

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 June 2009

Public Authority: Challock Parish Council
Address: Parish Office
Laurenden Forstal
Blind Lane
Challock
Ashford
TN25 4AU

Summary

The complainant requested information from Challock Parish Council (“the council”) including money received since 1978 and correspondence from 1989. The council refused to provide this under section 12 as compliance would exceed the appropriate cost limit. During the course of the investigation, the council also sought to rely on the exclusion at section 14, that the request is vexatious. The Commissioner has investigated and found that the council were not obliged to comply with the request by virtue of section 12(2) therefore he has not gone on to consider whether section 14 is engaged. The Commissioner also found that the council breached the requirements of section 17(7) and section 16(1) and requires the council to contact the complainant in order to refine his request in line with its duty under section 16 to provide advice and assistance.

The Commissioner’s Role

1. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the “Act”). This Notice sets out his decision.

The Request

2. The complainant advised us that on 20 December 2007 he made the following information requests:

- 1) "Please inform me of the monies received by the Parish Council from easements raised since May 1978 and particularise each individual sum they were paid and by whom.
 - 2) The Parish Council accounts do not record these monies. Where are they held? I have challenged omissions from the accounts and have been ignored.
 - 3) What compound interest has been aggregated on these monies and the current rate of interest?
 - 4) Has the interest earned been disclosed to HM Inspector of Taxes? If not why not. How much Tax has been paid.
 - 5) I require the full exchange of correspondence passing between the Parish Council and the District Auditor from February 1989 at the time he denied having instructed the Parish Council to pursue easement payments. In September 1989 he changed his mind and admitted having received much contentious correspondence from parishioners. I require copies of these.
 - 6) I require a statement of all legal fees incurred by the Parish Council and itemised.
 - 7) It has been suggested to me that the cases authorised and financially supported against me, my family and former business may have been used as a president [sic] across the UK by other Parish Councils. Please advise if this has been the case since it has been brought to my notice that E.K Harris in the Swansea firm of John Collins Solicitors has actually circulated Parish Councils as to the method to be employed in extracting so called easement payments."
3. From the evidence available to the Commissioner it appears that the request was first made on 10 March 2008 to the Audit Commission rather than the council in error.
 4. On 8 April 2008, the complainant contacted the Department of Communities and Local Government to complain about the way his requests for information had been handled.
 5. Following a phone call from the complainant on 14 May 2008, the Department of Communities and Local Government forwarded the above letter to the Commissioner on the 16 May 2008.

The Investigation

Scope of the case

6. The Commissioner's investigation has considered the council's handling of all parts of the request.

Chronology

7. The Commissioner wrote to the complainant on 11 June 2008 stating that the complaint could not be considered as the complainant had not requested that the Audit Commission conduct a review of its response.
8. On 17 June 2008 the complainant telephoned the Commissioner to inform him that the complaint is against Challock Parish Council and not the Audit Commission.
9. On the 23 June 2008 the Commissioner forwarded the request to the council asking it to respond within 20 working days. On the same day the Commissioner wrote to the complainant to inform him of the action taken and that his complaint would only be considered if the council did not respond in 20 working days or if he remains dissatisfied after exhausting the council's internal review procedure.
10. The council wrote to the complainant on 1 July 2008 stating that it had not received his letter until 24 June 2008 when the Commissioner forwarded it. It stated that the request would not be processed as under the provision at section 12 of the Act it estimated that it would exceed the appropriate limit to determine appropriate material and locate, retrieve and extract the information in reference to the request.
11. An internal review was requested by the complainant by letter of the 9 July 2008. The council responded on 23 July 2008 upholding its original decision. The council offered to supply the complainant with a copy of the previous financial years audited accounts.
12. The complainant contacted the Commissioner on 29 July 2008 requesting that the Commissioner now investigate his complaint regarding the council's refusal of his request.
13. On 1 August 2008 the council provided the Commissioner with background information as to its relationship with the complainant and on 8 August 2008 informed the Commissioner that it had supplied a copy of the 2006/2007 financial accounts to the complainant as per paragraph 11 and would supply the 2007/2008 accounts as soon as they are returned from the Audit Commission.
14. The Commissioner wrote to the council on 2 February 2009 requesting further explanations and a breakdown as to how the estimated cost of compliance with the request would exceed the appropriate limit.
15. By letter of 10 February 2009 the council responded explaining in more detail why to determine whether the information exists and to supply the information requested would exceed the appropriate limit and supplied more background information to the request. The council stated that it wished to stand by its original response and also suggested that it wished to apply the exclusion at section 14 of the Act, that the request is vexatious.

16. The Commissioner telephoned the council on 27 February 2009 to seek clarification of the council's points in its letter of 10 February 2009 and received a written reply on 2 March 2009.
17. On 24 March 2009 the Commissioner telephoned the council to obtain further information in relation to its letter of 2 March 2009.

