

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2016

Public Authority: Neen Savage Parish Council
Address: c/o Harcourt View
Chorley
Nr Bridgnorth
WV16 6PP

Decision (including any steps ordered)

1. The complainant has made a multi-part request to Neen Savage Parish Council for recorded information relating to different areas of the Council's responsibilities.
2. The Commissioner's decision is that Neen Savage Parish Council does not hold recorded information which is relevant to item 6 of the complainant's request. She has decided that the Council is entitled to withhold information relating to item 13 of the complainant's request in reliance on section 40(2) of the FOIA.
3. In respect of items 14 and 15 of the complainant's request, the Commissioner has decided that the Council has breached section 1 of the FOIA. She also finds that the Council breached section 10 of the FOIA by failing to respond to the complainant's request within twenty working days.
4. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - The Council is required to issue a fresh response to the complainant in respect of the recorded information it holds relevant to items 14 and 15 of his request; namely the invoice entitled 'The Royal British Legion Poppy Appeal' and the invoice for Action Centres UK.
5. 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.

Request and response

6. On 11 August 2015, the complainant wrote to Neen Savage Parish Council asking to be provided with the following information:
 1. "The Annual Return for 2013/2014
 2. The Annual Return for 2014/2015
 3. The Internal Auditor's Report for 2013/2014
 4. The External Auditor's Report for 2013/2014
 5. The Internal Auditor's Report for 2014/2015
 6. The Notice for the Appointment of Date for the Exercise of Elector's Rights – 2014
 7. The Notice for the Appointment of Date for the Exercise of Elector's Rights – 2015
 8. Evidence to support the [payment made to the clerk by way of salary – contract of employment.
 9. Job Specification for the position of Temporary Clerk – Neen Savage Parish Council.
 10. Job Specification for the position of Clerk – Neen Savage Parish Council.
 11. Person Specification for the position of Clerk – Neen Savage Parish Council.
 12. The minutes of the meeting(s) at which the 9, 10 and 11 were agreed.
 13. Minutes of the meetings at which the terms were agreed and the decision was made to employ the clerk on a permanent basis and the terms applying thereto.
 14. Invoice for the "Parish Council Meeting" held at The Pioneer Centre/Action Centres on 14th May, 2014 and approved for payment at the meeting on 2nd June 2014.
 15. Breakdown of Councillor's expenses for 2014/15 (£51) in total."

7. In addition to the complainant's reference to the FOIA, he also cited the 2014 Transparency Code for smaller authorities issued by the Department for Communities and Local Government in December 2014.
8. On 14 September 2015, the complainant wrote to the Council to remind it of its duty under the FOIA to respond to his request within 20 working days. The complainant also asked the Council when he would receive the information he seeks.
9. On 9 November 2015, following the intervention of the Information Commissioner, the Council made its response to the complainant.
10. The Council informed the complainant that the accounts spreadsheets were emailed to him on 22 July 2015 and that the accounts were included as an agenda item for the Council's meeting of 29 July. This was done so as to make them available for examination after that meeting had ended.
11. The Council pointed out that the public had the opportunity to view the 2013/14 accounts during the specified period set by the Audit Commission and that the Council intended to make the 2014/15 information available at its meeting of 29 July.
12. The Council contested the complainant's assertion that it had not provided the opportunity to review the requested information and it maintained that it had effectively satisfied items 1 – 8, 14 and 15 of his request. The Council advised the complainant that information relevant to items 9, 10, 11 and 12 are not held by the Council and that information relevant to item 13 – all minutes of meetings, are available on the Council's webpage, except those which are subject to exemption clauses.
13. The complainant wrote to the Council again on 15 November 2015. He expressed his dissatisfaction with the Council's response to items 1 to 8, 13, 14 and 15 of his request and he informed the Council of his intention to invoke its complaints process.
14. On 6 January the complainant submitted a new request for recorded information to the Council. The terms of the new request are:

“As you record the proceedings of the PC meetings, I wish to hear the recording of the meeting of 3rd December, insofar as it relates to agenda items 25 and 26, in order to satisfy myself that my note is correct. I invoke the Freedom of Information Act (2000). Please let me know where and when the recording will be made available.”
15. The complainant then set out his complaint about the way the Council had handled his request of 11 August 2015. The complainant asserted

that the Council had failed to provide the information relevant to items 1-4, 6-8, 13, 14 and 15, or give an adequate reason for failing to do so. The complainant did however accept that the Auditor's report for 2014/2015 (item 5) had now appeared on the Council's website.

