

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 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) regarding information about the Freedom of Information Act (the FOIA) and Environmental Information Regulation (EIR) requests it had received. The council refused to respond to the request because it considered that it was vexatious under section 14(1) of the FOIA and that the complainant was acting in concert with other individuals. The council also applied section 12(1) of the FOIA and regulation 12(4)(b) of the EIR. The Commissioner later concluded that it was more appropriate to consider the requested information solely under the FOIA.
2. The Commissioner's decision is that the council correctly applied section 14(1) and he has not gone on to consider the application of section 12(1).
3. The Commissioner requires no further steps to be taken.

Request and response

4. On 8 February 2012 the complainant made the following request for information under the FOIA:

"13. In order to have a public record, and to prevent having to re-do the work, did you keep a proper sequentially numbered record all FoIA requests, as they were submitted, in the same way that SCDC does? Will you please provide me with all the information regarding the FoIA requests that you have received, responded to or have refused up to the end of 2011. Please also provide me with information regarding EIR

information requests that Walberswick Parish Council has received and responded to, or refused, in the same period as the five hundred and forty-seven (50 + 497) FoIA requests"

5. The council responded on 20 February 2012, refusing to provide the requested information, citing section 14(1) and 12(1) of the FOIA and regulation 12(4)(b) of the EIR.
6. The council provided an internal review on 28 May 2012 in which it maintained its original position, though it refused to conduct an internal review regarding regulation 12(4)(b) as it considered the request for a review to be out of time.

Scope of the case

7. The complainant contacted the Commissioner on 18 September 2012 to complain about the council's response to his request for information.
8. The Commissioner considers that the focus of this case is on the council's application of section 14(1) and section 12(1) of the FOIA. He does not intend to consider the application of regulation 12(4)(b) because he considers the request itself, as it is concerned with numbers of information requests, refusals and responses is more appropriately dealt with under the FOIA.

Reasons for decision

Section 14(1)

9. Section 14(1) of the Act does not oblige a public authority to comply with a request for information if the request is vexatious.
10. As noted above, the council applied both sections 14(1) and 12(1) to the request. The Commissioner has first considered the council's application of section 14(1).
11. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal's (the 'Tribunal') decision in *Ahilathirunayagam v Information Commissioner's Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning: would be likely to cause distress or irritation. Whether the request has this effect is to be judged on objective standards.

12. The Commissioner also endorses paragraph 21 of the Information Tribunal's decision *Mr J Welsh v the Information Commissioner* (EA/2007/0088) ('Welsh') (paragraph 21) where it stated:

"In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another."

13. As explained in his guidance¹, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

14. It is not necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious request will be. The Commissioner is able, as stated in paragraph 13 above, to take into account the history and context of the request when determining whether a request is vexatious. It is often the case that a request for information only reveals its vexatious quality when put into context.

¹ Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website and for ease of reference, at the following link:
http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

15. The Commissioner wrote to the council on 30 October 2012, asking for its arguments in relation to the application of section 14(1) and section 12(1). The council responded on 15 February 2013, after a time delay due to events that had occurred, including the resignation of the council and the installation of interim councillors. Some argument was presented in support of section 12(1) but the council asked the Commissioner to consider its application of section 14(1) in relation to argument presented elsewhere and incorporated in previous decision notices and its responses to the complainant.

Context and History

16. The Commissioner recognises that there is nothing in the FOIA which prevents the aggregation of requests from disparate sources for the purposes of section 14, and he is mindful that section 12 of the FOIA makes specific provision for just such a process for the consideration of costs, where two or more requests have been made by different persons who appear to the public authority to be acting in concert, or in pursuance of a campaign. The council considers that a similar provision ought to apply in the circumstances of this request and others it has received from four individuals. The Commissioner has also noted the approach taken in a number of cases related to Forestry Commission Scotland², and also the University of Salford³. In these cases he accepted that a number of applicants were acting together, in pursuance of a campaign and this was a relevant consideration as to whether the requests were vexatious.
17. Section 14 does not specifically contain the provision that if two or more requests are made "*by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign*" then the requests can be considered together. Therefore the Commissioner must consider the degree to which it can be said that the four requesters are acting in concert, and whether it is reasonable for the council to refuse the complainant's request on this basis.
18. In November and December 2010, the council issued separate 'exclusion notices' to the four requesters as it considered their freedom of information requests and general correspondence to be vexatious and/or repeated under section 14 of the FOIA. The requesters, including the complainant, complained to the Commissioner about the

² FS50176016, FS50176942, FS50187763, FS50190235

³ FS50297312

council's 'exclusion notices'. In the course of the Commissioner's investigations into those complaints in July 2011, the council withdrew its reliance on section 14. The Commissioner provided the council with guidance on the application of section 14 at this time. This matter is discussed in the Commissioner's decision notice FS50422187.⁴

19. The four requesters have since submitted a large number of freedom of information requests to the council relating to the planning application reference C/10/0188, the exclusion notices, the way the council handles freedom of information requests and council affairs. The requesters have further submitted a large number of complaints to the Commissioner about the way the council has handled many of those requests. The Commissioner is therefore aware of the scale, type and pattern of the requests the council has received since 2010.

