

## **Freedom of Information Act 2000 ('FOIA')**

### **Decision notice**

**Date:** 5 March 2014

**Public Authority:** Hurworth Parish Council  
**Address:** 41 Hurworth Road  
Hurworth  
Darlington  
County Durham  
DL2 2BN

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to how Hurworth Parish Council ('the council') deals with the Freedom of Information Act 2000 ('FOIA'), how it dealt with standards board complaints and information relating to an event held for some members of HMS Hurworth.
2. The Commissioner's decision is that Hurworth Parish Council has incorrectly applied the vexatious provision at section 14(1) of the FOIA.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
  - Issue fresh responses to the requests under the FOIA without relying on s14.
4. The public authority must take this step 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.

## Requests and responses

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5. On 25 July 2013, the complainant wrote to the council via the WhatDoThey Know website<sup>1</sup> and requested information in the following terms:

Q A, Please could I have copies of all Section 10 warnings/letters/complaints that HPC have received from the ICO?

Q B, Please could I also have copies of any complaints/warnings/letters from the ICO that HPC have received that originate from other villagers?

Q C, How many requests have HPC had (to date) for internal reviews?

Q D, Could I have a copy of the agenda and full set of minutes for the emergency meeting held by HPC on 12th July as your website is not displaying them correctly on some platforms?

In the minutes I can read under FoI you say "The responses now go through the Vetting Committee. The volume of questions, plus the apparent trivial nature of the questions appear to be becoming vexacious [sic], and are certainly time-wasting for all concerned.

I would point out that although you find them to be time wasting for all concerned, I certainly do not and find them an invaluable insight into HPC.

Q E, Therefore can I ask how much in pounds has the Clerk claimed in overtime in responding to these FoI requests since Jan 2012?

Q F, You also say in the minutes...."The council has now answered approximately 180 questions, mainly to one person" I assume you are referring to me, firstly can you clarify the fact it is me to whom you are referring?

Secondly as I can see 33 requests on the "whatdotheyknow" site of which ONLY 19 are mine please could I have copies of all other FoI requests received from anyone else (written or email) since Jan 2011? (Not to include My partner who logs in as [log on name

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<sup>1</sup> [https://www.whatdotheyknow.com/request/section\\_10\\_ico\\_complaints#outgoing-301562](https://www.whatdotheyknow.com/request/section_10_ico_complaints#outgoing-301562)

redacted]) I need this information to see if the public records on your website are indeed accurate?

I would also point out I am still waiting for a reply along with copys [sic] of your vetting practices and procedures [sic] as per an earlier FoI request "Vetting Process"!

Where I asked on May 21st...

Please under the Freedom of Information Act 2000 can you provide me with a copy of your "vetting procedure" as replied in my request "refusal of reply"?

Equally can you tell me how many people have been subject to this "vetting process" since January 2013?"

6. The complainant said he had not had a response to this request. He provided a link to the WhatDoTheyKnow website (see footnote 1) which showed the request but did not contain a response from the council.
7. The council provided the Commissioner with a copy of the response it sent on 30 July 2013 but it is unclear how this was communicated to the complainant. The response did not address every point of the request but provided some narrative information and referred to previous responses.
8. The Commissioner provided the complainant with a copy of the response dated 30 July 2013 and advised that if he wanted to take the matter further he would first need to ask the council to conduct an internal review of the request. The complainant then informed the Commissioner that the council is refusing to respond to his FOIA correspondence but without claiming any specific exemptions.
9. On 11 November 2013, the complainant made the following request for information via the WhatDoTheyKnow website<sup>2</sup>:

"It is my understanding there has recently been/to be an event held for some members of HMS Hurworth, Officers and crew. (I believe it was/is to be held at the Emerrson Arms Public House. In light of this could I please request the following under the Freedom of Information Act 2000.

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<sup>2</sup> [https://www.whatdotheyknow.com/request/hms\\_hurworth\\_partyget\\_together#outgoing-312303](https://www.whatdotheyknow.com/request/hms_hurworth_partyget_together#outgoing-312303)

1, How much was/is to be spent at this event in total? With a copy of the minutes where this amount is minuted and approved in the parish records and if a vote was taken who proposed and seconded it?

