

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2018

Public Authority: Bramber Parish Council

Address: bramberparishclerk@gmail.com

Decision (including any steps ordered)

1. The complainant has requested recorded information from Bramber Parish Council which concerns the development of a Neighbourhood Plan by four parish council's under the acronym "SWAB" – Steyning, Wiston, Ashurst and Bramber Neighbourhood Plan.
2. The Commissioner's decision is that Bramber Parish Council has breached section 11 of the FOIA, by failing to provide the complainant with the information she has requested in format which she specified.
3. The Commissioner has also decided that the Council has breached sections 1 and 17 of the FOIA, by failing to provide information to the complainant, relevant to her request or by failing to issue a valid refusal notice.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Bramber Parish Council is required to provide the complainant with the invoices relevant to the complainant's request of 10 September 2017. The information is to be provided by email or by post, with the information being placed onto a memory device in machine-readable file format.
 - Bramber Parish Council is required to provide the complainant with a copy of the information currently being considered by AiRs – referred to below at paragraph 30, by email or by post, with the information being placed on a memory device in machine readable file format; or, it should issue to the complainant a refusal notice under section 17(1) of the FOIA which specifies one or more appropriate exemption and which states why that or those exemptions apply.

5. The public authority must take these steps 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 12 August 2017, the complainant sent an email to four councils including Bramber Parish Council. The complainant's email contained the following request for information:

"Please provide copy quotations, specifications, contracts, invoices and receipts for all work undertaken by both AiRs¹ and rCOH² throughout the SWAB project. Please provide details of all other payments and liabilities incurred in connection with the project. Please provide details of all grant monies received or due."

7. The complainant asked the Council to respond to her request by email or by post, with the requested information being placed onto a memory device in machine-readable file format.
8. The Council responded to the complainant's request on 8 September 2017, by providing her with a list detailing all of the payments and receipts throughout the three years of the Local Plan, which were presented to the Steering Group. The Council also advised the complainant that:

"Bramber Parish Council agreed to take responsibility for the SWAB account funds which have been held within the Bramber Parish Account in order that VAT be reclaimed. As such, all SWAB expenditure and continual updates have been shown on the BPC website in its accounts and minutes. An up to date report was also given out to councillors at each steering group meeting."

9. The Council confirmed to the complainant that "no grant monies are due at this time".

¹ Action in rural Sussex

² rCOH Ltd

10. The complainant wrote to the Council on 10 September 2017 to seek clarification of two matters contained in the Council's response and to request a number of documents which she specified as follows:

"Clarification

1. Please could you just confirm that so far as you are aware there are no outstanding invoices which have not yet been paid, and also that there is no work which has not yet been invoiced. In other words, that the expenditure shown on the spreadsheet is the total cost of the SWAB Plan.
2. I am not clear what the position is over the specification and contract with Airs and rCOH which I requested. Is Bramber Parish Council saying that it does not hold documentation relevant to this?

Documents

3. I did ask for invoices for AiRs and rCOH. The spreadsheet indicates that you should hold four such documents, please could you oblige.
 4. The SAWB minutes of February 2016 show an anticipated shortfall of over £15,000. This does not seem to tie up with the figures in the spreadsheet you have kindly provided. Please could you let me see your financial report referred to at item 11 of those minutes?"
11. The Council replied to the complainant's 'clarification' email on 18 September 2017 by providing her with a financial statement of 10 February 2016. This statement showed the estimated shortfall which the complainant had requested at item 4 above. The Council advised the complainant that the shortfall includes all work until completion of the plan.
12. The Council also advised the complainant that it had received a further invoice for work, which had yet to be approved, and that the Council anticipated no further work to be invoiced.
13. With regard to the four invoices requested at item 3 above, the Council advised the complainant that these had been photocopied and would be taken to the Steyning Parish Council office. Finally, the Council informed the complainant that it holds a copy of the Agreement of Services with AiRs and that it had asked Steyning Parish Council to contact AiRs "in regard to them having any FOI/EIR legal exemptions".
14. The complainant wrote to the Council again on 22 September 2017. She thanked the Council for its reply and asked it to supply the additional invoice referred to in the Council's email of 18 September. The

complainant also asked for a copy of the four invoices referred to at item 3 above.

15. The complainant said, "I am not clear why the four [invoices] are going to the Steyning Office", and, referring to section 11 of the Freedom of Information Act, she asked the Council to scan and email them to her.
16. The complainant also said that, "Since I made my request I have become aware that SWAB operated a Dropbox facility, but even if it did not, SWAB documents are all jointly owned documents and so all are within the separate power and duty of each council to produce. The duty to produce the requested documents rests as much with Wiston Bramber Parish Council as with any of the other three councils. I do not mind which council produces them but at the moment none of them are doing so. Please could you either produce them or ensure one of the other councils does so within the very near future".
17. On 9 October 2017, the Chairman of the Council wrote to the complainant to advise her that its previous response still applies, and that the invoices can be viewed at Steyning Parish Council's offices on request.
18. The Council, referring to the complainant's request and to other FOI requests recently received on the same subject, stated that the requests were, "prepared in collaboration and are unreasonable in relation to the amount of resource demanded to address them and the very limited resources available to the Bramber Parish Council".

