold the information under the exemptions which it has.
15. During the course of the Commissioner's investigations the council wrote again to the complainant on 4 June 2019. It told him that:

*"Having reviewed the Act, and the previous decision, the authority now considers the request to be vexatious because, knowing that the request should properly be rejected, it was made in any case with the intent of hindering the authority's ability to go about its democratic business due to the disruption and workload generated."*

16. The council has argued that in addition to the application of section 14, the requested information would be exempt under section 43 or section 12 of the Act. The Commissioner must initially make a decision only the application of section 14. If section 14 is applicable it negates the requirement to provide a response as required by section 1 of the Act; the council is not under a duty to consider any information for disclosure.
17. If the Commissioner's decision is that section 14 was not applicable, barring any appeal on this point, the council would need to reconsider its response and respond again as required by section 1 of the Act. At that point it could apply other exemptions and the Commissioner would expect it to provide greater detail as to why it considers that section 12 or section 43 may be applicable. The complainant can also make a further complaint to the Commissioner if he has concerns with the council's response.

## **Reasons for decision**

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### Is the information environmental?

18. The information relates to the sale of a section of land to a member of the public ('the developer'). In the recent past the developer had built part of a development on a section of land which belonged to the council. The council states that the development had been given planning consent by the county council. The parish council is now negotiating a sale of the land to him in order to address this issue. There is an additional point, in that the dispute also surrounds the sale of further land to the developer which will facilitate access to the development.
19. With this in mind the Commissioner asked the council if the information which falls within the scope of the request should be considered under the Environmental Information Regulations 2004.
20. The council clarified that the development has already occurred, and that planning permission was already provided for the development. The only question which remained was the price that the parish council and the developer agreed between them for the section of land. As this sale would not have any future impact or effect upon the elements of the

landscape or on the environment as defined in Regulation 2 of the EIR the council did not consider that the information was environmental information.

21. Having considered this point the Commissioner is satisfied that the council is correct in its position. The council was therefore correct to consider the request under the terms of the FOI Act.

#### Section 14

22. Section 1(1) of the FOIA states that:

*"Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

23. Section 14 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."*

24. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC)*. It commented that "vexatious" could be defined as the *"manifestly unjustified, inappropriate or improper use of a formal procedure"*. The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

25. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

26. Dransfield also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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).*

27. The Commissioner has published guidance on dealing with vexatious requests<sup>1</sup>, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
28. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

*“The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies”.*

29. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
30. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner’s guidance states:

*“In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.”*

### Background to the case

31. The council argues that the 'Playing Field Dispute' relates to a trespass by the developer on land owned by the council, and actions taken by the council in an effort to resolve it. The council says that permission for the development was granted by Northumberland County Council on the basis of an inaccurate plan produced by surveyors employed by the developer. The dispute has been going on for some time. The council says that it has provided updates to members of the public through its notice boards and minutes describing the ongoing process, however the

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



council argues that the information requested by the complainant is commercially sensitive as the negotiations are ongoing.

32. The Commissioner notes that the council considers the situation contentious. On the council website, in a news update dated 9 January 2018 it states:

*"We acknowledge that the ill feeling and concern this dispute is causing is due in no small degree for the need of confidentiality, which the law imposes on the Parish Council, and that a lack of official information over what has been/is being done to resolve the dispute is also leading to speculation."*<sup>2</sup>

33. In its response to the Commissioner it said that: *"The dispute continues on how much additional land is required, and at what price and how much of the costs incurred by the authority should be funded by the counterparty."*
34. The Commissioner wrote to the complainant noting that the request included details of private correspondence between a member of the public and the council. She noted that the complainant had stated that the developer had consented to his correspondence being disclosed and asked the complainant if they could provide proof of that. In response, the developer wrote separately to the Commissioner confirming his consent to the disclosure of his correspondence, fully understanding that under the FOI Act disclosure is considered to be to the world.

#### The council's position

35. The council argues that the request is vexatious as the complainant is a friend of the developer and has requested information that would assist the developer in the dispute. It argues that had he been acting as a formal agent of the developer he would have been able to cite this authorisation in the request, but he did not do so.
36. It said that the complainant, both in correspondence with the council and in statements he has made, has made clear that he has access to the DVS report if he wished, and that he has also obtained copies of the offers made by the parish council to the developer directly from the developer himself (evidenced from a letter it received from the complainant dated 24 May 2018). It therefore argues that the complainant had no reason to request the information in part 4 of the

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<sup>2</sup> <https://northumberlandparishes.uk/horncliffe/article/school-field-update-1>



request, nor some of the correspondence which had passed between the council and the developer previously, as he already has access to that information.

