

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 28 February 2011**

**Public Authority:** West Rainton & Leamside Parish Council  
**Address:** 7 Grassdale  
Durham  
DH1 2AF

### Summary

---

The complainant asked to inspect various documents held by the Parish Council. The Parish Council allowed the complainant to view the information it held which was relevant to the scope of his request. After viewing the information in situ the complainant is not satisfied that he has seen everything held, he is of the opinion that the Parish Council has withheld some of the information he requested. The Commissioner has investigated and is satisfied that the complainant has been given the opportunity to view all of the information held by the Parish Council that he requested and, therefore does not require the Parish Council to take any further action.

### 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. On 1 November 2009, the complainant submitted the following request to the Parish Council:

"I am writing to submit a formal request to inspect the following documents held by the parish council (since the May 2007 local government election):

- All documentation / correspondences between the Parish Council and its auditors BDO.
  - All documentation / correspondences between the Parish Council and Durham Association of Local Councils (including Steve Ragg)
  - All documentation associated with the appointment of the new parish clerk with the exception of any application forms or curriculum vitae submitted by the candidates which would be exempt under the DPA.
3. The Parish Council provided a response to the complainant on 10 November 2009 in which it invited him to meet with the clerk in order that he may view the requested information.
  4. There was then a chain of correspondence which shows that the complainant met with the clerk on 4 December 2009 to view the requested documents.
  5. As a result of the meeting, in a letter dated 4 December 2009 the complainant requested an internal review of the Parish Council's handling of his request, stating that he did not feel he had seen everything he had asked for.
  6. The Parish Council responded in a letter dated 10 January 2010 confirming the information the complainant felt was outstanding and offering him a further meeting to inspect the requested information again.
  7. The complainant responded to the Parish Council in a letter dated 19 January 2010 stating that the Parish Council's letter of 10 January 2010 was factually incorrect; it falsely stated that he had rejected some of the information provided to him and asked the Parish Council why it was trying to mislead him.
  8. In a letter dated 1 February 2010 the Parish Council stated that the complainant had been given the opportunity to view everything held by the Parish Council which was covered by the scope of his request. In this letter the Council also stated that it was unable to assist him any further and informed him that it considered his repeated requests to be vexatious.

## The Investigation

---

### Scope of the case

9. On 28 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The public authority had not provided all of the requested information.
  - The public authority was attempting to conceal information to prevent disclosure into the public domain.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

11. In a letter dated 21 October 2010, the Commissioner wrote to the Council informing it of the complaint and asking it for information regarding the Council's handling of the request.
12. There were then a series of telephone conversations between the Commissioner and the Council to discuss the Council's handling of this request.
13. In a letter dated 6 December 2010, the Council provided further information about its handling of this request. The Council re-iterated that it had provided the complainant the opportunity to view all of the information it held relevant to the scope of the request.

## Analysis

---

### Substantive Procedural Matters

Is relevant recorded information held?

14. The Commissioner has considered the public authority's handling of the request with regard to the section 1 requirements of the Act. In doing so he has considered the information requested along with the representations provided to him by the public authority and complainant. The Commissioner has found evidence contained within

the case file from both parties that the information requested had been the subject of past requests and correspondence dating from 2007. The full wording of all the extracts of the Act included in this notice can be found in the Legal Annex.

## Section 1 – general right of access

15. Section 1 of the Act states that any person making a request for information is entitled to be informed in writing whether the information is held and, if this is the case, to have the information communicated to them.
16. The Council in this case has informed the Commissioner that the complainant has been given the opportunity to view the information held by the Council. The Complainant is of the opinion that the Council did not provide him with the information he requested. The complainant does not accept that the Council does not hold any further information.

