

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 May 2019

Public Authority: Addingham Parish Council
Address: The Old School
Main Street
Addingham
LS29 0NS

Decision (including any steps ordered)

1. The complainant requested information from Addingham Parish Council (the Council) relating to an exchange of correspondence between the Council and a named individual.
2. The Commissioner's decision is that the request was vexatious and the Council was therefore entitled to rely on section 14(1) of the FOIA to refuse to comply with the request.
3. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

4. On 22 October 2018 the complainant wrote to the Council and requested information in the following terms:

"...copies of the exchange of letters between yourself and [name redacted], who had written on behalf of Forum members recording concerns on minutes of the Forum meeting of 29 June."
5. On 19 November 2018 the Council responded and informed the complainant that it required more time to consider whether it was in the public interest to comply with this request for information.

6. On 20 December 2018 the Council provided the complainant with its response and refused his information request under section 14(1) (vexatious requests) of the FOIA.
7. On 27 December 2018 the complainant responded stating that the response was unacceptable and said that the Council should display all evidence which supported its assertion that the request was vexatious. He also asked for an internal review as he believed that the public interest test had been wrongly applied.
8. On 2 January 2019 the Council informed the complainant that it had been instructed not to engage in further correspondence on the issues listed in the review.

Scope of the case

9. The complainant contacted the Commissioner on 27 January 2019 to complain about the way his request for information had been handled.
10. The following analysis considers whether the request was vexatious by virtue of section 14(1) of the FOIA and if the Council was correct to rely on this exemption to refuse to comply with this request.

Reasons for decision

Section 14(1) - Vexatious requests

11. 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.
12. 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 CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

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

13. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering 4 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 or distress of and to staff. 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).
14. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests, these are set out in her published guidance². The fact that a request contains one 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 a request is vexatious.
16. The task for the Commissioner is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal. In doing so she has taken into account the representations of the Council and the evidence that is available to her. In this decision notice, the Commissioner will also refer to her published guidance on defining and dealing with vexatious requests.

The Council's position

17. The Council provided the Commissioner with its reasons as to why it had applied section 14(1) of the FOIA. In doing so, the Council said it had considered the history and context which preceded the request for information.

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

18. The Council asserted that this matter relates to emails exchanged between individuals working on the Addingham Neighbourhood Plan in May/June 2018. By way of background, the Council provided the following explanation:

"Developing a Neighbourhood Plan (NPlan) follows a formal process, during which regular opportunities to question each stage of the Plan's development have to be provided by means of public consultation exercises, as determined by statute, with the questions and answers published afterwards in a transparent manner. In the early stages of development, informal consultation events are also held. Following such events, informal and formal, the content of the NPlan is decided on by the Parish Council as the 'qualifying body'. However, a parish council may appoint a working group to help take forward the work on drafting and consulting on a NPlan.

Addingham Parish Council appointed a steering group and then a forum working group for this purpose, with membership comprising both councillors and village volunteers. The groups were both appointed as advisory (or working) groups only, with no delegated powers, either in terms of expenditure or policy decision-making. The Council, as qualifying body, is responsible and accountable for all policy decisions related to the development of the Plan; this role cannot be carried out by the non-elected volunteer members of working groups.

The relationship between the NPlan forum working group and the Council has been a matter of some tension over the years, as some of the volunteer members have not seemed happy to accept the formal limitations on their role."

19. The Council said that the action taken by the complainant, which has given rise to his information request, is part of an ongoing pattern of behaviour. The Council reported that there had been a number of attempts by the complainant to undermine the statutory process of developing the NPlan (Neighbourhood Plan) and considers this to be because he does not agree with the Council's decisions and actions. The Council provided the Commissioner with a list of the correspondence (including correspondence relating to the NPlan) between the Council and the complainant.
20. The Council believes that the complainant is attempting to pursue other long-standing grievances against the Council. It said that this has been demonstrated over the years across a number of policy areas where the complainant disagreed with the Council's actions. The Council provided the Commissioner with details of three policy areas in which the complainant had been directly involved with the Council over a period of time.

21. The Council also believes that this complaint to the Commissioner is part of this campaign. It explained it has reason to believe that the complainant discusses information relating to Council business with an organiser of a campaign group. It argued that the complainant had passed material to non-members of the Forum for use by them for other purposes. The Council said that these local residents work together to obtain information from other bodies or agencies they can use to disrupt Council business. The Council believes that the complainant acts with this individual in this respect and that a similar FOI request was submitted to the Council from this other individual.
22. It said that the complainant had also made a formal complaint to the Council about procedural matters prior to his FOI request. The Council asserted that the complainant pursued the complaint over the following months and that he attempted to subvert the Council's procedures and impose his own. The Council believed that his actions disrupted its business during the lengthy complaint process. However, the complaint was eventually resolved at an informal hearing and the Council said that despite the resolution of his complaint, and the completion by the Council of the agreed action, the complainant submitted his FOI request shortly afterwards.
23. In its submissions, the Council makes reference to a number of indicators taken from the Commissioner's guidance, including:
 - Obsessive behaviour
 - Harassment and distress to staff and Council members
 - Burden on the Council
 - Intention to cause disruption and annoyance
 - Lack of serious purpose or value
24. The Council provided the Commissioner with a file consisting of correspondence from the complainant which relates to the complaint and his recent FOI request. The Council said that this shows the complainant's persistence in pursuing his lines of enquiry and in refusing to accept that a matter is closed. It argues that submitting an FOI request, even when the related complaint to the Council had been resolved, reveals the complainant's determination to repeatedly request information in order to maintain an argument against the Council and to disrupt its business.

