

Freedom of Information Act 2000 (Section 50)

Environmental Information Regulations 2004

Decision Notice

Date: 7 February 2011

Public Authority: Winsley Parish Council
Address: 26 St Nicholas Close

Winsley

Bradford on Avon

BA15 2NH

Summary

The complainant requested information on the council's public response to negotiations with a local charity over the lease of a playing field. The council initially stated that the request was vexatious, however on review it stated that it did not hold any information because one of the councillors on the working group had not provided it to the reviewer. The Councillor concerned stated that his letters were private correspondence and he was not prepared to provide it to the council. The Commissioner's decision is that the letters were private correspondence and so the council did not hold the information.

The complainant also asked a number of questions regarding the council's actions in respect of the hospice. The Commissioner's decision is that the council did hold recorded information which would allow it to respond to one of those questions, and he finds that that should be disclosed. However he has also been satisfied by the council's argument that no other information was held regarding the remainder of the questions, and therefore he finds that Regulation 12(4)(a) applies.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement

provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. This case was investigated alongside another similar complaint which the Commissioner has responded to in Decision Notice FS50295060. Hence the background and the chronology of this case closely follows the decision described in that Decision Notice.
3. The Commissioner understands that at the time of this request Winsley Parish Council was in difficulties with discord occurring between various Councillors. This related partly to council matters which are covered within the scope of this request.
4. The complainant's request relates to a lease which the Parish Council holds on a field owned by a Hospice, a charity situated in the village. The lease was due for renewal and a working party of three Councillors was set up by the council to renegotiate it with the charity.
5. The Hospice wished to change the terms of the lease to allow it to park cars on the field on about 10 occasions over the year. The parish council had concerns about the damage which it felt was likely to the field if cars were allowed to be parked on it on such a regular basis. It was worried that if cars used the field after heavy rain it would soon become unusable as a playing field.
6. At least one member of the working group ('Councillor A') was also a resident in the village. He wrote a number of letters to other residents in the village and to other parties about the Hospice's position. He also wrote a number of articles in the local newsletter expressing opinions on the actions of the Hospice in trying to change the terms of the lease. This correspondence argued that the Hospice could use other fields to park and that due to the damage that would be caused the field should not be used for car parking. He stated that the council had been informed that persistent use as a car park would leave the field in a dangerous condition for fast, running games.
7. In these circumstances the complainant made a request for copies of information justifying the council's position in relation to the letters and articles that had been issued as regards the Hospice. She also asked the council to justify its actions as regards the negotiations.
8. On 9 April 2010, subsequent to the Commissioner's receipt of this complaint but prior to him beginning his investigation, the council called an extraordinary meeting in which the former chairman of the council and eight other Councillors, including Councillor A and the other

members of the working group, announced their immediate resignation from the council, stating that this was due to their working relationship with a colleague: Councillor B. This left Winsley Parish Council inquorate and unable to function until it could be reconstituted. Its powers therefore reverted to the County Council until elections could be held or new Councillors co-opted. The Commissioner understands that this has now occurred, and that Councillor B is now the chairman of the newly constituted council.

9. This internal discord provides some explanation of the difficulties which the council has had in responding to the complainant's request in this instance. The Commissioner understands that the former members of the working group were part of the group in dispute with Councillor B, and that it was Councillor B who reviewed the council's initial decision to claim that the request was vexatious.
10. At least one member of the group has also alleged that Councillor B was in fact behind the request for information made by the other complainant in the first instance. The Commissioner does not know if that is the case and it is not relevant to his decision in this instance. However the description of events at the council does explain why there was little, if any cooperation between the former working group members and Councillor B when he sought to review the council's response to the complainant's request.