2, Can I please have this amount broken down separately into food bill, bar bill (parish/public/crew all separately), venue rental etc.?

If there was just an accumulative bar bill please break down the names of those OTHER THAN officers & crew that were allowed to use the "free bar" and how this was monitored ie: each person allowed 2 drinks? If this was done by way of some kind of voucher please provide a specimen voucher for me?

What as a percentage of the "bar bill" was for those other than the Officers/Crew?

3, Could I have a copy of all invitation (with a list of names) that were sent out for this event whether they be by mail, email or orally?

4, Is it correct that it was classed as a private function with invitees only, and if so please could you provide me with copies of all minutes where the council decided upon this? With who proposed and seconded it?

5, Could I have a copy of the email/note/memo/invitation (call it what you will) that went to Rockcliffe Court? I assume you invited them as is the norm?

6, How many in total attended/ are to attend?

7, Could I have a copy of any bill/s paid already and copies of invoices of those bills pending all relating to this event?"

10. The council responded on the same day stating that it has informed the complainant that from 31 July 2013 it will not be responding to his FOI requests. It said that it is not required to give a reason, but it is treating them as vexatious and repetitive.

11. The complainant requested an internal review on 12 November 2013. The council responded on the same day and said that;

"Having reported your request to the Vetting Committee of HPC, they are satisfied with the answers you have received, and have nothing to add."

12. On 12 November 2013, the complainant made the following request for information, again via the WhatDoTheyKnow website<sup>3</sup>:

"1, Following on from my recent 2 standards board complaints please may I see any paperwork you hold sent to Hurworth PC from DBC (the local authority) in relation to these 2 complaints, to include all written, email and other correspondence from DBC in relation to complaint one and the same in relation to Cllr. Pattisons publically libelous statements about me?

2, Could I have a copy of any emails, notes, memos etc that may have been circulated indicating that and where the other PC members have been made aware of both of these complaints?

3, Could I also have copy's of any emails ,notes, memos etc sent internally to other Council members in relation to Cllr. Pattisons libel claims by myself to include any discussion as to where damages will be paid from?

4, Could I also have copy's of any emails, notes, memos etc of any discussions/circulations in any way relating to yet another Parish Precept rise for next year?

5, Could I also have copy's of any emails, notes, memos etc that clearly show that by blanket refusing all my FoIA requests that the Parish are acting in accordance with the ICO's legal guidelines? Ie: instructions from DBC or other outside bodies, that to do so is legal and in accordance with the "public interest" principle that applies to all Councils in England?"

13. The council responded on the same day as follows:

"We have informed you that this council will not be responding to any more FoI requests from you, for the time being.

However, to save you time, I am allowed to inform you that this council does not have any correspondence relating to your Standards Board complaint."

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<sup>3</sup> [https://www.whatdotheyknow.com/request/standards\\_board\\_complaints](https://www.whatdotheyknow.com/request/standards_board_complaints)

14. The complainant requested an internal review on 16 November 2013. The council responded on 19 November 2013 stating that it had considered and discussed the request and repeated that it holds no documentation in regard to the complainants Standard Board complaints. The complainant wrote back on the same day to say that his request also asks for documents about the next Parish Precept increase. The council replied, also on the same day, as follows:

"We have informed you that this council will not be responding to any more FoI requests from you, for the time being."

### **Scope of the case**

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15. The complainant contacted the Commissioner to complain about the way his requests for information had been handled.
16. The Commissioner considered that some of the information requested may be the personal data of the complainant, that being information within the scope of Q D & Q F of the request made on 25 July 2013 and parts 1, 2, 3 and 5 of the request made on 12 November 2013. As such, the Commissioner has requested that the council consider those parts of the requests as subject access requests under the Data Protection Act 1998 ('DPA'). Any of the complainant's personal data has therefore not been considered in this decision notice.
17. The Commissioner has considered whether the authority was correct to apply the vexatious provision at section 14(1) of the FOIA to the requests made on 25 July 2013, 11 November 2013 and 12 November 2013.

