

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 December 2011

**Public Authority:** Walberswick Parish Council  
**Address:** Seaspray  
Millfield Road  
Walberswick  
Southwold  
Suffolk  
IP18 6UD

#### Decision (including any steps ordered)

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1. The complainant requested from Walberswick Parish Council ("the council") a copy of a speech given by the chairman at a particular meeting. The complainant also made another request for information relating to the refusal to provide her with a copy of the speech and she also asked for details of the complaints procedure. The council initially refused the first request by stating that the speech was possibly subject to legal professional privilege. It subsequently refused both requests relying on section 14 of the Freedom of Information Act 2000 ("the FOIA"), the exclusion relating to vexatious and repeated requests. Following the Commissioner's involvement, the council decided to respond to the requests and it said that it did not hold the information requested.
2. The Commissioner's decision is that the council did not hold the information on the balance of probabilities. He has recorded a breach of section 10 of the FOIA.
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 28 October 2010, the complainant requested information from the council in the following terms:

*"Please could you send me a copy of the text of the speech delivered by the Chairman of Walberswick Parish Council at the meeting of the*

*Parish Council on 4 October 2010".*

5. The council replied on 2 November 2010. It said that as the complainant has an outstanding complaint against the Chairman it considered that the information could "potentially become an item of legal privilege" and it was therefore not willing to provide it.
6. The complainant wrote to the council on 25 November 2010 to ask for an internal review of its refusal. In this letter, she also made a further request for information in the following terms:  
  
*"...can you please now also provide information related to the circumstances surrounding the making of the original WPC decision to deny me access: who made the decision? When? On what basis? Was it a delegated decision by the Chairman? Was it a decision by the full WPC? And where is the record or the minute of this decision? Can you also provide to me information as to the WPC complaints, internal review and procedures?"*
7. On 13 December 2010, the council replied. It said that the letter should be treated as an "exclusion notice" under the Freedom of Information Act 2000 ("the FOIA"). It cited section 14 of the FOIA and said that it would no longer correspond with the complainant. It said that the complainant could appeal the decision by writing to the Clerk.
8. The complainant wrote to complain about the response on 2 January 2011. She made another request which is not the subject of this notice.
9. As it appeared that the council did not consider that its letter of 13 December 2010 represented an internal review of its initial response of 2 November 2010, there followed some correspondence between the Commissioner and the council to try to establish whether the council was going to carry out an internal review and if so, when it would do so. The outcome of that correspondence was that the council refused to be specific about how long it may take to conduct a review. A copy of the review was eventually provided to the Commissioner by the complainant on 1 August 2011. This said that the council had decided to maintain its position in relation to the requests in issue.
10. Following an initial complaint to the Commissioner, the council decided to respond to the requests rather than to rely on section 14 of the FOIA. It provided a copy of its response to the complainant on 30 September 2011 along with a follow up response of 5 October 2011. The council said that it did not hold the information requested.

## Scope of the case

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11. Following the council's decision to respond to the complainant's requests, the complainant complained to the Commissioner that she did not accept that no information was held falling within the scope of her requests. She also complained about the way the authority had handled her requests.
12. One of the issues that the complainant asked the Commissioner to consider is whether the council correctly refused her requests using section 14. For clarity, the Commissioner will not consider this issue because the council subsequently decided to respond and it is not the best use of his limited resources to consider such a matter in these circumstances.

## Reasons for decision

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### Was the requested information held?

13. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".<sup>1</sup>
15. In relation to the speech requested, the council said that it had checked relevant records and found no copy of the relevant speech. It said that the speech had not been referred to or annexed in the minutes of the meeting. The council said that it had also consulted the Chairman who had given the speech and he said that the speech had been given before the meeting opened and this is why it had not been

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

- in the minutes. He said that it involved an apology for a failure to declare an interest. He said that he used notes for the statement but he did not read from these verbatim. The chairman confirmed that a copy of the notes had not been retained. He said that although he cannot remember exactly when the notes were destroyed, he believes it was shortly after the meeting and before the complainant's request. No record of the destruction was made. The council explained that it did not consider that the notes represented a council record because the speech had been made by the councillor acting in his capacity as an elected member. The council said that even if the information had not been destroyed, it did not believe that it would have been subject to the FOIA because of this.
16. The complainant argued that the information was held and that somebody must have deliberately deleted or destroyed it after her request. It is an offence under the FOIA to deliberately conceal information that is the subject of a request and as such, this is a very serious allegation to make. The Commissioner notes however that the complainant provided no evidence to substantiate the allegation. The complainant also alleged that the information must have been held at the time of her request because the refusal notice on 2 November 2011 refers to an exemption. The Commissioner does not consider that this proves that the information was held at the time of the request.
  17. The council asked the Commissioner to confirm whether the notes would have fallen within the scope of information that could be disclosed under the FOIA. The Commissioner does not consider that it is necessary to make a formal decision in this respect however because in any case, he was satisfied on the balance of probabilities, the information was not held by the council at the time of the request.
  18. In relation to the information requested on 25 November 2011, the council said that it had searched relevant paper and electronic records and had noted that there was no other record of the decision that it took apart from the refusal notice itself issued on 2 November 2010. The council said that it understood that the former Clerk had received advice over the telephone from Suffolk Association of Local Councils which had led to the refusal. The council said no record of this process was held and it is likely that it was never held. The council also said that it currently does not have any formal procedures for dealing with complaints or carrying out internal reviews of decisions. It had conducted appropriate searches to check that this was the case. It believes that such information was never held. It acknowledged that it would be good practice to have such a procedure and it would consider this in due course.
  19. Based on the above, the Commissioner decided that on the balance of probabilities, the information was not held.

## Procedural Issues

20. Section 1 of the FOIA provides a general right of access to information. When a request for information is received, a public authority must state whether it holds the information requested. In accordance with section 10, it must do this within 20 working days following receipt of a request.
21. The authority in this case decided not to rely on an exemption or exclusion. As explained in the scoping section of this notice, the Commissioner will not investigate whether the exclusion or exemption cited were rightly or wrongly applied at the time because the issue is essentially a purely academic one now that the authority has responded and the Commissioner must make the most effective use of his limited resources. The Commissioner will in such circumstances only record a breach of section 10 of the FOIA so that there is a record of the fact that a response under section 1 was provided at a late stage.

## Other matters

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22. The complainant specifically asked the Commissioner to consider the council's failure to refer to her right to complain to the Commissioner. The council should have responded that it did not hold the information. Where such a response is given, it is a matter of best practice to refer to the right to complain to the Commissioner and provide contact details for the Commissioner. The Commissioner trusts that the authority will do this in the future when responding to requests for information. The Commissioner also considers that the council would benefit from reviewing his guidance on refusal notices so that it can make improvements in the future when handling requests:

[http://www.ico.gov.uk/for\\_organisations/freedom\\_of\\_information/information\\_request/reasons\\_to\\_refuse.aspx](http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx)

23. The complainant also expressed a number of concerns to the Commissioner regarding the council's conduct in relation to internal reviews. The Commissioner would like to draw the authority's attention to guidance on his website regarding best practice for internal reviews as follows:

[http://www.ico.gov.uk/for\\_organisations/freedom\\_of\\_information/internal\\_reviews.aspx](http://www.ico.gov.uk/for_organisations/freedom_of_information/internal_reviews.aspx)

## Right of appeal

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24. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

25. 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.
26. 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 – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**