20. The complainant stated in the letter in which he made his request for information that:

"It will be impossible for Walberswick Parish Council to resolve these matters and for us to move on until the Parish Council accepts and publicly admits its past mistakes and the serious problems that have arisen as a result. At present the situation and the predicament in which Walberswick Parish Council now finds itself is a direct result of its own actions. This fact will become even more obvious as time passes..."

21. In July 2011 the current clerk took up post at the council and has retained records of the time she has spent dealing with freedom of information requests. In addition to this, from July 2011 to February 2012, the monthly council meetings had a fixed agenda item to discuss the problems faced with the number of freedom of information requests from the four individuals and the time taken to deal with them.

22. The Commissioner also notes that the minutes for the meeting of 14 May 2012 record a discussion between a member of the public and two of the requesters about the background to the freedom of information dispute. In relation to this discussion, one individual stated "*the four of us together*" and it is understood that this refers to the four individuals the council has referred to as acting in concert⁵.

⁴ http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50422187.ashx

⁵ <http://walberswick.onesuffolk.net/assets/Parish-Council/Minutes-2012/minutes-14.05.12.pdf>

23. Based on the council's position and the Commissioner's experience of dealing with complaints about the council from the four requesters, the Commissioner accepts that it is reasonable for the complainant to be considered to have been acting in concert with the three other requesters. He has therefore gone on to consider the council's arguments in support of its application of section 14(1) in this context.

Could the request fairly be seen as obsessive?

24. When a request for information is refused as vexatious, it is often the case that an examination of the background will reveal a long and difficult relationship between the parties that has arisen as a result of a dispute or a number of related disputes that, for whatever reason, have never been resolved to the satisfaction of the complainant.
25. The council has offered no specific evidence under this heading, other than to refer the Commissioner to its statement to the complainant that replying to the request,

"... would very likely lead to a number of further requests and complaints. I say this based on my experience of dealing with all requests..."

26. However, the Commissioner is aware of the background to this request, as detailed in paragraphs 16-23. Consequently, this request can fairly be seen as obsessive when considered contextually as part of a concerted campaign.

Is the request harassing the authority or causing distress to staff?

27. The Commissioner would like to highlight the fact that he is not concerned with what the complainant's intention may have been when considering this question. It is not unusual for a request to be deemed vexatious even though the complainant genuinely believes that the request and their behaviour were entirely justified. Instead, the Commissioner is concerned with the effect that the request would have had on any reasonable public authority.
28. The council has detailed how two councillors resigned, partly as result of pressure. It has been asserted by the council that the reasons for the resignations had been due to a campaign of criticism and harassment by a small group of individuals that the council believes were working in concert. The council has also cited the distress that contributed to a previous member of staff resigning. This was apparently due, at least in part, to the pressure of dealing with multiple freedom of information requests submitted by a small group of people.

29. Whilst accepting that the council had a poor record of compliance and applied the FOIA legislation incorrectly at times, the complainant appears to have used that same legislation to attempt to undermine and expose these inadequacies.
30. The Commissioner agrees that the council has been harassed by the concerted efforts of a few individuals, including the complainant, and that this has impacted on both the councillors and paid staff.

Would complying with the request impose a significant burden in terms of expense and distraction?

31. The council wrote to the complainant detailing the history of his FOI and EIR requests. From the beginning of 2010 he had written "*frequent and long letters*" to the council. From August 2010 these letters became requests under the FOIA and EIR. The council found it difficult to respond to these requests because of the quantity of opinion they contained and what it described as "*rhetorical questions, accusations and complaints*". The council has stressed in its letter to the Commissioner on 15 February 2013 that it had offered advice and assistance to the complainant by suggesting he confine his request/s to the information itself and not intersperse them with opinion etc.
32. The council has concentrated the weight of its argument on the significant burden it believes has been imposed on it by the combined efforts of four individuals. The council has explained that the parish clerk has had their contracted 40 hours of work almost entirely monopolised by responding to freedom of information requests. This was detailed as follows:
 - August 2011 – 44 hours
 - September 2011 – 30 hours
 - October 2011 – 36 hours plus another approximate figure of 30 hours for locating the requested information.
33. The Commissioner recognises that the response by the council has, at times, been inadequate or misguided. The council has been in a state of transition whilst the new parish clerk settled in and attempted to comply with outstanding requests for information whilst faced with an influx of new requests and requests generated from the responses that had been provided.
34. The council categorically states that attempting to comply with freedom of information requests has seriously undermined its core functions and public service remit. This contention is supported by the