### **Reasons for decision**

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18. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
19. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*<sup>4</sup>, the Upper Tribunal took the view that the ordinary dictionary definition of the word

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<sup>4</sup> UKUT 440 (AAC) (28 January 2013)

vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

20. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the  
  
"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
21. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
22. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>5</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
23. The council said that there is a long and quite unpleasant history with the complainant which is both pertinent and fundamental to this situation. It said that the information it has provided the Commissioner with regarding this situation has been provided on a strictly private and

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<sup>5</sup> [http://www.ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

confidential basis. Therefore, the Commissioner has used a confidential annex to relay the information relating to the background and history of these cases.

24. As stated and explained in the confidential annex, the Commissioner acknowledges that there is a history between the complainant and the council but does not view the specifics provided by the council as directly relevant to the decision to be made in this case.
25. The council said it has strictly adhered to, and respected the principles of openness and transparency and provided the following as examples of this:
  - In 2009 it sent out 1660 questionnaires and followed this with two public meetings in order to produce a formal Parish Plan. The Plan is re-visited each year to ensure that actions and policies are in accordance with residents wishes and that residents are updated regarding progress.
  - It produces a quarterly newsletter and distributes it to all residences in the parish.
  - It has a website where all notices and minutes are displayed along with the village diary and newsletters.
  - It holds a parish council surgery every month and advertises its monthly meetings on its three noticeboards and its website. It displays the meeting agendas on its noticeboards prior to meetings and invites residents to speak.
  - In 2010 it drafted a complete set of procedures which are published on its website and are updated as procedural legislation dictates.
  - It has both an internal and external auditor and its accounts are open for public inspection for a period of time every year. The audited accounts are displayed on the notice boards and website for 28 days.
  - It produces very detailed minutes for each meeting. Draft versions of these are placed on the website shortly after the meeting and the final version is posted once confirmed by the council.
26. The Commissioner welcomes the council's efforts to be open and transparent but notes that the examples provided are measures which the council is under a duty to take, such as opening its accounts for public inspection and publishing agendas and minutes in accordance with its publication scheme, or measures of good council practice, such as producing a quarterly newsletter. The proactive measures the council



described in its submission to the Commissioner do not in any way effect the right of access to public information afforded to individuals under the FOIA.

27. The council also provided the Commissioner with the following actions it has taken to obtain advice and escalate its FOI problems:
- It prepared a portfolio of documents and correspondence relating to the complainants requests for appraisal by an external legal organisation.
  - It held meetings with its legal consultant to seek advice as to how to stem the flow and respond legally to the 'questions and insults'. It also raised the question of taking action for slander/libel.
  - Its legal advisers made it aware of section 14 and the council used wording suggested by them to the complainant so that he could fully understand the reasons and rational for its decision not to keep responding to his requests.
  - It talked to several ICO staff and wrote requesting advice and shelter including requesting an ICO audit to provide some protection.
  - It established an FOI register so that documents could be catalogued and to ensure that all requests receive responses and the responses are recorded.
  - It established a vetting committee to 'evaluate, discuss, and ponder over the continuous inflow of questions' from the complainant. It asked the Commissioner to give a moment's thought to the stress and harassment this entails and said that the members of this committee are effectively performing a similar job to the ICO, making internal reviews week after week, but in their own time.
  - It has a private meeting with the President of NALC in relation to its problems (those being the purpose of the FOIA, the role of ICO, the logic and practical use of the Election legislation and the role of the Planning Inspectorate) who indicated that their government representative would look into the matters raised.
  - It had a meeting with its local MP who is raising questions in Westminster regarding the role of the ICO and parish council elections.
  - It allocated £5000 for legal fees to investigate and combat the complainant's campaign which has resulted in an increase in the 2014 precept.

