

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 October 2014

Public Authority: Bottesford Parish Council

Address: Parish Office
The Old School
Grantham Road
Bottesford
NG13 0DF

Decision (including any steps ordered)

1. The complainant has requested details of how Bottesford Parish Council (the "Council") is spending the local Precept. The Council withheld the information and applied section 21 and section 22 of the FOIA to the request.
2. The Commissioner's decision is that section 22 of the FOIA is engaged and the public interest test favours maintaining the exemption.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 9 January 2014 the complainant wrote to the Council and requested the following information:
"...the details of the Accounts for Payment for the past three months – with clear details of to whom payments have been made and for what specific services/purchases those payments have been made, along with reference to the appropriate minutes resolutions that such payments should be made."
5. The Council responded on the same day and stated,
"In line with the Freedom of Information guidelines the documentation is available as the accounts for payment appended to the minutes. The financial accounts are available each year following the closure and audit of the accounts for that year."

6. On 3 February 2014 the complainant made a complaint to the Information Commissioner's Office (the "ICO") about the Council's handling of his request for information. The ICO wrote to the Council on 6 March 2014 and asked it to provide a more detailed response to the complainant.
7. The Council responded to the complainant on 24 March 2014. It stated that some of the requested information was available as an appendix to the relevant minutes accessible through its website and cited section 21 of the FOIA. It also cited section 22 and explained how further details will be available on publication of the audited accounts following the financial year end.
8. Following a letter from the complainant, the ICO wrote to the Council on 1 April 2014 and noted that it had not supplied details of an internal review procedure in its refusal. The ICO advised the Council to review its decision or to inform the complainant if it did not have a complaints procedure.
9. On the same day the Council informed the ICO that it did not have an internal review procedure and that this was clarified to the complainant under one of his other complaints. It added that the complainant is a persistent complainer and is subject to a communication restriction which has been recently extended.
10. The Commissioner wrote to the Council on 13 June 2014 to request a copy of the withheld information and further submissions to support its application of the exemptions.

Scope of the case

11. The complainant contacted the Commissioner on 3 February 2014 to complain about the way his request for information dated 9 January 2014 had been handled. Specifically, he asked whether the Council had correctly applied section 21 and section 22 of the FOIA to the requested information.
12. The Commissioner will first consider whether the Council correctly applied section 22 of the FOIA to the request. He will then go on to consider section 21 of the FOIA if section 22 does not apply.

Reasons for decision

Section 22 – information intended for future publication

13. Section 22 of the FOIA states that information is exempt if that;
- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) the information was already held with a view to such publication at the time the request for information was made, and
 - (c) is it reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
14. In order to demonstrate that the exemption under section 22 of the FOIA is engaged, a public authority must have an intention to disclose information at a future point in time and it must be able to demonstrate what information within the scope of the request it intends to publish.

Information held at the time of the request

15. The Council explained to the Commissioner that it has not refused to provide the complainant with the requested information but that the information is freely available on the Council's website. It added that its audited accounts are made available to the public for a period of time after the closure of the Council's accounts as dictated by Government Act. It stated that the Council has no requirements to create a new report or document reformatting this available information.
16. The Council had informed the complainant that in line with the FOIA guidelines that the documentation is available as the "*accounts for payment*" appended to the minutes. The Council explained how the financial accounts are available each year following the closure and audit of the accounts for that year.

Intention to publish the information at some future date

17. The Council informed the Commissioner that the details of the expenditure were always going to be available for future publication as stipulated by the Audit Commissioner Act. The Council explained that its accounts were open for inspection this year for the required 20 days (closing 13 June 2014).
18. During the investigation, the Council provided further evidence demonstrating that the information was going to be published at the

time the request was received. The Council explained that there was a monthly statement of bills paid with each monthly meeting and that "*by law we have to publish the audited accounts which are also open to inspection and challenge.*" The Council added that it is self-evident that it has a settled intention to publish the information "*as that is a statutory duty and the timescale for publication is similarly determined.*"

19. The Council explained that in November and December 2013 the Parish Councillors may not have known the exact date of the inspection period but they would have known the month when this information would become available as part of the Council's audit process.
20. The Council stated that during the 20 days when the accounts were open, some of the requested information was provided to the complainant. This included the minutes of a Council meeting and contained the "*accounts for payment*".

Reasonable in all the circumstances to withhold the information prior to publication

21. The Council explained that due to the fact that information on how the budget is being spent is available each month, it is reasonable to withhold any further detail. The Council is of the view that this is reasonable until such time as the accounts have been closed down therefore ensuring the accuracy of the information.

Public interest arguments in favour of disclosing the information

22. The complainant argues that there are local concerns about the manner in which the Council has been, and is, handling the money raised through the local precept. He added that the Council should accept its responsibility to be open and transparent about its financial affairs and that it should provide information requested by the public. The complainant reiterated that his request is for complete transparency of the Council's financial payments for the months of September – December 2013 and that these should be made available for public scrutiny without delay.
23. The complainant believes that the Council has not been transparent in its management of the public money through the precept. The complainant argues that the Council has attempted to use strategies to avoid public disclosure of its financial transaction when requested, including citing FOIA exemptions without foundation.
24. In providing his arguments in favour of disclosing the information, the complainant made reference to details of the December accounts. He explained that the details may have been circulated to the Council, but

they were never made public and that this fund transfer was unknown to the Neighbourhood Plan Steering Group.

25. The complainant argues that the Council's reference to the accounts being available "*each year following the closure and audit of the accounts for that year*" is totally inadequate as it does not satisfy his request for information and current local concern. The complainant added that by the time the closure and audit are completed, it would be too late to answer concerns that he believes require addressing immediately.
26. The complainant has expressed his concern for details as to exactly how the Council is spending this public money. He is of the view that in the interest of transparency and public accountability of public finances, the Council should provide full details of all payments made during the months in question.
27. The complainant argues that this lack of transparency is giving rise to local concern, specifically if certain payments have not been declared or indications as to what certain payments refer to.

Public interest arguments in favour of maintaining the exemption

28. The Council argued that the public interest is already being served by the monthly reports and "*the benefit of publishing every last piece of information held by the Council relating to expenditure is outweighed by the need to ensure that the information is accurate in every respect which can only be done on final reconciliation at year end.*"
29. The Council provided the Commissioner with a copy of its mandatory notice which the Council stated was posted on its noticeboards. The Commissioner acknowledges that this notice informs the Council's electorate of their right to inspect the accounts over a 20 day period. The Council stated that the complainant did exercise this right a number of times during this period.

Balance of public interest

30. Having considered the balance of public interest in favour of both withholding and disclosing the information, the Commissioner considers that the arguments in favour of maintaining the exemption outweigh the arguments in favour of disclosing it.
31. In this case the Commissioner recognises that the requested information is freely available on the Council's website and that the audited accounts are made available to the public for a period of time.

32. The Commissioner acknowledges that the Council had an intention to publish the information and that it has a statutory duty and a timescale for publication.
33. The Commissioner has accepted that there is a strong argument in favour of the requirement to make sure that all parts of the information are accurate. He notes that this is completed at year end at the final reconciliation.
34. The Commissioner accepts that the Council held the information at the time of the complainant's request and that details of how the Council was spending the local precept were going to be available for future publication. The Council confirmed this by providing the accounts for the year which shows the available dates for viewing these details.
35. Therefore, the Commissioner is satisfied that the Council correctly applied the exemption under section 22(1) of the FOIA to the information.

Right of appeal

36. 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 123 4504

Fax: 0870 738 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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

Rachael Cragg
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