The Request

11. On 11 August 2009 the complainant wrote to the council and asked it for:

"1. The report in the Wiltshire Times of 31/7/09 states that the parish council vice chairman (Councillor A) has recently sent letters to all households in the village asking if the hospice cares about the local community. Not everybody in the village has been sent the vice chairman's letter, at least not the letter I received on 17/7/09. To date friends and acquaintances of mine who live in other parts of the village have received no communication from Councillor A at all and if there is another letter in issue, I haven't received it. Should I have?

2. If you are counting the article in the August village magazine as notification to all households, then you must surely be aware that the magazine does not reach every household in the village and even if it did, the disclaimer discounts any Parish Council (the 'PC') ownership of the comments made by the vice chairman (Councillor A), unlike the letter posted through my letterbox. So,

does the PC endorse the vice chairman's article and if so why does the magazine article have a disclaimer attached to it?

3. What evidence does the PC have that the majority of people are incensed by the renewal lease proposals? At no time have I been directly or indirectly approached for a view or comment on the matter and as far as I am aware other people I know in the village have not been approached either. Indeed when another parishioner who attended the PC meeting on 28/7/09 asked what evidence the PC had to back up this assertion, no evidence was offered. The reply given merely stated that many people were against Dorothy House's proposed use of the field but they were not able to articulate themselves as well as those supporting Dorothy House. The councillor's remarks were patronising to say the least, and her failure to identify or produce evidence to support her allegation could be considered inaccurate and misleading. So, does the PC have actual evidence to support their assertion and if yes, what is it?

4. Finally I note in the August issue of the village magazine that Dorothy House was asked by the PC chairman to retract the comments he made to them in the confidence of a meeting regarding the car parking. They have complied with his request. However, I note that the chairman does not ask for a retraction because the comments were incorrect, only that they were said in confidence and should not have been published. The hypocrisy of this request is unbelievable. Dorothy House cannot comment on negotiations even if their reported remarks are upbeat, but it's acceptable for the PC to broadcast comments about on going negotiations in a hostile manner. What hypocrisy. Is it that Dorothy House breached a "confidence" or that the chairman's argument and personal interest, which he declared at the PC meeting on 28/7/09, has been compromised by the truth of his remark?"

12. The council responded on 6 November 2009 by alleging that the complainant's letter contained libellous information intended to discredit the council. It warned her that legal action may be taken against her if she persisted.
13. The complainant complained to the Commissioner about this response on 17 November 2009. The Commissioner wrote to the council on 1 December 2009 stating that the refusal notice was inadequate and that the council needed to issue a proper refusal notice in line with the requirements of the Act. He also provided the council with advice on the requirements of a refusal notice under the Act.

14. On 3 December 2009 the council wrote to the complainant providing a refusal notice. The council applied section 14 to the request (vexatious) and stated that it would not therefore respond to it.
15. On 10 December 2009 the complainant wrote to the authority and asked it to review its decision.
16. On 19 December 2009 the complainant received a message from the council stating that Councillor B had been assigned to review the council's refusal notice.
17. On 18 January 2010 the council responded to the complainant's request. It stated that there was no evidence that the request was vexatious and it therefore revoked its reliance on that exemption. The review stated however that the council was unable to provide a response to the request as Councillor B's request to the councillors on the working group for relevant information had been refused. The Commissioner understands that Councillor A had in fact refused to provide the information on the basis that it was his own, private correspondence.

The Investigation

Scope of the case

18. On 25 January 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider whether the information she requested should have been disclosed to her.

Chronology

19. The Commissioner wrote to the council on 18 February 2010 indicating that valid complaints had been received. The council responded on 26 February 2010 indicating that it did hold some information but that there was no correspondence from Councillor A as that was written privately.
20. On 27 February 2010 the council provided further documents to the Commissioner, including Councillor B's review of how the request had been handled. Other telephone calls and brief emails were exchanged following this period.
21. On 25 March 2010 the Commissioner wrote to the council asking for any further arguments and for a copy of the withheld information.