37. The council argued that the information was also commercially sensitive and so exempt under section 43 of the Act, and that the complainant would have been aware of this. It argues that the requestor is acting:

*"as a friend of the counterparty in the dispute and with the intentions of so burdening the authority with workload at a difficult time that the authority would be unable to perform in the best interests of the parishioners.*

*The information requested is commercially sensitive and subject to ongoing negotiations. Since the appellant invoked the Act it must be assumed that he knew that this exemption would apply and so his motive could only be to so burden the authority with workload at a difficult time that the authority would be unable to perform in the best interests of the parishioners. In this effort the authority finds that the appellant has succeeded and the dispute is in fact ongoing."*

38. It provided additional information to the Commissioner demonstrating that additional workload which it argues that the FOI requests have had. The evidence is in the form of a timesheet/task list relating to the clerk over the period of three months. This demonstrated that over the period in question the council's clerk spent 14.5 hours out of the 46 hours she worked dealing with FOI related matters. It argued that whilst it might be considered that the recorded time was not 100% accurate it considered that errors of inclusion and omission were considered to balance out over the period of time. It argued that:

*"...the authority, believing that the requests by the appellant were valid, initiated a process to comply. By the time work stopped, some 95 documents had already been identified and collated. It was realised that this one task had doubled the time the Clerk had to devote to the authority and would continue to do so for a further couple of months, exceeding the limit of 18 staff hours that should properly be devoted to such a request. The Clerk expressed the concern that this additional workload was gravely impeding the ability of the authority to go about its business,"*

39. The Commissioner considers that its argument in this respect is that the request would require a disproportionate amount of work to respond to it, and that this is a deliberate attempt to overburden the council's limited resources and affect its ability to focus on the negotiations for the sale of the land.

40. It also points to a council minute, dated 6 November 2018 (min 1789) which records that: *"A resident stated that he was the source of the Freedom of Information request and that it had been made because the Parish Council were untruthful, the comments were objected to by members of the public present at the meeting"*. The council alleges that the complainant was the person who made the request, that the remark was inflammatory, and that it almost resulted in a breach of the peace but for firm chairmanship to calm the atmosphere down.

The complainant's position

41. The complainant argues that, based upon the information he has seen, the council has published a one-sided and inaccurate narrative of negotiations which are taking place between the developer and the council over the sale of the land. He argues that:

*"the minutes of meetings and statements published on the Parish Website contain only selected and very limited information related to [the developer's] offers, and even this has been provided in a partisan manner. Furthermore, the Parish Council has admitted that it has used the minutes of council meetings to disseminate false information as part of its negotiation strategy. The Parish Council has no right to decline to provide the information I have requested on the grounds that it has provided a selected fragment of that information, particularly when it has done so in a manner that is designed to shape public opinion."*

42. The developer, in his letter to the Commissioner providing authorisation for his correspondence to be disclosed, stated to the Commissioner that:

*"I have never had any objection to the full public disclosure of the various offers I have made to the Parish Council. They have stated publicly that I "would not compromise" and this is clearly untrue and I am happy to have my offers made known to the public, rather than selectively quoted. Indeed, my latest offer has been made conditional upon publication of all my offers."*

The Commissioner's analysis

The burden of the request

43. The Commissioner notes that the council has provided evidence that over a 3 month period its clerk spent approximately 14.5 hours out of a total recorded time of 46.25 hours responding to FOI matters.
44. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the

Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).

45. The appropriate limit for central government departments is £600 and £450 for all other public authorities.
46. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
  - determining whether the information is held;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
47. Based upon the figure of £25 per hour, the approximate limit for the council equates to 18 hours work ( $\text{£25 per hour} \times 18 \text{ hours} = \text{£450}$ ).
48. Having considered the evidence provided by the council the Commissioner notes that much of the time which has been taken into consideration does not relate to locating relevant information in relation to this request, but to administrative tasks. She also notes that the total period of time responding to FOI requests by the clerk only reaches the states sum of 14.5 hours dealing with FOI related matters.
49. The Commissioner understands that the figure 14.5 hour estimate is not an estimate of the time it would take to respond to these requests. It is intended to demonstrate the burden which FOI as a whole is having on the council's ability to carry out its other functions, with a view to emphasising the effect that responding to this request would have on its ability to carry out its other functions.
50. A noted above, it argued that in initially seeking to comply with the request it had recognised how difficult it would be to respond within the appropriate limit after locating 95 documents. It noted the burden that this was having upon the clerk, and how this affected her ability to carry out her other duties on behalf of the council. It said that it noted that further equivalent levels of work would be needed in order to respond to the request for information.
51. The council's did not provide substantive evidence that responding to the complainant's request would exceed the appropriate limit but it has sought to rely upon the point as evidence that section 14 should apply.
52. The Commissioner accepts that responding to the complainant's request would add a further burden on its clerk, based upon the limited number of hours which the clerk works and the limited resources of the council.