- It made an information request to ICO and made the following comments regarding the ICO's response to that request:

"The ICO answer managed to provide a series of responses, which allowed them not to directly answer almost all of the ten questions, but merely refer to legislation, quote web site addresses, and provide reasons why they need not provide an answer. **We will certainly adopt this approach in our future treatment of the Act.**" (Council's highlighting)
  - It invited the complainant to meet the council on three occasions to discuss his concerns and to attend the council's monthly meetings but these invitations were declined.
28. The Commissioner notes that the advice provided is largely based on the Commissioner's aforementioned guidance on vexatious requests. It mentions that the complainant's requests relating to 'bee-keeping' fall into the category of 'long and frequent series of requests' contributing to an aggregated burden. It concludes that, depending on the subject of the next request, it envisages no problem in the council refusing the request as vexatious. It advised that the council has reached its tipping point in relation to the requests being made by the complainant, that the requests are putting a disproportionate burden on the council, are re-opening issues that have been resolved, are showing a level of unjustified persistence, and the volume of requests is proving harassing to the clerk and are simply vexatious when viewed in context. The Commissioner has considered the advice received by the council but he will ultimately base his decision on the submission made to him in relation to the particular requests under consideration.
29. In relation to the council establishing an FOI register to ensure that all requests receive responses and that responses are recorded, whilst the Commissioner acknowledges that this may go some way to demonstrating the volume of requests, he considers this to be a standard measure to ensure the council complies with its duty to respond to requests rather than an additional measure that should be taken into account in decided whether the requests are vexatious in this instance.
30. In relation to the establishment of a 'vetting committee', the Commissioner notes the council's inconsistency regarding its set up and purpose. As detailed in paragraph 27 above, it told the Commissioner that the vetting committee was set up to 'evaluate, discuss, and ponder over the continuous inflow of questions' from the complainant but on 5 September 2013, in a response to a request made on 21 May 2013, it told the complainant that:

"The "Vetting Committee" has been informally in place for a number of years. Of the very few FoIs received most would normally be dealt with by the Parish Clerk, only on rare occasions would he involve the Chairman and/or Vice Chairman. However, with the advent over the past weeks and months of the tirade of inane nonsense from your good self, it was decided to formalise the "Vetting Committee". It was decided this committee should be formed by the previous and present Chairmen and Vice Chairman as your interminable and largely pointless missives span two eras. Due to summer recess this procedure is due to be confirmed at tonight's PC meeting.

Assuredly there is no discrimination involved as you are the only "family" that has required this attention, there being no others. We have on this occasion replied to your public forum as, rather than protect your readers from the nonsense you perpetrate, we think it is perhaps time we gave them the easiest possible access to it such that they can more quickly realise its true worth."

31. The Commissioner notes that some of the problems mentioned above relate to the by-election issue. The Commissioner has no jurisdiction over the by-election issues and does not view it as relevant to its handling of the complainant's requests.
32. The Commissioner has been provided with no evidence of the council needing to allocate £5000 for legal fees 'to investigate and combat the complainant's campaign' and notes that the complainant has stated that there is no litigation to defend.
33. The Commissioner cannot see how the information request to ICO is relevant to the application of the vexatious provision in these cases as it mainly relates to the role and accountability of the ICO, and individuals within it. It does contain some questions regarding how the ICO has dealt with the cases from the complainant but this is not something the council can take into account when deciding whether a request is vexatious. The council can of course challenge decisions made by the ICO and the service it has received but the fact that it has sought to do so through an information request to the ICO is not relevant to whether the requests in this case are vexatious.
34. The Commissioner notes that the attempt to take a conciliatory approach to dealing with the requests, that being the council inviting the complainant to meet with it to discuss his concerns, is in line with good practice. However, as stated in the Commissioner's guidance on vexatious requests, public authorities should use their judgement when deciding whether to engage with a particular requester in this way as some requesters may be aggrieved by this approach. In this case, the requester responded to the council's invitation as follows:

"At present I respectfully decline your invitation to meet the 'vetting committee' as I do not believe it has any credulity or legal standing to begin with and is merely an invented committee to work out what and what not to answer".