22. On 1 April 2010 the council spoke to the Commissioner on the telephone and explained some of the background to the issues the council was having in responding to the request.
23. On 8 April 2010 the Commissioner again wrote to the council asking it to provide any withheld information, and explain if it believed that some information should not be held.
24. On 20 April 2010 the council wrote back to the Commissioner referring him to its previous responses.
25. On 3 June 2010 the Commissioner wrote to Councillor A regarding his letters. He asked if the Councillor would be prepared to send a copy of some of them to him in order that he could establish that they were private correspondence.
26. On 15 June 2010 Councillor A responded providing an explanation of the situation and his reasons for issuing the correspondence privately.
27. On 5 July 2010 the complainant from the other case wrote to the Commissioner asking him to ask the council for a specific document he believed provides evidence that the correspondence was sent by Councillor A in his public role. He explained that both the clerk and Councillor B held copies of that email.
28. On 6 July 2010 the Commissioner wrote to Councillor B requesting a copy of the email.
29. On the same date Councillor B responded stating that he would send the information to the Commissioner, but wished to discuss the matter over the telephone beforehand. A telephone conversation took place and Councillor B subsequently provided the information to the Commissioner.
30. On 13 July 2010 the Commissioner asked the council for copies of the emails which it had stated had been withheld previously, together with any further relevant information which was held. On the same day the clerk responded providing some information such as minutes of relevant meetings. The Commissioner has established however that the majority of this information does not fall within the scope of this case, although it did fall within the scope of the other case he was investigating.

Analysis

Substantive Procedural Matters

31. The Commissioner notes that the council responded to the complainant's request under the Act, however his decision is that the information is environmental information falling within Regulation 2(1) of the Environmental Information Regulations 2004 and he has therefore considered this under these Regulations.
32. Regulation 2(1)(c) provides that –
- “environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements”
33. The factors referred to in (a) include -
- ‘the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements’
34. The Commissioner is satisfied that the information falls within the definition of environmental information as provided in Regulation 2(1)(c). The information relates to a change to the terms of a lease which was being negotiated between the council and the Hospice which would allow the use of a playing field as a car park. As such the new terms were likely to affect the elements of the landscape as described in Regulation 2(1)(a).
35. Given this, the refusal notice which the council issued breached the requirements of Regulation 14(3), which requires that a public authority that refuses a request to provide environmental information specifies the exception it is relying upon in the refusal notice.

Does the council hold any information?

36. Regulation 12(4)(a) provides an exception to provide a complainant with information where the authority concerned does not hold any

relevant information. The Commissioner has therefore considered whether the council did actually hold relevant information.

37. The Commissioner considers that there are two questions which arise from the response of the council:
- Whether the correspondence written by the Councillor was written privately, and if not, whether the council should hold copies of that information, and
 - If not whether any other information is in fact held by the council.
38. The Commissioner notes that the majority of the requests which the complainant has made surround correspondence which was produced and issued by Councillor A. It is this information which would primarily allow the council to respond to the questions which the complainant has asked. His first question is therefore whether the information held by Councillor A was actually private correspondence as Councillor A claims, or whether it was produced on behalf of the council.
39. If the letters and articles were sent on behalf of the council, then as Councillor A was a still councillor on the council when the request was received then the information would have been held by the council. The council would then have been under a duty to consider the information for disclosure to the complainant under the Regulations.
40. On the counter side, if the information was private and personal to Councillor A then if the council did not hold copies of it in its own right the information not actually be held, in spite of the fact that Councillor A clearly held the information as it was his own correspondence.
41. In its review, the council did not state that it should not hold the information, nor did it state that the information was exempt. The council merely stated that due to the reticence of members of the working group, together with the lack of procedures in place it was unable to establish what the council's response should be.
42. The council therefore failed to provide a valid exception to the complainant's request, as required by Regulation 14. The Commissioner's decision is that therefore that the council also breached Regulation 14(3).

Was the correspondence issued by Councillor A public or private correspondence?