The motive behind the request/the value and purpose of the request

53. The Commissioner notes that the complainant is a friend of the developer. The complainant believes that the council may have disclosed information to suit its own purposes, whilst seeking to shape public opinion to support its actions. The developer has also confirmed that he considers that some of the public statements made by the council are not correct, and he said that he would like the council to disclose the offers he has made in order to confirm that that is the case. The complainant said that he wishes the information, even though he has had access or sight of some parts of it previously, in order to confirm the facts himself. He said that:

*"...what [the developer] had provided appeared to be his correspondence with the Council. However, what he provided clearly contradicted the Parish Council's assertions in public that [the developer] had made "demands" and would not compromise. In view of this contradiction, and as I had no way of knowing that what were clearly unsigned draft offers that [the developer] had given to me were in fact the formal offers he had made to the Council, the sensible solution was to seek verification of what the Council had actually received."*

54. He further argued that as regards the DVS report; *"I had been offered the opportunity to read the report, while standing in the garage reception area waiting for my car. Given that the report is of some length and addressed the core issue of a dispute that remained unresolved and had involved legal costs, it would be imprudent to rely on my memory and a handwritten note of two clauses in drawing conclusions as to the conduct of the parties to the dispute: hence my request for a copy"*.

55. He argues that the developer had told him that he was willing to make compromises/concessions but the council refused to respond to the request for information which might clarify this point.

56. The complainant points to public statements made by the parish council referring to the issue which he argues appears to give an inaccurate picture of events if the developers arguments are correct.

57. A public statement on the council's website also refers to the costs incurred through the actions of the developer<sup>3</sup>, stating that the developer had:

*'refused to accept that he had encroached upon parish land', and that 'The Parish Council have given concessions more than once in an attempt to resolve the dispute but unfortunately [name redacted] refuses to compromise.*

In a letter to the council dated 25 November 2018 the complainant argues that the developer had assured him that he had written to the council accepting fault, and that he did so before the costs referred to were incurred by the council. He therefore requested a copy of this correspondence.

58. The complainant further argues that the costs incurred by the council in relation to the legal advice amounted to £1700 rather than the expected £240, and that this *'was the result of a misunderstanding of the instructions given...'* He argues that he had therefore requested a copy of the instructions but the request had been deemed vexatious.
59. He further argues that he understood that the council did not select the company providing the cheapest quote to produce a valuation report, and alleges that the lowest quotation was 2.5 times lower than the company chosen by the council. He further said that he understood that the reasons for not choosing this option were personal reasons relating to members of the council. He said that he therefore asked for any documentary evidence to the contrary.
60. He concluded his request to the council with the statement:
- "It is this seemingly endless contradiction as to matters of fact and the resulting suspicion that the facts have been misrepresented to the public that is the reason that I have made requests under the Freedom of Information Act."*
61. It is not the Commissioner's role to make a decision on the points raised, however it is clear that there are matters which the public has a legitimate interest in seeking clarification.

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<sup>3</sup> <https://northumberlandparishes.uk/horncliffe/article/school-field-update-4>

Harassment or distress of, and to, staff

62. The public statement on the council website of 20 November 2018 refers to:

*"During the course of this dispute, the Parish Council have had to endure malicious rumours, false accusations and lately an anonymous letter, some from unknown sources, whilst endeavouring to resolve the situation with a genuine attempt to reach an agreement with [the developer]. The Parish Council are volunteers and only have a paid, part time Parish Clerk. We have always strived to do our best for the parish of Horncliffe. Disappointingly, the rumours that have been circulated from time to time, without foundation, have been mistakenly and readily believed by some parishioners without being fully aware of all the facts.*