35. The Commissioner appreciates that a conciliatory approach will not always be appropriate and there is no obligation on a requester to agree to deal with issues arising from information requests in this manner.

36. In its response to the Commissioner's enquiries, the council listed the following as matters of concern:

- The additional and unwarranted workload, and cost thereof, caused by the complainant and his partner.
- Disparaging comments and innuendoes designed to discredit the parish councillors individually, the parish clerk and the council as an entity.
- The expense incurred due to insistence on futile elections. It said that it agrees with the principle of freedom to elect but this could be seen as a misuse of the Act and contrary to public spending guidelines.
- The insults embraced in 'election' material, and some FOI interactions.
- Press comments initiated by the complainant under 'Hear all sides' in the local press.
- The strain put on the Parish Clerk and the Vetting Committee by questions which are 'repetitive, and frankly of little concern to anybody'. Most if not all are reported on the council's website which the complainant uses as his source of information from which to ask more questions.
- The council is qualified to become a QPC (the Quality Parish Scheme), and intends to do so as soon as the new application conditions are concluded, and it believes that the complainants campaign attempts to cheapen the qualifications of the council, through 'innuendo and fruitless questions and comments'. Above all, this disheartens volunteer councillors who devote their time and efforts to maintaining and improving the parish services in accordance with the parish plan.

38. The first point above relates to the workload caused by the complainant. The Commissioner draws attention to his aforementioned guidance on vexatious requests, which states that;

“131. When building a case to support its decision, an authority must bear in mind that we will be primarily looking for evidence that the request would have an unjustified or disproportionate effect on the authority.

132. The authority should therefore be able to outline the detrimental impact of compliance and also explain why this would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value.”

39. The council has not specifically provided evidence that responding to these requests would have an unjustified or disproportionate effect. It has not detailed the detrimental impact that complying with the requests would entail. Taking the requests at face value, it does not appear to the Commissioner that compliance would be an onerous task. Indeed, the council informed the Commissioner that it responded to an identical request, from a different requestor, to the one made by the complainant on 11 November 2013, within an hour of it being made and it can be assumed that in providing such a quick response, the amount of time taken to do so was minimal. In response to the request made on 12 November 2013, the council informed the complainant that it did not hold any information but has not provided any detail as to how long it took to come to this conclusion.
40. The Commissioner acknowledges that the council provided it with a log of information requests made by the complainant but this log does not detail the amount of time taken to respond. The Commissioner has examined the log and notes that it contains 59 entries but he considers that only 31 of those entries can be considered as new requests made before it first applied the vexatious provision in this case. The 31 requests relate to 10 different subjects and the Commissioner considers that 14 of these requests can be said to be connected to the same subjects as the requests under consideration in this decision notice. It may be that the combined effect of dealing with the previous related requests together with the current requests would impose a significant burden in terms of expense and distraction which would have a detrimental impact on the council but the council had not provided sufficient evidence for the Commissioner to make this conclusion.
41. The second, fourth, and last points in paragraph 36 relate to insults and innuendoes designed to discredit the council. The Commissioner has seen little evidence of this and nevertheless considers that those holding a public position should be accustomed a certain amount of criticism.

44. The third point made by the council in paragraph 36 relates to the by-elections costs. The Commissioner does not consider that the costs spent on such elections are relevant to its handling of the complainant's information requests.
45. In relation to the fifth point regarding the press comments initiated by the complainant, the council referred the Commissioner to 'Support Document A4'. The Commissioner notes that 'Support Document A4' is the council's refusal of the information request made on 11 November 2013. He has not seen the press comments referred to but has noted that 'Support Document A6' is a letter from the complainant to a newspaper commenting on a particular councillor and the FOI issues between the complainant and the council. Although the Commissioner appreciates that adverse comments printed in the press could be distressing to the council, he considers that the complainant is entitled to freedom of speech.
47. The sixth point in paragraph 36 above refers to the strain put on the parish clerk and the vetting committee. As previously stated in this decision notice, the Commissioner has not seen evidence that the effort required to answer the requests would be so grossly oppressive that the council cannot be reasonably expected to comply. The Commissioner notes that his aforementioned guidance on the vexatious requests states, at paragraph 38, that;

"Public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance."