43. The Commissioner finds himself in an unusual situation with this case. Given the change in personnel at the council due to the resignations

highlighted above, he finds himself discussing the case with the new chair of the council, Councillor B. Councillor B's view would appear to be that the correspondence was not private and that the council should therefore hold copies of it, or at the least, that that information should be provided to the council in order for him to make a decision on its status. Councillor A has however stated to both the Commissioner and to Councillor B that he believes that (Councillor B) is behind the other request for information in the first instance, and that as the information is his own private correspondence he refuses to provide copies to the council for that purpose.

44. The Commissioner has considered whether the letters and correspondence were written privately or whether they were written on behalf of the council. He summarises some of that evidence below.
45. In making his decision he has considered all of the correspondence, statements and arguments between the parties highlighted in the paragraphs outlining the course of events below. He also contacted former Councillor A and asked him if he was willing to provide copies of his letters to the Commissioner in order for him to consider their status. Councillor A agreed to do this, and so the Commissioner has also had the opportunity to consider some of the correspondence itself. Councillor A also provided information on his intentions in writing the letters and acting in the way he did.
46. In a Parish Council meeting dated 28 July 2009 the complainant in case FS50295060 made the following statement to the meeting.

"I note that Councillor A has made several written contributions supporting the PC without clearly stating that he is only speaking for himself and not the PC. I believe that a majority of Winsley parishioners would consider that he is in fact speaking for the PC. When you discuss this matter later in the meeting I would be grateful for confirmation that Councillor A has been acting with the prior knowledge and approval of the whole Parish Council."

47. In the same meeting a statement was read out from Councillor A providing an update on the working group's negotiations. Councillor A was not present due to illness. In that statement Councillor A stated:

"I have written letters in my own name to a number of people including the Princess Royal and the Chairman of the Trustees hoping they might exert some influence on the situation. I have received encouraging replies expressing hopes that the problem might be solved amicably between ourselves but as yet we have received no invitation to a further meeting.

I have written a short article for the next issue of the Weaver which you have all seen, but I know that Councillor B was not happy with it, and he has spoken to the editor trying (I think) to prevent it being published....

The Wiltshire Times has published a letter from the Hospice which was in my view very misleading (although I don't think Councillor B tried to prevent that one being published) and I have replied to that in a letter published last week."

48. On 2 August 2009 the complainant in the other case wrote to the council stating that in the meeting the council had stated that the correspondence issued by Councillor A was done with the council's knowledge and approval. He asked if he could view that correspondence.
49. On 4 August the then chairman of the council responded stating that what he had said was that the council was aware of Councillor A's actions, not that it had approved them. He also stated that as the correspondence was private correspondence the council had no control over it and he should ask Councillor A for it if he wished to have copies of it.
50. On 8 August 2009 the complainant in that case responded. He said that the question he had asked the council in its meeting was whether Councillor A had been acting with the prior knowledge and approval of the council, and it was his understanding that the council had confirmed that that was the case at that meeting. He said that the council was now trying to say that that was not what it had said. Further to this, he argued that if the working group was aware of Councillor A's actions, then those actions cannot be said to be private. He also referred to statements written in the local newspaper which (he argued), suggested that the Councillor was acting in a public rather than a private role.
51. Councillor B provided the Commissioner with a copy of an email from the former chairman, sent on the 15 July 2009 to all Councillors which he cites as evidence that Councillor A's correspondence was sent on behalf of the council. This email was sent prior to the argument beginning, and stated:

"The Working Group, chaired by Councillor A with (another councillor) and myself as members, continue to engage with Dorothy House senior managers and with the Chairman and others on the Trustees Board. Considerable correspondence, including letters to The Princess Royal as Visitor, Dr Andrew Murrison MP and many others inside and outside Winsley Parish

have so far not produced a satisfactory result, although expressions of support have been received...

