Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **13 March 2013**

Public Authority: **Walberswick Parish Council**
Address: **Old Hall**
Wenhaston
Suffolk
IP19 9DG

Decision (including any steps ordered)

1. The complainant requested information from Walberswick Parish Council (the council) related to the decision-making process that led to the issuing of "exclusion notices" against certain individuals, including the complainant, by the council.

2. The Commissioner's decision is that, on the balance of probabilities, no further information is held that has not already been supplied by the council to the complainant.

3. The Commissioner requires no further steps to be taken.

Request and response

4. On 9 September 2011, the complainant made a request for information under the FOIA (though part of the request is for the complainant's personal data) in the following terms:

> '*…1.* ***The "terms of reference"*** *that the WPC Chairman* [named person] *gave to* [named person] *(purportedly 11/03/11).*
>
> *2. The "pack of documents" that the WPC Chairman* [named person] *gave to* [named person] *(purportedly 12/03/11), including "****copies of the correspondence with [me]****", "****relevant internal communications****", the "****summary of [me] by the Clerk to WPC****", and "****the ICO guidelines****" referred to in the report. (I do not require copies of my own letters, a simple schedule listing the dates and headings of my correspondence will suffice. I do not require copies of*

the ICO guidelines, a simple schedule listing the ICO documents will suffice. I am not requesting copies of the correspondence or other documentation or information related to any other members of the public who were also issued bogus "exclusion notices".)

*3. The "**Intra WPC correspondence provided to** [named person] **which included comments on [my] alleged behaviour at WPC meetings which could be judged to have been inappropriate**". In passing, for the record, I refute that any of my behaviour at WPC meetings has ever been inappropriate.*

4. The "questions posed individually to Councillors" [by named person] *and the parish councillors' replies" that led* [named person] *to conclude that "**there may have been a small number of occasions when robust comments were traded between councillors and the public but [these] were insufficient to mitigate [my] actions**" and that the special WPC meeting [presumably 20/10/10] was "**diligent in its approach**" and that "**its adjudication of each case appears sound**". Not only is this utterly incomprehensible in the context of my correspondence and my own behaviour at WPC meetings, but in addition it is irrelevant to my request for WPC to undertake an internal review of the WPC 'decision' to issue me with a bogus so-called "exclusion notice" following receipt of my letters of 26 and 27 October 2010.*

5. The record of the meeting between [named person] *and* [named person] *12/05/11 and the record of the meeting between* [named person] *and SALC 05/04/11.*

6. Information related to [named person's] "***individual analysis of [my] correspondence***" *(presumably my letters of 26 and 27 October 2010) and his conclusion "**that [I] had made vexatious and/or repeated requests**" for information. Again, in passing, for the record, I refute that I have ever made any repeated or vexatious requests for information in terms of S.14.1 or S.14.2 of the FOIA or any other terms.*

*7. **Can you please clearly specify which requests for items of information in my letters of 26 and 27 October 2010 you, on behalf of WPC, truly and honestly believe are repeated or vexatious in terms of S.14.1 and S.14.2.** When you assess the position you may quickly come to accept that I have not made any such requests.'*

5. The council responded on 28 October 2011 in the following terms:

- After searches had been made, there was nothing held under points one, five, six and seven.

- Regarding point two, the council stated that there had been a "*pack of documents*". After the named person had used them they had been returned to a previous member of staff and amalgamated back into the files before those files were passed on to the present parish clerk. As no schedule or index had apparently been recorded by the council before the documents were passed to the named person they could not be listed or copied to the complainant. However, the current parish clerk was informed that the documents consisted of correspondence between the complainant and the parish council. As a result of these circumstances the information was 'not held', as the council had not been able to identify what exactly the "*pack of documents*" originally comprised of.

- The council's response to point three was the same as the previous bullet point.

- The council's response to point four was that there were no questions, in other words, the information was 'not held'.

- It was stated that point seven was not a request for information because it asked for an expression of opinion.

6. The complainant asked for a review on 7 November 2011.

7. Following an internal review on 9 December 2011, the council wrote to the complainant to explain that it did, in fact, hold certain information related to his request that had not been provided previously. Some of this information had been provided by existing and recently resigned councillors in response to the parish clerk's enquiries:

- In relation to point one - "Terms of Reference for Exclusion Notices Appeals" (11 February 2011) from the chairman of the council was provided to the complainant.

- In relation to point five – there was now a record of the meeting between named person and Suffolk Association of Local Councils (SALC), created on 30 October 2011. This was created retrospectively and therefore not held at the time of the request but was provided to the complainant.

