

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2018

Public Authority: Swinford Parish Council
Address: The Old Stables
Fir Tree Lane
Swinford
Leicestershire
LE17 6BH

Decision (including any steps ordered)

1. The complainant has requested information about legal advice obtained by Swinford Parish Council regarding a proposed amendment to the minutes of a particular Parish Council meeting. Swinford Parish Council refused to comply with the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA.
2. The Commissioner's decision is that Swinford Parish Council was entitled to rely on section 14(1) of the FOIA to refuse to comply with the request.

Request and response

3. On 15 November 2017, the complainant wrote to Swinford Parish Council ("the Parish Council") and requested information in the following terms:

"Regarding the falsehoods in the minutes of 7 March 2017 Swinford Parish Council sought advice from NALC [National Association of Local Councils] via LRALC [Leicestershire and Rutland Association of Local Councils].

Under the terms of the Freedom of Information Act, please provide me with the following information:

1. *What documents were submitted in support of the request?*

2. *Did the provider of the legal advice have sight of the letter referred to?*
 3. *Were the contents of the letter (i.e. its text, not merely a general precis) made known to the adviser?*
 4. *Was the author of the letter made known?*
 5. *What was the actual request for advice?*
 6. *Did that request state or imply that I referred to a letter?*
 7. *What was the advice offered?*
 8. *Was the advice dependent upon the letter?*
 9. *What ticket or reference number was assigned to the Swinford PC request for advice, by NALC, or by LRALC prior to the request being forwarded to NALC?*
 10. *Since the proffered letter is now proven to refer to a totally different matter, would the NALC consider its advice to be still pertinent?"*
4. The Parish Council responded on 17 November 2017. It refused to comply with the request, stating that it was vexatious within the meaning of section 14(1) of the FOIA.
 5. The complainant requested an internal review the same day. Following the Commissioner's intervention, the Parish Council informed the complainant on 12 March 2018 of the outcome of the internal review, which was that it was upholding its decision to apply section 14(1) of the FOIA to refuse to comply with the request.

Scope of the case

6. The complainant contacted the Commissioner on 15 March 2018 to complain about the way his request for information had been handled. He disputed that the request was vexatious, explaining that he was pursuing legitimate concerns he had about the Parish Council's conduct.
7. The analysis below considers the Parish Council's application of section 14(1) of the FOIA. The Commissioner has commented on the time taken to conduct the internal review in the "Other matters" section of this decision notice.

Reasons for decision

Section 14 - vexatious or repeated requests

8. Section 14(1) of the 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.
9. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon County Council & Dransfield¹. The Tribunal commented that the term could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
10. 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 authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment of, or distress to, staff.
11. 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).
12. The Commissioner has published guidance on dealing with vexatious requests². That guidance includes a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one

¹ <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether or not a request is vexatious.

13. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.
14. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. In that respect, the Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

The complainant's view

15. The complainant explained that he made the FOIA request further to concerns he had about the way the Parish Council had referred to a complaint he had made about a named councillor, in published minutes.
16. The published minutes of the Parish Council meeting of 7 March 2017 stated that his complaint had been investigated by Harborough District Council (HDC), and that "*HDC had responded and advised that there were no grounds for complaint*". The complainant considered this to be both factually incorrect and personally defamatory, he being named in the minutes as the complainant, and the implication being that his complaint was malicious.
17. The complainant asked the Parish Council to amend the minutes to reflect what he considered to be the true outcome of HDC's investigation of his complaint. He disputed that HDC had found there were no grounds for complaint, saying that HDC had in fact made several recommendations to the Parish Council as a result of his complaint. He also said that there appeared to be some confusion within the Parish Council as to which letter from HDC communicated the decision that there were "*no grounds for complaint*", as it had, at various times, been ascribed to three different items of correspondence from HDC. One item could no longer be located, while the other two, he contended, contained no such finding by HDC.
18. The complainant was told that the Parish Council had taken legal advice on his request to amend the minutes. As a result of the legal advice received, a note was placed on the minutes in question, referring readers to a letter from HDC setting out the outcome of its consideration

of the complaint, which, as the complainant had asserted, made a number of recommendations to the Parish Council.

19. The complainant then made the FOIA request which is the focus of this decision notice. He explained that he did so because on another occasion the Parish Council had claimed to have acted on legal advice received, but when he had asked for a copy of the legal advice, it had been unable to provide it, or even an audit trail proving that the advice had ever been requested and given. In that case, he strongly suspected that no such legal advice existed, and he suspected the same may be the case here. As such, he believed that the Parish Council was applying section 14(1) of the FOIA to conceal a lie that it had told him about having obtained legal advice.
20. In support of his complaint, the complainant supplied to the Commissioner copies of other complaints and correspondence he had submitted to the Parish Council, and also to HDC.