16. On 22 January 2016, the Council wrote to the complainant to inform him that, "the information requested in your letter dated 11th August 2015, previously made available to you on the 29th July 2015 can be accessed on the Council website; with the exception of those parts which are not held by the Parish Council or those parts which are exempt".
17. The complainant wrote to the Council on 26 January 2016 asserting that the following items had still not been provided:

Item 6: The Notice for the Appointment of Date for the Exercise of Elector's Rights – 2014.

Item 13: Minutes of the meetings at which the terms were agreed and the decision was made to employ the clerk on a permanent basis and the terms applying thereto.

Item 14: Invoice for the "Parish Council Meeting" held at The Pioneer Centre/Action Centres on 14th May, 2014 and approved for payment at the meeting on 2nd June 2014.

Item 15: Breakdown of Councillor's expenses for 2014/15 (£51) in total.

Scope of the case

18. The complainant initially contacted the Commissioner on 11 October 2015 to complain about the failure of the Council to respond to his request of 11 August 2015.
19. The Commissioner determined to investigate whether the Council has handled the complainant's request in accordance with the FOIA, specifically in respect of items 6, 13, 14 and 15 of his request. This notice sets out the Commissioner's decision.

Reasons for decision

Item 6: Notice for the Appointment of Date for the Exercise of Elector's Rights – 2014

20. Section 1 of FOIA states that –

"(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

21. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds this particular notice.
22. In making this determination, the Commissioner applies the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
23. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant. The Commissioner's investigation also included and questions about the possible deletion/destruction of this information.
24. The Council has confirmed to the Commissioner that it does not hold a copy of the Notice to Electors for 2014.
25. The Council advised the Commissioner that, in line with the Audit Commission Act 1998 and the Accounts and Audit (England) Regulations 2011, the notice had been properly displayed on the Parish Council's notice board. This notice, together with others, was removed from the notice board by one or more unauthorised persons.
26. Unfortunately, out of keeping with his normal practices, the Parish Council's Clerk did not retain a copy of the notice. Normally this would have been kept as a paper-based record and filed in an envelope which is dated by the year the records relates to.
27. The Clerk checked the appropriately dated file and was unable to locate the notice which the complainant seeks. In addition to checking the properly dated file, the Clerk also checked other files in case he had mistakenly misfiled the notice.
28. In this case, the Council does not have a record of the document's destruction. Ordinarily the Council would have retained a copy of the notice for 6 years, though it is not obliged to do so by statutory provision nor is there any business purpose which would normally require this.
29. The Commissioner has considered the Council's representations. She has decided that, on the balance of probabilities, the Council does not

hold a copy of the Notice for the Appointment of Date for the Exercise of Elector's Rights for 2014.

Item 13: Minutes of the meetings at which the terms were agreed and the decision was made to employ the clerk on a permanent basis and the terms applying thereto.

30. The Council has provided the Commissioner with a copy of its minutes which relate to item 13 of the complainant's request. These minutes were made during a closed session of the Council, held under s100(4) of the Local Government Act 1972.
31. In addition to recording the Council's resolution to offer the Clerk a permanent position, the minutes record an item which the Commissioner would characterise as relating to 'a personnel matter'.
32. In conversation with one of the Commissioner's officers, the Council confirmed that it is withholding the minutes in reliance on section 40(2) of the FOIA.

Section 40(2) – personal data of a third party

33. Section 40(2) provides an exemption from the duty to disclose information which is the personal data of any third party and where disclosure would breach any of the data protection principles contained in the DPA or section 10 of that Act.
34. In order to rely on the exemption provided by section 40, the requested information must constitute personal data as defined by the DPA. The DPA defines personal data as:

'...data which relate to a living individual who can be identified

- a) From those data, or
- b) From those data and other information which is in the possession or, or is, likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect to the individual.'