*A recent anonymous note circulated in the village, encouraged people to contact the Parish Clerk to object to the Parish Council's alleged financial mistakes and the forthcoming decision on the precept. This note was not only inaccurate, but it was calculated to encourage a select few people to overload the Parish Clerk with more work and incur further costs and unfair stress to the Parish Council."*<sup>4</sup>

63. The Commissioner is therefore satisfied that the overall issue is causing a degree of distress and feelings of harassment to council staff.
64. The Commissioner notes the complainant's statement to the council that he was offered the opportunity to read the DVS report, and that he already has copies of the offers made by the developer provided to him. The council argues therefore that there was no need for the complainant to make his requests, and therefore that the only reason for doing so must be to place a greater burden upon the council's resources in responding to it. The complainant has however outlined his reasons for making the request and some of these are noted above.
65. As noted above the council also argues that the complainant must have been aware that the information was commercially sensitive and would therefore be exempt under the Act but he still requested it. It argues that he must therefore have done so on the basis that this would increase the burden upon the council.

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<sup>4</sup> <https://northumberlandparishes.uk/horncliffe/article/school-field-update-4>



66. The complainant's request for information over the issue will have resulted in a greater burden being placed on the council, in particular the clerk, to respond within the required timelines and procedures required by the Act over an issue which is already contentious and which appears to have caused the council members and staff to feel harassed.
67. The receipt of an FOI request will always increase the burden upon an authority to some degree, and this burden will be magnified where the authority is small, with limited resources and full time staff as in the case of Parish Councils. This clearly does not mean that the receipt of such requests are vexatious. Requestors are able to make reasonable and appropriate requests of such authorities. Whilst the size of an authority is a factor to be taken into account it is not an overriding factor in the application of section 14. It is merely one relevant factor in the consideration. The Commissioner also considers that it is not a requirement for a complainant to prejudge whether the requested information is exempt or not. An obviously unreasonable request may be a factor in the consideration as to whether the motive of the requestor is vexatious or not, but in this case it is not clear that the requested information would be exempt, particularly given the information which the council had disclosed, publicly, previously during the ongoing negotiations.
68. The request was reasonable given the disparity between the parties to the negotiations and the public statements which the council has made about the ongoing events.
69. The fact that the request increased the burden upon its staff, and therefore the harassment they felt regarding the additional burden, together with the subject matter of the request, does not of itself provide a strong argument in support of the application of section 14 in this case.

The requirement to consider the complaint holistically, including any evidence of any lack of proportionality that typically characterises vexatious requests

70. The Commissioner has considered the overall position. The complainant is clearly known to the developer. His argument is that statements made by the parish council may have misrepresented events and painted a picture of the developer's actions which are designed to direct public opinion. He argues that his request for information is designed to shed greater clarity on the true position.
71. The developer, for his part, supports creating greater clarity on the situation and has provided consent for his offers and correspondence to be disclosed.



72. The contentious situation between the parties is generally a matter for them, however the public do have a legitimate interest in greater clarity in the matter given the costs which have been incurred and the council's public statement that these have been as a result of the developer's actions as opposed to its own actions.
73. The direct criticism of the developers actions published on the council's website are clearly likely to engender distrust in the council where members of the public hear contrary statements indicating the opposite is true. This distrust is likely to be raised further by the developers consent to the correspondence being disclosed, which, to an extent, provides a degree of support to the complainant's argument that there are two sides to this contentious debate. Whilst the Commissioner is not in a position to determine the veracity of these allegations or suggestions, she does consider that the arguments support greater transparency in this case.
74. Additionally the direct criticism of the developers actions are equally likely to have been considered by him to be distressing and/or harassing if, in his view, they did not report factual truths. If the developer and the complainant are correct in their assertions it would appear to be inequitable for the council to use its position as a public authority to present an account of the actions of an individual in order to support its own commercial negotiating position. If the assertions are incorrect there is also a public interest in this being clarified in order to settle the public's concerns.
75. To be clear, the Commissioner has not seen copies of the withheld information and cannot judge the merits of either party's claims in this respect.
76. The Commissioner fully accepts that, under the circumstances, the requests will create an extra burden on the council, and she also accepts that the complainant has written to it providing evidence that he has access to at least some of the information which he has requested that it discloses to him.
77. However, other than this, the Commissioner does not consider that she has been provided with any evidence of a lack of proportionality in the requests made by the complainant. His requests have sought evidence creating greater clarity and transparency on issues which are clearly contentious, and in the face of the council's refusal to provide relevant information due to the costs which might be incurred he was willing to narrow his request for information. The fact that the complainant has compromised and narrowed the scope of his requests provides evidence that there is no lack of proportionality in his requests, although it can be argued that seeking information he already has had access to may be

considered to be evidence of unreasonable persistence on his behalf, at least for that particular information. The complainant has however addressed this point as noted above.