The Parish Council's view

21. The Parish Council told the Commissioner that the complainant is a former councillor, who resigned from his post in 2016. The Parish Council said that since resigning, the complainant has persistently raised objections about Parish Council discussions and decisions, and that he continually demands background information as a means to challenge those decisions. It believes that he is motivated to do this by personal grievance rather than by any wider public interest.
22. The Parish Council said that the request in this case stems from the complainant's time as a councillor, when a disagreement with another councillor had resulted in the complainant submitting a complaint to HDC about the other councillor's conduct.
23. The Parish Council conceded to the Commissioner that HDC's consideration of the complaint resulted in HDC making recommendations to the Parish Council about the training, mediation and support needs of Parish Council members. However, there had been no finding of misconduct on the part of the other councillor.
24. The Parish Council said that the complainant did not seem satisfied with the outcome of HDC's consideration of his complaint, and that he has persistently tried to re-open the matter by raising it at Parish Council meetings. At the Parish Council meeting of 10 January 2017 three questions he proposed to ask about the conduct of the other councillor were disallowed. This resulted in him delivering a leaflet containing the three questions, and allegations about the conduct and integrity of the other councillor, to every household in the Parish.

25. At the Parish Council meeting of 7 March 2017, the Parish Council discussed the complainant's behaviour and it was reiterated that if he had an issue with the conduct of a particular councillor he should take it up with HDC, which is the appropriate body to deal with such complaints. The Parish Council said that during the meeting a comment was made to the effect that HDC had already considered the matter and had judged it not to require further investigation, and that this was recorded in the minutes as there having been "*no grounds for complaint*".
26. As noted above, the complainant challenged that assertion, and so the Parish Council said it took legal advice, resulting in it taking the action set out in paragraph 18, above. It considered the matter closed as a result of that action, and when the complainant tried to raise a further formal complaint about the matter in November 2017, it advised him accordingly.
27. Talking about the impact of the complainant's conduct, the Parish Council told the Commissioner that the previous Parish Clerk had resigned the position when the complainant was still a councillor, citing his behaviour as their principal reason for doing so. The Commissioner has seen a copy of the Clerk's letter of resignation, which was circulated to the complainant at the time, which confirms this.
28. The Parish Council said that the current Parish Clerk is contracted to work eight hours per week. It said that over the course of the previous 12 months the complainant had submitted two FOIA requests, and that a further 2 requests had been received from someone it believed to be an associate of his. Describing the burden to it of dealing with the complainant's behaviour, the Parish Council said:

"[The complainant] continues to take up the Parish Council's time and efforts by making repeated complaints about the same issue. He is hindering the ability of the Parish Council to carry out its business. The problem for a small council is that resources, both paid for and voluntary, are scarce and decisions must be taken about how those resources are used most effectively for the benefit of the whole Parish. The current Parish Clerk has been in the role since May 2017, a simple search of [complainant's name] in her email account brings up over four hundred emails relating to [the complainant], not all sent by [the complainant] but related to his various complaints.

For a council this size, that is a huge number of emails relating to one parishioner over a single 12-month period.

[The complainant] is never going to be satisfied with the decision of the Parish Council and has in recent months submitted further

complaints and contacted the local MP for Swinford and asked him to mediate.

...

The Parish Council is trying to move forward, three of the five current councillors were co-opted in Spring 2017. [The complainant] is making this impossible with his constant demands. The parishioners of Swinford would rightly expect their Parish Council to spend their Council Tax on projects that are constructive and which benefit the community as a whole rather than continuing to waste resources responding to the personal agenda of one person”.

The Commissioner's conclusion

29. The Commissioner notes the background to this case. It is clear that the relationship between the complainant and the Parish Council is poor. In making his complaint about this request to the Commissioner, the complainant asked her to take account of the wider context and history of his concerns about the Parish Council's conduct over several years. The Commissioner has done so, but also takes the view that the Parish Council is similarly justified in considering the wider context and history of the matter when applying section 14 of the FOIA to this request.
30. The complainant says that his concerns are about the conduct of the Parish Council as a whole, however, it does appear from the evidence provided by both sides that much of his focus is on the behaviour of the other councillor, about whom he previously complained to HDC.
31. The Commissioner has not been provided with any evidence which indicates that either the Parish Council or the other councillor have acted inappropriately, other than the complainant's own allegations. She appreciates that the complainant has his concerns, but without any independent finding of any wrongdoing, the Commissioner is unable to support his view.
32. The Parish Council had stated in the minutes of the meeting of 7 March 2017 that the complainant's complaint was without grounds, while the complainant said that it was demonstrably justified.
33. As is often the case, the truth appears to fall somewhere in the middle; as a result of investigating the complainant's complaint to it, HDC's finding did contain recommendations that training, mediation and support be provided for Parish Council members, which suggests that the complaint did raise legitimate issues which required attention. However, the complaint appears to have raised no substantive evidence of misconduct by the other councillor which required further investigation by HDC.