Analysis

Procedural matters

Section 12 'Appropriate Cost Limit'

18. Section 12(1) states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

19. Section 12(4) states:

"The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority-

- (a) by more than one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."

20. The Commissioner notes that in this case the complainant has made more than one request within a single item of correspondence. Section 12(4) provides that, in certain circumstances set out in the Statutory Instrument 2004 No. 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004" ("the Fees Regulations"), requests can be aggregated so that the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. Regulation 5 of the Fees Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information.
21. In the letter in which the requests were made, the preamble to those requests clearly displays that there is an overarching theme running between them. The

Commissioner is therefore of the view that this is sufficient to class the requests as relating to similar information. Indeed, the Tribunal is of the opinion that the test for aggregation is very wide as it stated in the case of *Ian Fitzsimmons V Information Commissioner & the Department for Culture, Media and Sport EA/2007/0124*:

“The test in Regulation 5 of the Fees Regulations seems to us to be very wide; the requests need only relate *to any extent* to the same or *similar* information [Tribunal emphasis]”. (para 43)

22. The Commissioner considers that as the requests are clearly from the same person, relate to similar information and were received on the same day, the council are entitled to aggregate the requests in considering if compliance would exceed the appropriate cost limit.

23. Section 12(2) provides that:

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

24. Accordingly, section 12 provides that a public authority is not obliged to comply with a request for information if it estimates that meeting the request would exceed the appropriate cost limit. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). The cost limit is currently set at £450 for local government and equates to 18 hours work at £25 per hour.

25. Under regulation 4(3) a public authority may, for the purposes of its estimate of the cost limit, take account only of the costs it reasonably expects to incur in

- determining whether it holds the information;
- locating a document containing the information;
- retrieving a document containing the information;
- extracting the information from a document containing it.

These activities are sequential, covering the retrieval process of the information requested from the public authority's information store, no matter how or where the information is held.

26. The council expressed its view that even to establish whether or not the requested information was held would exceed the cost limit. However, the council did not initially provide a breakdown or any details to support this.

27. Subsequently, at the request of the Commissioner, the council provided some details and calculations to support its view that complying with the request would exceed the cost limits set out in the Regulations.

28. The council submitted that the requested information is not stored in a central location or centrally catalogued and that it would need to contact Kent County

Council archives and the Parish Council solicitors to establish if information was held going back to 1978. It further stated that as a Local Government body it is duty bound to hold information for a certain amount of time and it is likely that some of the information was held at one time but it would not hold records in the local office going back to 1978 or even as far back as 10 years.

29. The council also stated that to provide a full schedule of monies alone would almost certainly exceed the appropriate limit.
30. In relation to the information held within the council's office, it argued that the information could not be retrieved and extracted electronically and it would take in excess of 40 hours to determine appropriate material and locate, retrieve and extract the relevant information. The council broke this down as 3 to 4 hours to look properly through each of 10 large boxes and then approximately 5 hours to extract and collate the information. The Commissioner made further enquiries to satisfy himself that the 10 boxes mentioned would be likely to contain information of the description specified in the request.
31. The council also explained that in recent correspondence with the complainant in relation to other requests the council has, where available, provided all the information requested and spent in excess of 20 hours in doing so.
32. In the case of Mr William R Urmenyi v Information Commissioner & the London Borough of Sutton (EA/2006/0093) the Tribunal stated that;

“...the Commission[er] and the Tribunal can enquire into whether the facts or assumptions underlying this estimation exist and have been taken into account by the public authority. The Commission[er] and the Tribunal can also enquire about whether the estimation has been made upon other facts or assumptions which ought not to have been taken into account. Furthermore the public authority's expectation of the time it would take to carry out the activities set out in regulation 4(3) a-d must be reasonable”. (para 16)
33. The Commissioner has examined the evidence and made enquiries to the council as to whether its estimation is reasonable. As a result of this investigation the Commissioner is satisfied that the council's assessment, that to respond to the complainant as to whether it holds the requested information would exceed the appropriate limit, is reasonable. However, the Commissioner is of the opinion that 2 hours to look properly through each of the 10 large box files to search for information falling within the scope of the request is a more reasonable estimate than 3 – 4 hours but this does not alter his conclusion that responding to the request would exceed the limit of 18 hours. Therefore the Commissioner has not found it necessary to go on to consider the time it would then take to locate, retrieve and extract the relevant information.
34. In coming to this view due regard has been given to the volume and management of records held by the council that could be relevant to the request and the volume and age of information requested.

