

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2013

Public Authority: Walberswick Parish Council
Address: C/O Michael Gower
Old Hall
Wenhaston
Suffolk
IP19 9DG

Decision (including any steps ordered)

1. The complainant requested a copy of and timing of the resignation letter of a former Parish Council member from Walberswick Parish Council. The council refused the request on the grounds that the complainant had made a large number of requests within the previous 60 days. It therefore aggregated the time and cost of responding to these requests together and applied section 12 of the Act (cost of responding to the request exceeds the appropriate limit)
2. The Commissioner's decision is that Walberswick Parish Council is not correct to apply section 12 to the request. In order for requests to be aggregated they must relate 'to any extent, to the same or similar information'. Having considered the requests relied upon by the council in order to apply the exemption, the Commissioner is not satisfied that they are for the same, or similar information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To issue a fresh response without relying upon Section 12.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 17 January 2012, the complainant wrote to Walberswick Parish Council and requested information in the following terms:

"I have again become interested in the timing and reasons for the resignation of [name of councillor redacted]. Can I please have a copy of his resignation letter.

This cannot not be a great demand on WPC time, it must be on file [by law] and I am very happy to receive it as an e-mail attachment from you."

6. The council responded on 1 March 2012. It stated that it had aggregated his request with other requests he had made in the previous 60 days, and that it had applied section 12 to the request.
7. Following an internal review the council wrote to the complainant on 20 June 2012. It found that the exemption applied for the same reasons as previously given.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner considers that the complainant's complaint relates to whether the council was correct to apply the exemption it did in order to withhold the information.

Reasons for decision

10. Section 12(1) provides that a public authority does not need to disclose information in response to a request if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The appropriate limit for parish council's is set at £450 or approximately 18 hours work based on officer time of £25 per hour.
11. Regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 states where estimating whether responding to a request would exceed the appropriate limit authorities can aggregate two or more requests if to any extent, the requests are made to the 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,*
12. The regulation applies in circumstances in which–
- (a) *the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and*
- (b) *those requests are received by the public authority within any period of sixty consecutive working days.*
13. The Commissioner notes that the council aggregated the request with the following other requests which it had received over a period of 60 days. The council summarised the requests which it had received over this period.
14. In an email from the complainant addressed to the clerk dated 28.12.11 the following requests for information were made:
- "Thank you for sending me the information below.
I am not clever enough to be able to reconcile the figures in your sheet 1 and your Appendix 2. Can you please provide me with the assumptions behind each of them and I will struggle with them, [or probably lean on my son to explain on the basis that he is supposed to know]. Alternatively can you provide me with a crib, that I am sure you will have provided your councillors concerned about the narrowing gap between resources and expenditure. Similarly can you please provide some sort of resolution between the figs in your "actual figs, 10/11" and the figures on "sheet 1".
Can you please confirm that WPC set no budget for 2010/2011 and for 2011/2012 until your arrival?"*
15. In an email dated 1 January 2012 the following requests for information were made:
- "I have become very interested in payments made to and for SALC over the last two years and going forward.
Can you please let me have from your records payments made by WPC to SALC in the WPC year 09/10, 10/11, and the budgeted expenditure in 11/12.*
- Can you please tell me whether this is a set annual fee or mix of "activity" and Fee"*
 - If it is a mix of activity and fixed can you please tell me what is the relationship?*

- *In as much as the quantum of each annual payment had to be agreed between WPC and SALC who at WPC agreed the amount*
 - *Who at SALC agreed the amount?..."*
16. In an email dated 2 January 2012 the following request for information was made:
- "Can I please have a copy of those financial regulations that were applicable to Walberswick Parish Council and under which payments were agreed and made for the period between the acceptance of the Treasurers' Report 2009 and the adoption of new financial regulations by the Parish Council in December 2011."*
17. In an email dated 3 March 2012 the following request for information was made:
- "...Can you please direct me to any correspondence of mine with WPC concerning "planning" that predates my unlawful "exclusion notice."?..."*
18. In an email dated 17 January 2012 the following request for information was made:
- "I have again become interested in the timing and reasons for the resignation of [name redacted]. Can I please have a copy of his resignation letter..."*
19. In an email dated 18 January 2012 the following requests for information were made:
- "...[name redacted] were you in making your judgement and drawing your conclusion that WPC "may have misinterpreted the guidance from various outside sources" acting on knowledge of the various guidances given on relevant topics or where you acting on hearsay. On the assumption you were acting on knowledge, rather than hearsay, can I please have a copy of the source material...
... You have already denied me this information on the basis that it is was not available to you. If this information has now become available to you can I please have it copied to me as soon as possible. Can you please take this as a request under the Freedom of Information Act..."*
20. In an email from dated 19 January 2012 the following request for information was made:
- "...Can I could have a copy of the note referred to in your e-mail that you typed approximately two or three hours before the meeting to guide you on what you might say?..."*

21. In an email dated 24 January 2012 the following requests for information were made:

"...Also, can you let me know why questions from the public have been deleted from the WPC Agenda and can you please provide information as to which parts of the WPC Agenda standing order 1.d. applies. Can you please clarify whether you honestly think that the resolution passed by WPC on 05.12.11, delegating responsibility for the entire functioning of WPC and passing to you alone full authority for the exercise of all WPC powers and duties, is lawful and reasonable. As things stand, this decision usurps the responsibility and power of the parish councillors and gives it to you instead, and you do not even need to consult them! Can you please provide to me relevant information and a copy of any advice the parish councillors and you obtained confirming that this arrangement is lawful. Has [name redacted] confirmed that this is all in order?"