Upon examining the correspondence between the complainant and the council, the Commissioner acknowledges that the complainant has pointed out instances where the council has not dealt with his requests strictly in accordance with the legislation but he has not seen evidence that the complainant has made completely unsubstantiated accusations against the council. The Commissioner also notes that the complainant has specifically stated that he does not have a personal grudge against the council and the Commissioner has not seen any evidence that the complainant's specific aim is to cause disruption or annoyance.

49. The sixth point also touches upon the purpose and value of the requests as the council said that the requests are 'frankly of little concern to anybody'. The subject matter of the requests in this case broadly relate to how the council deals with transparency legislation, the spending of public money, and complaints made about councillors to the standards board. The Commissioner strongly believes in the value of such subjects and could to no degree class them as frivolous. He also notes that another individual requested information relating to the council's

spending on the HMS Hurworth event which demonstrates that there was wider interest in that particular issue.

50. The council also stated that the requests are repetitive. The Commissioner has noted numerous occasions where the council has not responded to the complainants requests in accordance with the legislation (some examples are provided below) and believes that this is a case where the volume and frequency of requests has been contributed to by the council's unclear or ambiguous previous responses.

- Response from council on 30 July 2013 –

"With regard to your FoI dated 21st May 2013, requesting a copy of the council's Vetting Procedure.

We apologise for the delay in responding to this, but there appears to have been some confusion, and the incorrect question was answered. A number of individuals on the Vetting Committee were involved in the chain of responses, and it lost it's way.

The Council's Freedom of Information Procedure is on the web site, but to aid your reference, we are attaching a copy for your perusal.

Due to the huge increase of FoI requests, generated by yourself and your partner, the council has drafted an addendum to this procedure, focusing on the duties and procedure of the Vetting Committee. This draft will go before the council at their September meeting, and if ratified, it will be added to Procedure P6. You will be able to read it on the web site, in September, if it is confirmed."

This response did not provide the requested information or apply an exemption under the legislation.

- Extract of response from council on 10 May 2013 –

"1, Has a costing been done for the new village green monument? and if so what are the quotes/estimates you have recieved for a completed job, if at present you only have partial costings please provide those until the final figure is available for your reply to me?

Yes, three quotations received, selected supply accepted at a cost of £625. Order has been placed.

2, Please could I have a copy of all correspondance you as a Parish Council have recieved from the Information Commissioners Office (ICO) in the last 2 months, if none has arrived yet (and it will)



please may I have copies or everything when it does arrive from the ICO?

It would be imprudent to provide this information while an Inquiry is in progress; you will need to await the outcome, or ask ICO.

3, Please could I have a copy of all building regulations, covenants and Parish regulations of any nature relating to both sets of allotments under the control of Hurworth Parish Council (HPC)? To include the guidelines for planning permission for "permanent" erections on both the Straight Lane and Grange allotments? (please note by "permanent" I mean structures of ANY nature that are anchored into the ground and not merely placed upon it).

This will require external searches, and will incur expense. Please confirm that you will accept the costs appertaining to this. We cannot proceed with this without your consent to bear the costs personally. ...

...7, Please may I also have copies of all written letters (or emails) asking HPC for permission to erect what I will call through naivety "Bee fences"?

Allotment holders are entitled to grow whatever they please."

Again, these responses did not provide the specific requested information or apply an exemption under the legislation.

51. The Commissioner considers that the context and history in this case weakens the argument that the requests are vexatious. He has seen examples of unclear responses and believes that the following point, made in paragraph 61 of his aforementioned guidance on vexatious requests, applies in this case;

"If the problems which the authority now faces in dealing with the request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified."

52. The council's submission also provided the Commissioner with details as to how it handled each of the requests in these cases.
53. In relation to the request made on 25 July 2013, the council provided a copy of the response sent to the complainant on 30 July 2013. Although the council now wishes to apply the vexatious exemption to this request, it appears to believe that it also provided an adequate response to this



request. However, as stated in paragraph 7, the Commissioner notes that the response did not address every point of the request but provided some narrative information and referred to previous responses.