35. The council have a records management policy and have stated that where records are held in a manual form they are filed away in an index system in relevant sections. However, during the investigation the Commissioner learned that there was no filing system within the 10 large boxes likely to contain relevant information and that each box is 'jam packed' with loose documents.
36. The Commissioner has considered the issue as to whether a poor standard of records management and the fact the public authority will take longer to complete its searches, should be taken into account. This issue was considered by the Tribunals decision in *Robins Williams v Information Commissioner & Cardiff and Vale NHS Trust EA/2008/0042* where it was stated that:
- "...The Tribunal agreed with the IC that he could properly take into account 'the manner in which the information was held; the fact that it is held in various physical locations by the Trust and its appointed agents...and also the fact that very little information is available by electronic means' (para 41 of the decision notice) (para 26)...It was not open to the Tribunal to disallow reliance upon section 12 on the basis that the Trust could have organised its records more efficiently. The question was whether the information was held by the Trust or its agents and if so the time taken in compliance with the letter of the request." (para 28)
37. On the basis of the above, the Commissioner is satisfied that section 12(2) is engaged as to establish if the information is held would exceed the appropriate cost limit.

Section 14 'Vexatious or repeated requests'

38. Section 14(1) states:
- "Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"
39. During the course of the investigation, the council stated that in addition to applying section 12 of the Act, it also wished to apply the exclusion under section 14. However, as the Commissioner has found that section 12 of the Act applies he has not gone on to consider whether section 14 is engaged.

Section 16 'Duty to provide advice and assistance'

40. Section 16(1) provides that:
- "It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".
41. Section 16(2) provides that:

“Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case”.

42. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the “Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part I of the Freedom of Information Act 2000” recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit, and also consider advising the applicant that a narrowed or refocused version of the request could be handled within the limit.
43. The Commissioner notes that the council, in its internal review response, offered to supply the complainant with a copy of the previous financial years audited accounts. However, the council did not invite the complainant to refine his requests in order to bring them within the appropriate limit. The Commissioner therefore considers that the council breached the requirements of section 16(1).

Section 17 ‘Refusal of request’

44. Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.”
45. The council’s initial refusal notice explained to the complainant that the information was exempt under section 12 of the Act. However, the council failed to make the complainant aware of its internal review procedure and the complainant’s right to complain to the Commissioner should he have been dissatisfied with the outcome of any internal review process. The Commissioner therefore finds that the council’s refusal notice was in breach of the requirements of section 17(7).

The Decision

46. The Commissioner’s decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- i) The council was not obliged to comply with the complainant’s request by virtue of section 12(2).
47. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- i) The refusal notice was issued in breach of the requirements of section 17(7).
- ii) The council breached the requirements of section 16(1) in failing to provide adequate advice and assistance.

Steps Required

48. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - i) Provide the complainant with advice and assistance in bringing the requests within the appropriate cost limit in compliance with the section 45 Code of Practice and the requirement of section 16(2).
49. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

50. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters.
51. The Commissioner notes that there is no statutory requirement for a public authority to provide a breakdown as to how they have reached their estimate but as a matter of good practice they should do so. The Tribunal offered support for this approach in the case of *Gowers v Information Commissioner & the London Borough of Camden* (EA/2007/00114) in which it was said that a public authority should demonstrate how their estimate has been calculated:

“...a public authority seeking to rely on section 12 should include in its refusal notice, its estimate of the cost of compliance and how that figure has been arrived at, so that at the very least, the applicant can consider how he might be able to refine or limit his request so as to come within the costs limit...” (para 68)
52. Whilst the council have provided a brief explanation as to why providing the information sought would exceed the cost limit, it has not provided a breakdown which could have assisted the complainant in refining his request.
53. The [Code of Practice](#) issued in accordance with the provisions of section 46 emphasises the need for public authorities to ensure that they maintain robust arrangements for the creation, location, archiving, and destruction of records.

54. Whilst the council has indicated that there is a records management policy in place, there is evidence to suggest that in relation to the archiving and subsequent retrieval of information relating to this request, the council's approach did not accord with the expected standards of good practice. The Commissioner therefore believes that the authority may benefit from the advice and guidance provided by The National Archives in this respect. This can be obtained at:
- <http://www.nationalarchives.gov.uk/recordsmanagement/>
55. If a refined request is made, that falls under the cost limit, following the step in paragraph 48, the council should either provide the complainant with the information requested in line with its duty under section 1 of the Act or provide the complainant with a refusal notice compliant with section 17 of the Act.
56. In relation to request 7, whilst the council have stated that they have not seen any information regarding this, that the parish clerks from the time are not available, and that to its knowledge the complainant has not been used as a precedent, the council should consider request 7 specifically to see if any of the applicant's personal data would fall within the scope of the request and if there is, whether it can be disclosed to him under the Data Protection Act 1998.

Failure to comply

57. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

58. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 16th day of June 2009

Signed

**Steve Wood
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Vexatious or Repeated Requests

Section 14(1) provides that –

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

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

Section 16(2) provides that –

“Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case”.

Refusal of Request

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”