

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 March 2015

**Public Authority:** Lanteglos by Fowey Parish Council  
**Address:** Colquite Farm  
Lanteglos Highway  
Lanteglos by Fowey  
PL23 1ND

#### Decision (including any steps ordered)

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1. The complainant requested information from Lanteglos by Fowey Parish Council ("the parish council"). He asked for copies of documents sent by the parish council to Cornwall Council that had resulted in a particular email being sent to him. The parish council initially refused to confirm or deny whether the information was held. It subsequently relied on the exemption under section 42(1) of the Freedom of Information Act 2000 ("the FOIA"). This exemption relates to legal professional privilege. The Commissioner's decision is that some information was correctly withheld using section 42(1). The remaining information is the complainant's own personal data and is therefore exempt under section 40(1) of the FOIA. The Commissioner found breaches of section 1(1)(a), 10(1), 17(1) and 17(1)(a)(b) and (c). The Commissioner does not require any steps to be taken.

#### Request and response

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2. On 12 August 2014, the complainant requested information from the parish council in the following terms:

*"Under the provisions of the Freedom of Information Act 2000 please provide me with copies of the documents sent by Lanteglos Parish Council or a representative of Lanteglos Parish Council to [name], Cornwall Legal Department that resulted in the attached email from [name] on behalf of Lanteglos Parish Council being sent to me and my solicitor".*

3. The parish council responded on 5 September 2014 and said that it was unable to confirm if the requested information was held.
4. The complainant replied on the same day and said that he did not understand why the parish council was not able to confirm if the information was held, and he asked for clarification.
5. The parish council replied on 13 September 2014 and said that it had nothing further to add.
6. Following guidance from the Commissioner, the complainant contacted the council on subsequent occasions, continuing to complain about the response.
7. The parish council replied on 29 September 2014 and said that it could neither confirm nor deny whether the information was held but if it was held, it would be exempt under section 42(1) of the FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 1 October 2015 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the parish council had correctly responded to his request. He expressed concern that councillors may have discussed the information with their friends and families.
9. For clarity, a requester's own personal data is exempt under section 40(1) of the FOIA. Personal data is defined by the Data Protection Act 1998 ("the DPA") as any information relating to a living and identifiable individual. The Commissioner considers that the majority of the withheld information is actually the complainant's own personal data. The separate right of access provided by section 7 of the DPA therefore applies. This notice only relates to the information that falls under the scope of the FOIA.

### **Reasons for decision**

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#### **Section 42(1)**

10. This exemption provides that information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information. The information can be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosing it.

11. The Commissioner has already recently considered a separate request for information made by the same complainant to Cornwall Council. That request, made on 8 July 2014, was in the following terms:

*"...I request copies of the source of the information that has accused me of providing details of the agreed payment, to myself by the parish council, to [name] or others".*

12. The Commissioner issued a decision notice under section 50 of the FOIA on 11 November 2014 relating to the request to Cornwall Council above. The Commissioner's reference number for that decision was FS50552245. That decision found that the information requested by the complainant was exempt under section 42(1) of the FOIA and the public interest did not favour disclosure (excluding information that is the complainant's own personal data as mentioned in paragraph 9 above). For ease of reference, a copy of the full decision can be accessed here:

[https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1043257/fs\\_50552245.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1043257/fs_50552245.pdf)

13. The information held by Cornwall Council relating to the request in paragraph 11 above is the same information that was held by the parish council relating to this case, with the exception of one email. The council told the Commissioner that it wished to rely on section 42(1) to withhold the information using the same arguments presented by Cornwall Council. It confirmed specifically for the avoidance of doubt that none of the information had lost its confidentiality and no evidence was available to the Commissioner to suggest otherwise.
14. The Commissioner has already found that the information held by Cornwall Council was correctly withheld using section 42(1) and he therefore finds that the same information held by the parish council is also exempt for the reasons set out in the previous decision notice under reference FS50552245 above.
15. In relation to the additional email identified by the parish council, the Commissioner was satisfied that this information was also exempt under section 42(1) for the same reasons.

### **Section 10(1) and 1(1)(a)**

16. Section 1(1)(a) provides a general obligation to confirm or deny whether information is held. The council refused to confirm or deny to the complainant whether the information requested was held. It therefore breached section 10(1) of the FOIA for the failure to do this within 20 working days, and section 1(1)(a) for the failure to do this by the date of its internal review.

**Section 17(1) and 17(1)(a)(b) and (c)**

17. Section 17(1) provides that if a public authority wishes to withhold information, it must issue a refusal notice that states the public authority is relying on an exemption, specifies the exemption in question and states (if it would not otherwise be apparent) why the exemption applies.
18. In this case, the authority said that it could not confirm or deny if the information was held. It said that if the information was held, it would seek to rely on section 42(1).
19. The Commissioner finds that the authority breached section 17(1) for failing to state that it was relying on section 42(1) within 20 working days and failing to provide appropriate justification. It breached section 17(1)(a)(b) and (c) for failing to rely on section 42(1) and justify its use by the date of its internal review.

## Right of appeal

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20. 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: 0870 739 5836

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)

21. 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.
22. 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**