Scope of the case

19. The complainant contacted the Commissioner 11 October 2017 to complain about the way her request for information had been handled.
20. The complainant informed the Commissioner that the Council had refused to comply with her request of 12 August 2017. She stated her belief that the Council had rejected her request, and two subsequent requests, in reliance on section 14 of the Freedom of Information Act, and that its refusal to provide the four invoices, referred to at item 3 in her 'clarification' email of 10 September 2017, in the form and format she had specified.
21. In view of the above, the Commissioner decided that the focus of her investigation should be to determine whether the Council has handled the complainant's request in accordance with the FOIA. Specifically to determine whether the Council has breached section 11 of the FOIA by failing to provide the requested information in the form and format specified by the complainant; and, if the Council confirms that it has

applied section 14(1) to the request, whether the Council is entitled to rely on that provision.

Reasons for decision

22. The Council has confirmed that it had no intention to refuse the complainant's request when it was first received: Whilst the Council failed to provide the specific information she had asked for, it did provide a list of payments albeit in a different format. By its actions, the Council indicated that it had every intention to comply with the complainant's request by making the four invoices available to her at the Steyning Parish Council office.
23. The Council has also confirmed to the Commissioner that it has not applied section 14(1) of the FOIA to the complainant's request. The Commissioner therefore makes no further reference to this provision in this notice.

Section 11 – means by which the requested information is to be provided

24. The provision of section 11 concerns how information requested under the FOIA is to be provided to the requester, where the requester has expressed a particular preference.
25. In this case the complainant made clear her preference for the information to be sent to her by email or by post, with the requested information being placed onto a memory device in machine-readable file format.
26. Under section 11(1), where an applicant expresses a preference for a particular method of communication, the public authority shall, so far as reasonably practicable, give effect to that preference.
27. Where the public authority determines that it is not reasonably practicable to comply with the requester's preference, the authority shall notify the applicant of the reasons for its determination.
28. When asked whether the Council had considered the preferred means of communication specified by the complainant, the Council advised the Commissioner that, due to the complainant's position as a member of Steyning Parish Council, "it seemed wholly appropriate, efficient and convenient to her" for Bramber Parish Council to deposit the requested invoices at the Steyning Parish Council offices, so that she could access and copy them.

29. Additionally, the Council pointed out that its Clerk works from home and has limited IT facilities, whereas the Steyning office is fully equipped with the necessary copiers and printers.
30. In an attempt to bring this request and complaint to a conclusion, the Council's Clerk has advised the Commissioner that she has retrieved the invoices³ requested by the complainant and has scanned and saved them on her laptop. The Clerk has also confirmed that AiRs is still considering which parts of the information can be released and when the Council has AiRs' agreement it will make the information available to the complainant.
31. It is clear to the Commissioner that the Council took its decision to provide the requested invoices to the complainant in a manner which was convenient to itself and which it considered was appropriate to the requester: In doing so the Council failed to give effect the complainant's stated preference as to the means of communication she had specified.
32. The Council accepts that it did not consider the 'reasonableness' of the complainant's request for the information to be provided by email or by post on a memory device. The Council made its decision to deposit the requested invoices at the Steyning office because it would be "more efficient all round" to make the invoices available to the requester's own Parish Council officers. The Council made this decision without first checking with the complainant that she was in agreement.
33. The complainant referred the Commissioner to a Dropbox facility operated by SWAB and maintained by the Clerk of Steyning PC. She suggested that the documents she has requested could easily be located and released by email.
34. When asked to comment about the use of the Dropbox facility, the Council said, "Bramber Parish representatives had no occasion to use the Dropbox facility and to [the Clerk's] knowledge there are no documents relevant to this request stored on it".
35. The Commissioner accepts the Council's position in respect of the Dropbox facility.
36. Nevertheless, in the circumstances of this case, as the Commissioner understands them, there is no evidence to suggest or confirm that

³ The Council provided the Commissioner with copies of 5 invoices (4 from AiRs and 1 from rCOH Ltd.

giving effect to the complainant's preference regarding the method of communication would be unreasonable or excessively expensive.

37. The Commissioner's decision must therefore be that the Council have breached section 11 of the FOIA.
38. The Commissioner recognises that the Council is withholding information which is relevant to the complainant's initial request. That information is the information which AiRs is considering with a view to determining which parts of the information can be released – paragraph 30 above.
39. The Commissioner is not aware of any exemption which has been applied by the Council in respect of this information and there is no evidence which suggests or confirms that the Council issued a refusal notice to the complainant which cites an appropriate exemption.
40. The Council's withholding of this information without the issuing a valid refusal notice constitutes a breach of sections 1 and 17(1) of the FOIA.

Right of appeal

41. 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

42. 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.
43. 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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