The Working Group believes that the Parish Council should continue with a campaign to acquire a new lease for the Community Field at Murhill Lane on the same conditions as before which will prohibit the use of the field for parking at any time. In order to obtain the views of the whole electorate and hopefully support for our aims, it is proposed that posters and flyers be produced and distributed throughout the whole of Winsley Parish. In addition arrangements are already in hand for an explanatory article to be published in The Winsley Weaver."

52. Councillor B considers that this shows that the information was sent on behalf of the council rather than on a private basis by Councillor A.
53. In support of this view, the Commissioner also notes that the thrust of the correspondence which was issued matched and combined perfectly with the aims and intentions of the working group. The working group was aware of the intentions of Councillor A when he wrote his letters and articles, as is evidenced in its reply to the complainant in the other case dated 2 August 2009. It also seems likely that part of the reason for writing the letters etc was to support the working group's negotiations.
54. The articles which were written in the local newspaper did use the term "we" when referring to the actions taken by Councillor A. However the article never went so far as to say that he was acting on behalf of the council. It did refer to the fact that the writer was a Councillor on the working group, and it was never made clear that the actions in question were taken privately.
55. The Commissioner therefore recognises that it was not particularly clear on what basis he was writing the articles. In any event, this particular information was published and is now in the public domain.
56. The Commissioner also notes that the wording of the first paragraph of the email of 9 July 2009 does imply that the letters were sent on behalf of the working group. It does not go so far as to specifically state that, however the Commissioner considers that the complainant would be justified in drawing that conclusion from the statements made.
57. The Commissioner notes that although the working group was aware of the letters, this in itself does not mean that the council itself was responsible for them. It is possible for the council to have known about the letters without having authorised Councillor A to act in that way.

58. The Commissioner notes the following evidence countering the evidence above:

- The Commissioner notes that even if the goals and intentions were the same as that of the working group, and the council was aware of the letters, (even if it had not authorised them), then those letters may still not be considered to be public information if they were sent on a private basis; i.e. that the complainant intended to write privately, rather than on behalf of the council.
- The other complainant's statement to the council in the meeting of 28 July 2009 stated "I note that Councillor A has made several written contributions supporting the PC without clearly stating that he is only speaking for himself and not the PC". It therefore seems relatively clear that the complainant in that case understood that the letters were written on a private basis but considered that due to their nature, they should not have been, and therefore should be public information. This is not a relevant basis for such a decision to be made.
- The Commissioner also notes correspondence between Councillor A and Councillor B raises a similar point. He notes an email from Councillor A to Councillor B dated 16 July 2009 relating to the article in the Winsley Weaver. This was sent 1 day after the email which the complainant argues demonstrates letters were written on behalf of the council. Councillor A states in that email: "I have written it in my own name because it reflects my own personal views, although the working group have also agreed with it." Later within the same email he states: "So for the time being, as I said, it is just from me as an individual." Councillor B's response to him that the wording suggested that the council itself was behind the article.
- As noted above, none of the letters were written on council notepaper, or stated that the letter was on behalf of the council. They were simply sent under the Councillor A's own name. Councillor A also states that responses were received addressed to him, rather than to the council.
- Councillor A stated that he did not use council funds or stationery in order to send the letters. He used his own address, his own funds and his own stationery in order to send them.
- The Commissioner has also borne in mind that Councillor A was a resident of part of the village which had been affected by parking matters relating to the Hospice personally. He may therefore have had personal reasons for not wishing the playing field to be

used as a car park more often, in addition to the concerns which the parish council had.