25. The Council argued that the complainant's FOI request and long-running complaint has harassed a member of staff personally. The Council said that the quantity of correspondence generated by the complainant resulted in additional work by staff, causing harassment and stress to staff that work part time at the Council.
26. The Council said that the complainant's '*persistent and obsessive determination*' to pursue complaints against the Council, was presented in a high volume of correspondence directed to certain staff members at the Council, which caused an unreasonable disruption to its routine business. The Council explained that it is a small parish council with a precept under £100,000 and that the Clerk works 20 hours per week. Therefore, the Council argued the handling of this volume of correspondence from the complainant places a significant financial burden on the Council in terms of the cost in overtime payments to the staff.
27. It also argued that the disproportionate amount of time spent on handling correspondence from the complainant and a small minority of local electors, at the expense of other village residents and Council business, also places a burden on the Council.
28. The Council considers it to be futile to continue an argument about consultation with volunteer Forum members which took place in 2018. It said that anything which can be read into correspondence between the Clerk and one of the Forum members has become irrelevant and trivial over time. The Council explained that the notes were approved at the Forum meeting which followed (September 2018) and were received by the Council and published. Therefore, the Council considers it is futile to continue with an argument about the notes.
29. The Council said that releasing the requested information to the complainant would disrupt the Council's business further as it considers it a risk to potentially re-open a discussion of events that took place in 2018 and that a current referendum process would be undermined. The Council argued that the complainant could intend to use and misuse any information available to him, from the planning authority and from the Council, in order to manipulate the process to reflect his views, and not those of the village given in public consultation events.

Does the request have a serious purpose or value?

30. Section 14(1) of the FOIA is not qualified by the public interest test. However, the Upper Tribunal in the Dransfield case confirmed that it may be appropriate to ask whether the requested information has a value or serious purpose in terms of the objective public interest.

31. The Council considers that the arguments in favour of maintaining the exemption outweigh the arguments in favour of disclosure. It explained that although the complainant may have believed in some form of wrongdoing on the part of the Council last year, the Council asserted that there is now little point in pursuing this argument again within the public domain. The Council said that some considerable time has elapsed since the incidents which prompted the email exchange, and that the meeting notes in question have been dealt with as initially requested and also the complaint relating to these has been closed.
32. The Council is of the view that the release of the requested information would not add to public understanding of the Council's handling of the NPlan as they do not contain any significant new information. However, the publication of this information the Council said, could potentially undermine and confuse the next stage in the formal process and that this would also cause undue harassment to the authors. The Council believes that disclosure of the information would serve only private interests and not the public interest.

The Commissioner's position

33. The Commissioner would like to highlight that there are many different reasons why a request may be considered vexatious, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgment about whether a request is vexatious.
34. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow theme. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
35. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

36. The Commissioner acknowledges that from the background of this case, it is clear that the relationship between the complainant and the Council is significantly impaired. From the supporting evidence provided by the Council, this list reveals correspondence/contact between the Council and the complainant during 2017 to 2018. As an example, in May 2018, an email resulted in a telephone call, *"argument/harassment and then email claim re personal criticism of the clerk."* The Commissioner notes the emails between the Council and the complainant concerning *"challenge on NPlan process"* and in September 2018 *"Letter to CI alleging slander (re emails on recording of meeting)"* and *"Newsletter on NPlan during formal consultation alleging improper procedures by CI"* and also *"Emails to demand response to slander ltr."* The Commissioner recognises the relationship between the Council and the NPlan forum (including the complainant) has been a matter of some tension over the years. The evidence provided demonstrates the complainant's grievances against the Council.
37. The Commissioner wishes to reiterate that the purpose of the FOIA is to promote transparency and accountability to the general public and it should not serve as a mechanism for addressing personal grievances.
38. The Commissioner notes the frequent correspondence and the voluminous nature of other material generated as a result of the complainant's approach to the Council, and is of the view that it can be concluded that the cumulative impact may impose an unreasonable burden on the Council's limited administrative resources.
39. It is clear that the issues between the Council and the complainant have been ongoing for some time and do not appear to be at a stage where they will be resolved soon. The Council had said that the complainant is continuing to challenge and disrupt the planning authority's processes in handling the consultation regarding the NPlan. The Commissioner notes that the Council believes it is the complainant's intention to use and misuse any information available to him, from the Council, the planning authority and also from other outside agencies. She also notes the Council's argument that the complainant will continue to ask questions in order to reopen the debate and issues which have already been considered and addressed by the Council.
40. The Commissioner appreciates that the information the complainant has requested is of interest to him. However, the Commissioner has to consider whether the request is of sufficient wider public interest or value that it would be reasonable for the Council to comply with it, despite the burden involved.

41. The Commissioner acknowledges that parish councillors are volunteers giving their time freely for the benefit of the community, including involvement in projects for the benefit of the parish. However the Council 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.
42. However, on this occasion, the Commissioner notes that the Council has already dedicated a considerable amount of time and effort to respond to the issues raised by the complainant. It is the Commissioner's view that if the Council was to comply with the request it would create a burden that is disproportionate to the request's wider value. In reaching this conclusion, the Commissioner also took into account the size of the Council and its limited resources available to it in performing its duties.
43. The Commissioner has given consideration to the findings of the Upper Tribunal in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1) of the FOIA. Taking into account all the above factors, the Commissioner's decision is that the request was vexatious and the Council correctly relied on section 14(1) in this case. Therefore, the Council was not obliged to comply with the complainant's information request.

Right of appeal

44. 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@justice.gov.uk.

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

45. 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.
46. 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

Ben Tomes
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