54. In relation to the request made on 11 November 2013, the council provided a copy of the response it sent the same day. As detailed in paragraph 10, that council informed the complainant that from 31 July 2013 it will not be responding to his FOI requests. It said that it is not required to give a reason, but it is treating them as vexatious and repetitive. The council explained that another local resident later made the same request in which he referred to the complainant's request. The council responded to the local resident on the day it received the request and said that the complainant then used the information provided to the local resident to publish the details in the local press. As previously mentioned, this shows that the specific request could be answered without burden and that there is interest in the issue. In relation to the council's point that the information was subsequently published in the local press, the Commissioner draws the council's attention to the fact that a response to a request under the legislation is akin to a response to the public at large.
55. In relation to the request made on 12 November 2013, the council said that it has responded to this request and it has no records relating to the standards board complaints. It said that both the clerk and councillor received personal letters but as these were personal letters they were not forwarded to the complainant. The Commissioner does not consider that because a letter is classed by the council as 'personal' that it is therefore not covered by the FOIA. It may be the case that such letters are held by the council for the purposes of the FOIA and should be disclosed or an exemption applied. The Commissioner draws the council's attention to his guidance on when information is caught by the FOIA<sup>6</sup> and official information held in private email accounts<sup>7</sup>.
56. The Commissioner appreciates that the council have provided a detailed submission in these cases. However, the details provided are not

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/AWARENESS\\_GUIDANCE\\_12\\_INFO\\_CAUGHT\\_BY\\_FOI\\_ACT.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_12_INFO_CAUGHT_BY_FOI_ACT.ashx)

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/official\\_information\\_held\\_in\\_private\\_email\\_accounts.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/official_information_held_in_private_email_accounts.ashx)

focused on the disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the requests as requested by the Commissioner in order to evaluate whether the vexatious provision applies in these cases. The Commissioner does not believe that the requests are an attempt to harass the council by making unjustified requests for information but are a sign of the requestors persistence in pursuit of obtaining answers to his questions. The Commissioner appreciates that the requests have had an effect of harassing the council, as evidenced by its efforts to escalate what it describes as its 'FOI problems', but he also recognises that some of the requests have been generated by the council's inadequate responses and could have been avoided if the council gave the requests full consideration as required by the FOIA. It is evident that the council is investing a lot of effort in seeking advice as to how not to deal with the requests which may have been avoided if it had responded appropriately to the complainants requests in the first instance. The purpose of the requests go to the heart of the legislation, in that they relate to accountability and transparency and the Commissioner considers that the council has not demonstrated that the burden imposed by such requests is unjust in the circumstances. Taking into consideration the findings of the Upper Tribunal in Dransfield, that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the council was incorrect to find the requests vexatious.

## Other matters

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57. The Commissioner notes that the council's 'Procedure No. 6 – FOI'<sup>8</sup> document on its website states the following:

"6.4) Freedom of Information Fees Regulations

In respect of requests made under the FOI Act, the only charges which can generally be made are to cover the cost of photocopying, printing, postage, etc., i.e. disbursements rather than the labour costs associated with collating the information.

Hurworth Parish Council has decided to follow this principle for initial original requests for information.

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<sup>8</sup> <http://s3.spanglefish.com/s/9760/documents/procedures/hpc%20p6%20foi.pdf>

However, follow up requests and requests for similar information from the same party or group may attract a service fee. A fee of £25 may be requested, and payment of this fee will be required prior to the response being prepared."

58. There is no provision in the FOIA for public authorities being able to charge 'service fees'. Only actual disbursements can be charged for. The council should therefore revise its procedures in line with the legislation.
59. Paragraph 6.3 of the document states that 'the response should be submitted to the requestor within 28 days'. The statutory time limit for responding to requests is 20 working days. The council should therefore revise its procedures in line with the legislation.

## Right of appeal

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60. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

61. 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.
62. 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**