- The letters and articles appear not to have been provided to the clerk of the council, which would have been expected if they were sent on behalf of the council.
- Councillor A's statement to the council of 28 July 2009 was written prior to the requests being received and prior to a complainant making a statement to the council asking for the status of the letters to be clarified. It stated clearly "I have written letters *in my own name*". The Commissioner therefore considers this a further, clear notification to all concerned that he intended the letters to be sent privately.
- It is possible for Councillor A to have received authorisation from the council to write privately to other parties. An authorisation would not necessarily mean that the letters were written on behalf of the council. The individual may have informed the working group or the council of his intentions in order that the council could consider whether those actions would require him to stand down from his position on the working group because of a conflict of interest.
- The lack of any written authorisation or ratification for Councillor A to have taken such action from the council in this case could however be taken to indicate as further evidence that his actions were taken independently to his role on the council.
- The Commissioner has been provided with various documents and internal emails within the council from Councillor A which clarifies that he at all times viewed his correspondence to be private and separate to the actions of the working group, and of the council.
- The Commissioner agrees that the status of the leaflets was also ambiguous and that some members of the community/the Hospice may have assumed Councillor A's comments were made through his role on the council. However the Commissioner does not consider that a lack of clarity in this is, in and of itself, reason to consider that the information is public in nature.
- The Commissioner has been provided with an email from Councillor A dated 5 August 2009 which specifically offered some Councillor's the opportunity to view the letters which he states he sent privately. This indicates that prior to that time other Councillor's had not been party to the correspondence. The email

also very clearly states that the letters were sent on a private basis.

- As stated, Councillor A agreed to send copies of some of the letters he had written to the Commissioner. He also provided an explanation of his actions and intentions in writing the letters to the Commissioner. The Commissioner has therefore based his decision in part on the contents of both the letters and the explanation which Councillor A provided.
59. Having considered all of the above the Commissioner's decision is that the letters were clearly written in a private capacity by Councillor A. Therefore the Council would not be expected to hold copies of these letters.
60. The Commissioner is not responsible for considering whether it was right or proper for Councillor A to write on the issue in a private capacity whilst also retaining his role on the working group.
61. It is also not a matter for the Commissioner to consider whether acting in this way constituted a conflict of interest or whether he should have been excluded from the working group because of it.
62. The scope of the Commissioner's decision must rest purely in whether the letters were held by the council and if not, whether they should have been. This required him to consider whether they were sent privately or not, but no further questions of the nature outlined above are relevant under the Commissioner's powers. In this case, as the Commissioner finds that the correspondence was written privately, he considers that the council would not be expected to hold, or have copies of the information. His decision is therefore that at the time of the request, the council did not hold the information in question. Regulation 12(4)(e) is therefore applicable.

Is any further information held?

63. The Commissioner notes that the complainant's request encompasses a number of questions rather than simply requests for recorded information. The Act does not provide a right to ask questions from public authorities. It provides the right to ask an authority for a copy of any recorded information that it holds.
64. Although this is the case, the Information Tribunal has clarified that any written question to a public authority can be considered to be a freedom of information request. If a question can be answered by simply providing the applicant with copies of recorded information that it holds then it should do so. Otherwise it should simply state that it does not hold relevant information.

65. In his subsequent review of council's handling of the request Councillor B stated:

"The Council's official records were searched by the Clerk to find the records of the information requested associated with the Council's work to enable a new lease for use of the field. None of the material that could have satisfied the requests was found. Each member of the former working group was asked to deliver to the Clerk everything that had been available to them or generated by them during the time they were involved with the work to enable a renewed lease. Letters to the reviewer were received written by one indicating obstruction, asserting the material did not need to be seen for the review, general prevarication and worse.

Without any opportunity to see the information there was no way it could be examined to see what matched the requests nor to assess it alongside the exemptions provided by the Act to enable certain categories of information to be withheld.

For the second of the two separate requests the answers to the questions asked and the full written responses to the other points made in the August request letter could only have been provided by one or more members of the former working group.

So the review was frustrated from the start and could not provide either evidence that could justify the information being withheld or access for the Clerk to release it."

66. The Commissioner was also provided with requests from the Clerk to the former members of the working group asking for any relevant information they held. Clearly therefore the council did ask the working group members but did not receive relevant information as a result of this. The Clerk provided information she did hold to the Commissioner and some of this was relevant to the other request. In Decision Notice FS50295060 he finds that that information should be disclosed. The Commissioner is however satisfied that that information is not relevant to the request in this instance. However there is one document referred to below which the Commissioner finds is relevant. This is addressed further below.