increase in the precept which was necessary because of its attempts to respond to freedom of information requests. In the financial year 2011-12 the council's precept was £7,742. Between 5 July 2011 and 7 November 2011 £1093 was spent on dealing with freedom of information requests alone. As a direct result Suffolk Coastal District Council was asked to advance £2000 from its precept for the next financial year. This increase was mainly due to dealing with FOI requests and complaints about the responses provided. The council states that much of the money was donated over a period of time in order to benefit the community. It was intended for providing items like a solar powered vehicle activated sign and a visitor centre. The council has been forced to curtail or cut its normal expenditure in order to comply with its statutory duties under the FOIA. It gives examples such as the provision of an annual Christmas tree; its grant to the parochial church council to help fund the grass cutting of the churchyard; and its inability to provide any recognition to those who voluntarily upkeep local amenities.

35. The council further argued that it had been unable to carry out its duties "*in a timely manner*" or they had been delayed to the last moment. This has led to the parish clerk working well in excess of their contracted hours at times. Eight separate examples of work that had been postponed or worked on belatedly were provided, including councillor training that has been delayed due to the problems associated with freedom of information requests.
36. There is little doubt that this particular request has the capacity to impose a significant burden due to the monopolising of limited public resources. When considered in context, the argument is persuasive.
37. The Commissioner is aware of a pattern of behaviour regarding the use of the FOIA in Walberswick that supports the council's view that a group exists that is aware of each other's requests and has harnessed that knowledge to both double check and undermine the council's compliance with the FOIA. The Commissioner himself has received a significant number of complaints from the group of people the council believes are acting in concert in a relatively short space of time.

Is the request designed to cause disruption or annoyance?

38. The council has offered little that is relevant to this heading other than to say that it has been "*distracted*" by the hours spent on answering requests from this complainant acting with others. The complainant, despite being asked to write to the clerk, frequently copies in all the councillors which takes up limited time and causes disruption.

Does the request lack any serious purpose or value?

39. The complainant believes that the vast majority of his requests would not have been necessary if proper procedures had been in place at the council to ensure that it met its statutory compliance with the FOIA and the EIR. He also maintains that, if the small number of initial requests had been answered properly, the resulting mushrooming of requests would not have occurred. He takes issue with the "*unlawful exclusion notices*" which were issued (and only formally withdrawn in January 2013). He also accuses the council of concealing or destroying information after it was requested.
40. There is no doubt that the council was incorrect in issuing 'exclusion notices'. However, the council asserts that the complainant initially wrote to the council about a series of planning applications that he did not agree with. The parish council made its views known to the Local Planning Authority. These views did not apparently accord with the complainant's. The council says that he has subsequently tried to get the decision reversed. Therefore, although the complainant has a serious purpose in wanting a planning decision reversed, the council contends that the FOIA requests would have ceased had the planning decision been reversed. The council also asserts that the complainant wished to engineer the resignation of members of the parish council.
41. Although the Commissioner accepts that the complainant believes that he has a serious purpose behind his request, that serious purpose does not appear to be to obtain information so much as to use the FOIA in order to highlight deficiencies or further grievances, apparently related to planning or internal council procedures. Whilst this may, in some circumstances, be an end in itself, when set against the context of the volume of requests, this does undermine the value.

Was the request vexatious overall?

42. The Commissioner agrees with the council's argument that its reason for refusing this request is based largely on the significant burden it imposes in terms of expense and distraction. The council argues that the complainant has not only made repeated requests for information but that this appears to be part of a concerted action.
43. 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' 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 lately attempted to remedy. Despite its acknowledged inability at times to meet the requirements of the legislation, the council has found itself in a beleaguered situation. The Commissioner concludes therefore that the action that has been taken by the complainant and other individuals and the associated burden being imposed on the council is disproportionate to whatever objective the complainant is trying to achieve.

44. For the above reasons, the Commissioner has concluded that the council has correctly applied section 14(1) to the requested information. As he has concluded this, he has not gone on to consider the application of section 12(1) to the same information.

Right of appeal

45. 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

46. 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.

47. 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