- In relation to point six – information was provided concerning the named person's analysis of correspondence which had been created on 30 October 2011 and was also retrospective and therefore not held at the time of the request. This was provided to the complainant.

- A copy of an email that had been written to a previous member of staff by a member of the SALC, dated 19 October 2010, which had recommended the wording of an 'exclusion notice' was provided. Third party names had been redacted, including that of the solicitor who had given legal advice.

- A copy of an email, written after the request for information date, which the current parish clerk had written to the named person on 24 October 2011 and a copy of the named person's reply. Some third party personal data was redacted.

- A letter (without plans) from Suffolk Coastal District Council dated 7 July 2010 entitled "Village Physical Limits Boundaries" was provided but not the council's response which the council stated was already held by the complainant.

Scope of the case

8. The complainant contacted the Commissioner on 1 November 2011 to complain about the way his request for information had been handled.

9. The Commissioner considers the focus of this complaint to be whether the council held any further information relating to the request that it has not already provided to the complainant.

Reasons for decision

Section 1(1)

10. 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.

11. The council had stated in its internal review that it did hold further information which was provided as part of that review response. On 17 September 2012, the Commissioner asked the council for details of the searches it had carried out in order to reach a determination concerning whether any further requested information was held.

12. The council responded to the Commissioner on 11 October 2012. It explained that it was providing the correspondence it has sent to the

complainant but was unable to answer the detailed questions asked by the Commissioner because of events that had led to the resignation of the council and the then unremunerated position of the only individual able to answer his questions.

13. The council had originally stated in its internal review that the only information not provided to the complainant was in relation to point two's "*pack of documents*" which had been given to the named person. The council stressed that there was no schedule or index made of the documents. They had been amalgamated back into the files by a previous member of staff before those files were passed to the current parish clerk. There was now no information held as to what had been passed to the named person in relation to point two.

14. Despite this assertion, after further review the council had provided more information to the complainant on 28 May 2012. It was able to provide various documents relating to point two of the complainant's request. In other words, documents in the possession of the named person which had been used or produced by him in carrying out a review of "exclusion notices" issued by the council. These documents came under various pieces of legislation including the DPA 1998, the EIR 2004 and the FOIA.

15. However, the complainant has told the Commissioner that he believes he has not received all the requested information from points two, three and five. He maintained that:

- Regarding point two, the complainant explained that he received the personal data of another individual. He did not receive what he described as the "*summary of me*". He had not received all the "*relevant internal communications*" he had anticipated.

- Regarding point three, he had received some internal council communications but these were not what exactly what he had requested or expected to receive.

- Regarding point five, he had received some information from the council but what he had received was not what he had expected.

16. It seems likely to the Commissioner that some of the requested information, if held, would constitute the complainant's own personal data and would therefore be exempt from disclosure under section 40(1) of FOIA. However, this particular point is only relevant where there is a potential right of access, in other words, where the public authority establishes that it actually holds the information.

17. 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*".

18. Although the council was unable to answer all the questions posed by the Commissioner because of its indeterminate position at the time, it was stated by the council that electronic and paper records were searched thoroughly, on several occasions. The responses to the complainant were both beyond the statutory timeframe and piecemeal. It would appear, however, that the various chances to review the request and the provision of extra information from some of the individuals involved who held information or knowledge of information that the council had held in relation to the request, eventually led to the release of all the requested information that the council held.

19. The complainant disagrees and maintains that he still has not received all the information to which he is entitled. The Commissioner notes that the complainant's opinion that the council is likely to hold further information is based largely on supposition, rather than knowledge that particular information is held by the council in relation to his requests. The Commissioner does not consider that there is evidence to firmly suggest that the council holds further data to that which has already been disclosed. Although this is a finely balanced decision, the Commissioner has concluded that, on the balance of probabilities, the council has provided all that it holds in relation to this request, though in an unsystematic and unsatisfactory manner.

Section 10 - time for compliance

20. Section 10(1) of the FOIA provides that:

> *"…a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

21. In this case the council responded to the complainant beyond the statutory timeframe and breached section 10(1) of the FOIA.

Other matters

22. The Commissioner has upheld several complaints against the council. There was a period of time when the council did not respond to freedom of information requests in the erroneous belief that its application of 'exclusion notices' to certain individuals, including the complainant, made this unnecessary. He also recognises that the council's responses to requests for information have been tardy and procedurally incorrect on several occasions in the past which it has now acknowledged and is currently endeavouring to remedy.

Right of appeal

23. 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
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.

25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed .....

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