67. Looking that the complainant's questions more specifically:

- Question 1 referred to letters delivered to the members of the village. The complainant asked if she should have received one of those letters. The Commissioner's decision is that the letters were issued by Councillor A privately as a member of the community. As

the council did not hold Councillor A's correspondence and as it holds no other recorded information itself which would allow it to respond to the complainant's question, the Commissioner considers that relevant information is not held.

- Question 2 asked the council to clarify whether it endorsed Councillor A's statement or not. Again this is a question rather than a request for recorded information. The Commissioner notes that responding to this would not require the council to have access to the private information which Councillor A holds. If the council held information which showed that it had endorsed the approach, such as a written endorsement or authorisation to Councillor A to proceed then it would have needed to consider that information for disclosure to the complainant in response to her request. Similarly any minutes of meetings where Councillor A's actions were discussed would also need to be considered for disclosure.
- The Commissioner notes however that one email from the information he obtained from the council would be likely to fall within the scope of the complainant's request. It is an email from councillor A to Councillor B dated 16 July 2009, referred to in paragraph 57 above. The council has however subsequently stated to the Commissioner that it is willing to disclose this information to the complainant. The Commissioner's decision is that this information should therefore be disclosed.
- The council clarified to the Commissioner that no other information is held which would allow it to respond to the request. It also described the searches it had carried out to ascertain that. The Commissioner therefore accepts the council's assertion that no further relevant information is held.
- Question 3 asks the council what evidence it has that the majority of people are incensed by the renewal proposal. The Commissioner again notes that this was a comment made in Councillor A's private correspondence. But that another councillor also stated this in an open meeting. The council has clarified that no further information is held and detailed the searches it carried out looking for that information. The Commissioner is therefore satisfied that on a balance of probabilities no further information is held which would allow the council to respond to this question.
- Question 4 asked the council "Is it that Dorothy House breached a 'confidence' or that the chairman's argument and personal interest, which he declared at the PC meeting on 28/7/09, has been compromised by the truth of his remark?" Again this does not require access to the private correspondence of Councillor A. The

question is therefore whether the council holds recorded information which would have allowed it to respond to this request. For the same reasons provided above, the Commissioner is satisfied that no relevant information is held.

Was the council's response adequate?

68. The Commissioner has considered the responses to the complainant's requests.

- The Commissioner notes that the council's initial response was to state that if the complainant sent further correspondence of the same nature it would result in legal action being taken against her. This is an inadequate refusal notice because it does not refer to the elements of the Regulations which the council was relying upon. The Commissioner considers that this is a breach of Regulation 14(3) of the Act.
- After the Commissioner's preliminary intervention it subsequently changed its decision to state that the request was vexatious under section 14 of the Act. On further review it changed its position again and stated that the request was not vexatious.
- The council's response after that point was that it could not respond to the complainant's request because it could not obtain the relevant information from Councillor A. In fact the council's response to the majority of the questions should have been that no information was held and so Regulation 12(4)(a) applied.
- The Commissioner is however satisfied that the council's responses failed to take into account the email of 16 July 2009 referred to in paragraph's 57.

The Decision

69. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the regulations.

- It breached Regulation 14(3) in that it did not provide the complainant with a valid exception when responding to the complaint.
- The council should have disclosed the email between Councillor A and Councillor B dated 16 July 2009 to the complainant. The council breached Regulation 5(1) in not providing a copy of that email to the complainant in response to her request.

Steps Required

70. The Commissioner requires the authority to disclose the email of 16 July 2009 to the complainant.

Failure to comply

71. 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

72. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

73. 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.
74. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 7th day of February 2011

Signed

Andrew White
Group Manager

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

Legal Annex

Regulation 5(1)

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2)

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 12(4)

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;