22. In an email dated 28 January 2012 the following request for information was made:

"...When the New Regulations were being discussed I recall you telling the Parish Councillors that you had annotated a copy of the "New" with the differences between "New" and "Old". If you have kept a copy of that it would satisfy my request at virtually no cost in time to yourself and I am very happy to receive it via e-mail thereby removing the paper cost..."

23. In an email dated 5 February 2012 the following requests for information were made:

"In the February Village News under the Parish Council Meeting 16 January 2012 there is a statement that "The Parish Council has received £2600 in anonymous donations which have been paid into the Community Benefit Fund.". In WPC terms this is a considerable amount, a third of the annual precept, which needs to be taken seriously. On the basis that is a correct reportage, which can you please confirm, can I please explore the statement.

Is this an anonymous donation, ie paid through a third party, or is it a donation paid where the donator does not wish his or her identity to be revealed.

If it is an anonymous donation are you, as the appropriate officer, content that you are in the position to receive this donation? Have you made appropriate investigations to ensure that this money is rightly available to WPC?

If it is a donation where the doner wishes to remain anonymous is his or hers identity known to any of the councillors? If this is the case how

can it be right that you deny that information to me? If I don't know how can I make any judgement on and question how far the payment has been made to influence the decisions of the councillors? I am told that if any councillor, who is involved in any decision making knows whom made the donation, I am entitled to know Can you please tell me in the case of this anonymous donation of £2600? In your a-mail 15.11.11 concerning the "crabbing fund" you state that " You must make your own enquiries. It is not my job to support you in this". Actually if you make inquiries you will find that it is your job and can you please provide me with information from where the "crabbing fund " money came from."

24. In an email dated 20 February 2012 the following requests for information were made:

"...Please now provide information that WPC must hold about these donations:

- 1. How many donations were there?*
- 2. When were they received?*
- 3. How much were they for?*
- 4. Who are they payable to?*
- 5. Were they sent by cash, cheque or bankers draft and were they receipted by you?*
- 6. What is the status of the 'CBF' and why did you pay these donations into it?*
- 7. How can the funds in the CBF be deployed and on whose decisions and authority?*
- 8. How is the 'CBF' recorded in the parish council's financial records? Is it an identifiable separate element?*
- 9. Are there any other named 'Funds' included in the parish council's accounts?*

So there is no doubt about "conflicts" can you please confirm that neither you nor any of the Parish Councillors knows from whom these donations came...

...Has WPC obtained a loan or some sort of advance from SCDC to help the parish council deal with its current financial difficulties? If so what is the sum involved, what are the terms and when was it received? If there is a loan will or has the anonymous donations be used to pay off this loan?..."

25. The Commissioner accepts that the complainant's requests were made within a 60 day period. However the criteria of Regulation 5(2)(a) requires that the information relates, 'to any extent, to the same of

similar information.' Having considered the information requests above the Commissioner is satisfied that the requests are not for the same, or similar information. Whilst the questions address the councils administration and financial activities they do not ask for the same or similar information to this request.

26. The Commissioner's decision is therefore that the criteria in Regulation 5(2)(a) has not been met.
27. The Commissioner's decision is therefore that the council's application of Section 12 to the request for information was incorrect because it could not meet the criteria in order to aggregate the requests. The complainant's request in this case was for a copy of one letter. The council must therefore either respond to the request or apply another exemption.
28. The Commissioner notes that the council also provided copies of requests received by the authority after this request as evidence. Authorities should effectively make a decision based upon circumstances at the time that the request was received. In this case it relied upon requests received after that point.

Other matters

29. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern.
30. The Commissioner wrote to the council and stated to it that he did not consider that Section 12 applied in this case. The council replied stating that it would therefore consider applying another exemption to the information, but that due to the resignation of a number of the councillors at that time the council did not have the ability to make a decision until new councillors were appointed. A new temporary council was voted in on 6 November 2012 however the council failed to provide an alternative exemption to the Commissioner.
31. The Commissioner has therefore made his decision based upon the facts and circumstances of this request and the information which he had available to him. The Commissioner considers that this will ensure that the council reconsiders the request and responds to the complainant in a timely manner from this point forward.

Right of appeal

32. 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

33. 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.
34. 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
Cheshire
SK9 5AF