The Commissioner's conclusions

78. The Commissioner has considered the above points.
79. The council argues that the complainant is a friend of the developer, and this appears not to be in dispute. It further argues that as a friend, he has admitted having access to copies of information which he has also requested from the council. The council therefore argues that his purpose in this is to increase the burden upon it and deflect from its other duties, and in particular its negotiations over the dispute.
80. The Commissioner accepts that the parish council has limited resources available to it. She accepts that responding to the request will increase that burden. Although the extent to which this might occur is unclear from the council's response to her questions, she nevertheless does accept the council's point in this respect.
81. She also accepts that complainant's motivation for requesting the information. The developer has agreed to his offers being disclosed, and he wishes the council to clarify its position by disclosing copies of the correspondence itself. Additionally, a disclosure to the public via an FOI request would indisputably provide greater clarity to the community on some of the statements made by both parties to the dispute.
82. The Commissioner does not believe that the complainant has demonstrated any lack of proportionality, nor a disproportionate persistence in making his requests. He sought to narrow the scope of his requests in order to obtain information, and went so far as to make a request to the county council for copies of the correspondence with it in order to reduce the burden upon the parish council in responding to his initial request.
83. The council has made direct public criticism of the developer's actions. Counter allegations have been made. There are obvious concerns in the community surrounding the issue, and given the apparent costs to the council of resolving the long running issue the Commissioner considers that the public has a legitimate interest in the council being more transparent about the history of events. Responding to the complainant's request would be conducive to that aim. The developer's consent to the disclosure of his correspondence provides assurance to the council that it is able to do so without breaching the developer's rights under the Data Protection Act.

84. Taking into account a holistic view of the circumstances surrounding this request the Commissioner has not been persuaded by the council's arguments in favour of the application of section 14. She has therefore decided that the request is not vexatious, and that the council was not correct to apply section 14 to refuse to respond to the request.
85. She therefore requires the council to respond to the request again, without relying upon section 14.

## **Other matters**

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- a) In making this decision it is important to note that it is still possible for the council to apply other exemptions to withhold some or all of the information if these are applicable. The decision above only finds that the council was not correct to rely upon section 14 to refuse to consider the request further.
- b) For instance, the council has argued that the information is also subject to section 12 (appropriate limit), and section 43 (commercial interests). This decision notice has not reached a decision on the application of these exemptions as it was first necessary for the Commissioner to determine whether the council was under a duty to consider the request further or whether section 14 was applicable. The Commissioner has however partially considered the application of section 12 above.

### The 'Fees Notice'

- c) The Commissioner notes the council's initial response warned the complainant that the council may seek to charge up to £900 to respond to both of the complainant's requests.
- d) Where the cost of complying with the request would not exceed the appropriate limit, costs can only be applied in line with Regulation 6(3) of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI No. 3244
86. This can only include the charges it reasonably expects to incur in:
- Informing the requestor whether it holds the requested information (even if the information will not be provided), and
  - Communicating that information to the requestor.
- e) Further information on this can be found in the Commissioner's guidance at <https://ico.org.uk/media/for->

[organisations/documents/1168/fees\\_cost\\_of\\_compliance\\_appropriate\\_limit.pdf](#).

- f) Where responding to a request would exceed the appropriate limit further charges can be applied. Regulation 7 of the Fees Regulations allows a public authority that chooses to answer a request which exceeds the appropriate limit to charge for the total sum of the following:
- the costs which may be taken into account in calculating whether the appropriate limit is exceeded;
  - the communication costs (including the costs of communicating whether or not the information is held even if it is not to be provided); and
  - staff time spent on communicating the information.
- g) Further information on this can be found in the Commissioner's published guidance at [https://ico.org.uk/media/for-organisations/documents/1635/fees\\_cost\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1635/fees_cost_of_compliance_exceeds_appropriate_limit.pdf).
- h) The council is not able to charge the complainant £900 for responding to the request under the FOI Act without establishing that the costs associated with responding to the request are appropriate.

## Right of appeal

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87. 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](mailto:grc@justice.gov.uk)

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

88. 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.
89. 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**