*Is further information held by the Council?*

17. In the Commissioner's view, the normal standard of proof to apply in determining whether a public authority holds any requested information is the civil standard of the balance of probabilities.
18. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* (EA/2006/0072), in which it stated:

*"...we must consider whether the Information Commissioner's decision that the Environment Agency did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..."*

because

*"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"*

19. In deciding where the balance lies, the Commissioner will usually consider, among other things, any reasons offered by the public authority to explain why the information is not held.

### Explanations offered by the Council

20. The Complainant did not provide the Council with his telephone number or an email address. Arrangements for him to view the requested information had to be made by post, the Council did try to clarify with the Complainant which particular documents he wanted view at the meeting but unfortunately he did not clarify the information he was seeking.
21. The Council made the following information available to the complainant at the meeting:
  - Details of the Audit for 2007-2008 including the accounts and accompanying documents and correspondence appertaining thereto.
  - Paperwork relating to clerk's appointment/position.
  - Original paper files covering the last three years of correspondence received and sent to BDO ICO and County Council and general correspondence between different organisations
  - Copies of emails received and sent.
  - Brochures and catalogues
22. The Council informed the Commissioner that the complainant often changes the goal posts and his requests whilst demanding are often vague, which clouds the situation with regard to paperwork he requires.
23. The Council states it has always maintained an open policy and has never knowingly withheld any paperwork. It made searches through the paperwork held in the filing systems of the parish council and also searched in the documents retained on the computer system and email facilities. All documents and correspondence which the Council thought the complainant may be interested in were extracted or the originals made available. The Clerk of the Council retains the paper files, email access and there is only one computer on which data is stored in the Clerk's possession.
24. The Council also states that no documentation or files of importance are destroyed. The only emails that are deleted on the email system are those of a very general nature advertising services and catalogues which are already available in the public domain and are not unique to the parish council. Similarly with brochures and catalogues if individual councillors do not want these when offered they are destroyed as the Council does not have the facilities to store these items and the information offered in the catalogues is freely available in the public domain. The Council stressed that no documents or correspondence of importance are destroyed.

25. With regard to the actual meeting between the Clerk and the complainant, all of the documents and files of papers and copies of emails listed above were made available for inspection. The complainant refused to look at the information provided instead stating that it wasn't what he was looking for. At this meeting the Council attempted to clarify what information the complainant was seeking but he refused to provide any further clarification.

#### The Commissioner's position

26. From the explanations provided to him by the public authority in response to his detailed enquiries, the Commissioner is of the view that the public authority has carried out searches of the appropriate locations in order to locate and retrieve the relevant information. The Commissioner holds that it is not reasonable to suggest that other information pertaining to the request may be held by the public authority elsewhere. Moreover the Commissioner has considered the quantity of the information requested and the arguments provided to him by the public authority within the course of his investigation and he has not found any evidence within the correspondence, to suggest that further information within the scope of this request exists. Therefore, in the absence of any evidence to the contrary, he is satisfied that the public authority has provided the complainant sufficient opportunity to view all the information it holds pertaining to the request.
27. Given that a comprehensive list of documents relevant to the request has been provided, and details of how and why relevant material is held, the Commissioner is of the view that all relevant material has been made available for inspection. The complainant has not been able to provide specific areas where he feels information has been withheld and enquiries have not elicited any area where information has not been made available where it might be expected to be.

#### The Decision

---

28. The Commissioner's decision is that on the balance of probabilities that apart from the information made available to the complainant, no further information is held that is relevant to the request and therefore the Council has complied with section 1(1)(a) in this case.

## **Steps Required**

---

29. The Commissioner requires no steps to be taken.

## Right of Appeal

---

30. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 sent.

**Dated the 28<sup>th</sup> day of February 2011**

**Signed .....**

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



## Legal Annex

### General Right of Access

**Section 1(1)** provides 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."

**Section 1(2)** provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

**Section 1(3)** provides that -

"Where a public authority -

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

**Section 1(4)** provides that -

"The information -

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

**Section 1(5)** provides that -

"A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b)."

**Section 1(6)** provides that –

"In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny"."