35. In the Commissioner's opinion this information is undoubtedly personal data.
36. The Commissioner is required to consider whether disclosure of the minutes of the Council's closed session would breach any of the data protection principles contained in Schedule 1 of the DPA. He considers

that the first data protection principle is the one most relevant in this case. The first data protection principle has two components:

1. Personal data must be processed fairly and lawfully, and
2. Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.

The Council's representations

37. The Council has explained to the Commissioner the reasons why it was considered necessary for it to hold this part of its meeting in closed session. The Council's reasons are summarised in a Confidential Annex appended to this notice.
38. The Commissioner has considered the representations made by the Council in respect of the minutes requested by the complainant. She has considered whether any of the conditions provided by Schedule 2 of the DPA would warrant the disclosure of the personal data contained in those minutes.
39. In particular the Commissioner has considered the sixth condition in Schedule 2. The sixth condition states:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

40. Having reviewed the minutes in the context of the Council's representations, the Commissioner has found that condition six of Schedule 2 of the DPA is not met: She is unable to adduce a necessary legitimate interest which would warrant the disclosure of the Clerk's personal data into the public domain, which is greater than the Clerk's right to privacy.
41. Notwithstanding the above, it is the Commissioner's opinion that the information contained in the withheld minutes also constitutes sensitive personal data as defined by section 2 of the DPA. In addition to requiring that one of the conditions of Schedule 2 is met, sensitive personal data requires one of the conditions from Schedule 3 is also met. The effect of this is to raise the threshold required to make the disclosure of the minutes fair to the Clerk. Again the Commissioner can find no appropriate condition in Schedule 3 that can be met.
42. The Commissioner therefore considers that disclosure would be unfair to the Clerk and would contravene the first data protection principle. It is

for this reason that the Commissioner has decided that the Council is entitled to rely on section 40(2) of the FOIA to withhold the minutes requested by the complainant at item 13 of his request.

Item 14: Invoice for the "Parish Council Meeting" held at The Pioneer Centre/Action Centres on 14th May, 2014 and approved for payment at the meeting on 2nd June 2014.

Item 15: Breakdown of Councillor's expenses for 2014/15 (£51) in total.

43. The Council has advised the Commissioner that both of these items were available for inspection by the public on 29 July 2015 and that the electorate was informed of this by virtue of an agenda notice.
44. The information relating to councillor's expenses, contained in item 15, was explained in the Council's accounts which were also available for inspection on 29 July 2015.
45. In respect of item 15, the Council advised the Commissioner that it had resolved to approve the use of expenses to pay for poppy wreaths donated to the Women's Institute and the parochial church council. The cost also included the Council's own wreath for the Remembrance Day Service.
46. The Commissioner accepts the Council's assurance that the documents requested at items 14 and 15 were available for inspection on a designated date and that they have properly been recorded in the Council's accounts.
47. Notwithstanding this assurance, the Commissioner must point out that the two invoices were held by the Council as recorded information at the time the complainant made his request on 11 August 2015: The complainant's request postdates the occasion when the Council made the invoices available for inspection.
48. This being the case, under the duty imposed on it by section 1 of the FOIA, the Council should have confirmed to the complainant that it holds the information requested at items 14 and 15, and it should have provided copies of that information or issued a refusal notice under section 17 of the FOIA citing an appropriate exemption to disclosure.

The Commissioner's decision

49. Council has not advanced any arguments to support its continued withholding of the two invoices.
50. The Commissioner has decided that the Council has breached section 1 of the FOIA. In view of this breach, the Council is required to either disclose the two invoices to the complainant or to issue a refusal notice

under section 17 of the Act which cites an appropriate exemption to disclosure.

51. In consequence of the Council's failure to respond to the complainant's initial request within twenty working days, the Commissioner finds that the Council has also breached section 10 of the FOIA.

Right of appeal

52. 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

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

53. 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.
54. 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
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