34. The Commissioner has considered whether there is any serious purpose or value for the requested information and, if the request was complied with, whether it would satisfy this purpose. The complainant clearly has grievances about the Parish Council and the other councillor in particular, which have led him to publicly question their competence and integrity. The disclosure of information as to whether or not legal advice was obtained might therefore be in the public interest in that context.
35. However, the complainant's position is essentially that he was suspicious of a previous claim that legal advice had been obtained and that he is similarly suspicious in this case. He has not indicated why he is seeking evidence of the existence of the legal advice in question, beyond apparently wanting to ascertain whether or not the Parish Council was 'telling the truth' about it. Complying with the request would presumably answer that question, however, the Commissioner considers it highly likely that any response given by the Parish Council would not be the end of the matter and would be likely to lead to follow-up requests and complaints from the complainant. She is of the view that this would extend the life of the complainant's use of the FOIA to address his grievances about the other councillor and the Parish Council. The amount of time that has already been spent responding to the complainant on this issue has spanned two years and the Commissioner can see how this would impact on the Parish Council's limited resources. There has to be a point where, an investigation by HDC having concluded that no further consideration of the matter is required, the Parish Council is entitled to consider the matter is closed.
36. Although the number of FOIA requests submitted by the complainant over the previous 12 months is not, in itself, excessive, when considered alongside the voluminous nature of the other material generated as a result of his approaches to it, the Commissioner acknowledges the cumulative impact on the Parish Council's limited administrative resources of dealing with this request. She accepts that dealing with the complainant regarding his grievance has caused a significant level of disruption and irritation to the Parish Council and that this runs the risk of impacting on service levels afforded to other parishioners, including those who might make FOIA requests. Although this request in isolation might not be burdensome to comply with, the cumulative effect of the complainant's persistent requests, complaints and queries increasingly dominate the resources of what is a very small public authority.
37. Furthermore, the Commissioner notes that the published minutes, about which the legal advice was sought, now accurately reflect HDC's finding on the complaint, and so the record has been publicly set straight on that point. Compliance with the request would add nothing further to that outcome.

38. The complainant has been told that where an individual councillor's behaviour is called into question, there are official channels and procedures through which this may be investigated by HDC. Referring such concerns to HDC ensures that serious or systematic misconduct can be identified and dealt with appropriately and consistently, and the Commissioner is satisfied that the public interest in scrutiny of parish councillors is, to a very large degree, served by such procedures.
39. Nevertheless, the complainant persists in directing complaints and correspondence about the other councillor to the Parish Council, often in a very public and robust fashion, at Parish Council meetings, and with the leafleting of local households. The Commissioner considers that these approaches could reasonably be characterised as being a vehicle for the complainant to publicise his grievances with the Parish Council and the other councillor, and that this request, with its lack of identifiable purpose other than to possibly catch the Parish Council in a lie, could reasonably be seen as part of that pattern.
40. The Commissioner is of the view that local and parish councillors should expect to be subject to scrutiny from the public, as they have input into publicly-funded spending decisions which may impact the local community. At the same time, they are volunteers giving their time freely for the benefit of the community, including fundraising and other projects of benefit for the parish. In this case, the complainant's persistent attempts to re-open a matter which HDC was satisfied had been dealt with, and particularly his leafleting of the local area with allegations about the other councillor, go beyond the level of criticism that a public authority or its employees should reasonably expect to receive in the performance of their duties.
41. In view of this, the Commissioner has concluded that the request for information has no wider value or purpose beyond the furtherance of the complainant's public pursuit of his personal grievance against the Parish Council and the other councillor.
42. The Commissioner considers that the FOIA is not an appropriate mechanism for pursuing such interests. If the complainant remains concerned about the conduct of the other councillor, there exist channels through which he may have his grievances formally examined (outlined in paragraph 39, above). The Commissioner considers that there is no public interest in them being played out in public, under the FOIA regime.
43. Taking all the above into account, the Commissioner considers that the request meets the Tribunal's definition of a "*manifestly unjustified, inappropriate or improper use of a formal procedure*" and that it was vexatious within the meaning of section 14(1).

Other matters

44. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one the section 45 code of practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances. Any written expression of dissatisfaction with the outcome of a request should be treated as a request for an internal review.
45. The complainant expressed dissatisfaction with the outcome of the request on 17 November 2017, and the Parish Council provided the outcome of its internal review on 12 March 2018, 79 working days later.
46. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, the Parish Council has not conformed with the section 45 code, and asks that future internal reviews be conducted with the timescale in mind.

Right of appeal

47. 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

48. 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.
49. 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

Samantha Bracegirdle
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