

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 October 2019

Public Authority: Potto Parish Council
Address: 34 The Birches
Coulby Newham
Middlesbrough
TS8 0UA

Decision (including any steps ordered)

1. The complainant has requested copies of minutes and agendas which refer to correspondence with the Information Commissioner's Office ("ICO"). Potto Parish Council ("the Parish Council") refused the request as vexatious.
2. The Commissioner's decision is that the request was vexatious and the Parish Council was entitled to rely on section 14(1) of the FOIA to refuse it. However, it failed to issue a refusal notice citing section 14(1) within 20 working days and thus breached section 17(5) of the FOIA.
3. The Commissioner does not require any further steps to be taken.

Nomenclature

4. To avoid confusion, this decision notice will refer to "the Commissioner" when referring to the Commissioner discharging her duty under section 50 of the FOIA in relation to this specific complaint and "the ICO" when referring to the Commissioner (and her office's) broader interactions with the Parish Council in relation to information rights issues.

Request and response

5. On 30 December 2018 the complainant wrote to the Parish Council and, referring to the Parish Council's correspondence with the ICO, requested information in the following terms:

"please provide copies by email of any specific published council documents which:-

"Identify (eg, by [month][agenda]) and record details (eg, the council's Decisions) of how this very important correspondence was handled."

6. The complainant chased a response on 9 January 2019, 17 January 2019 and 24 January 2019.
7. On 25 January 2019, the 17th working day after receiving the request, the Parish Council wrote to the complainant to say that it would "review this request and provide the information once it has been compiled."
8. It then sent a further email, a minute later saying that, "the matter is now closed."

Scope of the case

9. The complainant contacted the Commissioner on 11 March 2019 to complain that he had yet to receive a substantive response to his request.
10. The Commissioner contacted the Parish Council on 12 March 2019, to point out that it did not appear to have complied with its duties under section 1 of the FOIA.
11. Following the Commissioner's intervention, the Council issued a refusal notice in which it relied on section 14(1) of the FOIA to refuse the request. In view of the exemption cited, the Commissioner considered that an internal review would be unlikely to add any value and thus accepted the case for investigation without requiring the complainant to exhaust the internal review procedure.
12. Before the case was allocated for investigation, the Commissioner issued a decision notice in respect of four other requests which the same complainant had made to the Parish Council and which the Parish Council had refused as vexatious.¹ The Commissioner found that those requests were vexatious but the complainant exercised his right to appeal that decision to the First Tier Tribunal.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2614911/fs50802347-fs50800009-fs50787132.pdf>

13. On 23 May 2019, the Commissioner wrote to the complainant to note that he had a number of complaints pending in which the Parish Council had either initially relied upon, or was now relying upon, section 14(1) – including the one which is the subject of this notice. She informed the complainant that, were she to issue decision notices in respect of these complaints, it was likely that she would reach the same conclusion in respect of section 14(1) as she had done in the decision notice that was under appeal.
14. The complainant wrote back to the Commissioner on 10 June 2019, to say that he was content for the Commissioner not to investigate his further complaints until such times as the Tribunal had disposed of his appeal.
15. The complainant then contacted the Commissioner again on 16 September 2019 to say that he now wished to have a decision from the Commissioner in respect of this present complaint *before* the Tribunal had determined his appeal – the Tribunal had yet to promulgate its decision at the point of issuing this decision notice.
16. The Commissioner considers that the scope of her investigation is to determine whether or not the request was vexatious.

Reasons for decision

17. Section 1(1) of the FOIA states that:

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.*

18. Section 14 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.

19. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper

Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

20. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
21. The Upper Tribunal in *Dransfield* also considered 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 or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained 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).
22. The Commissioner has published guidance on dealing with vexatious requests², which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
23. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".
24. However, the Commissioner is also keen to stress that in every case, it is the request itself that is assessed as vexatious and not the person making it.
25. In some cases it will be obvious when a request is vexatious but in others it may not. 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."

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

26. In the decision notice she issued on 3 May 2019, the Commissioner, in finding that the previous requests were vexatious, set out, in some detail, the history of the complainant's interactions with the Parish Council and his pattern of behaviour in making information requests. She does not consider it would serve any useful purpose to repeat that analysis in this decision notice, but notes the final paragraphs:

"47. The Commissioner does accept that the complainant has occasionally highlighted weaknesses in the way that the Parish Council operates. The Parish Council itself has accepted that it does not always publish its minutes within the recommended timeframe. But, as the Commissioner has highlighted, the Parish Council is dealing with a large volume of correspondence from the complainant. The burden of dealing with these requests is, as the Commissioner notes above, likely to impact on the Parish Council's ability to discharge its other functions.

"48. In the Commissioner's view, any value that the complainant's earlier requests might have had has been long since outweighed by the pattern of behaviour the complainant has demonstrated. She considers the complainant's requests to now have the effect (even if not the intent) of causing nuisance, annoyance and disruption to the work of the Parish Council. The burden was, at the time the requests in question were made (and, in all likelihood, some time before), well in excess of what a small public authority should be expected to deal with."

27. The complainant has not provided any arguments to set out why this particular request is not vexatious. Although the Commissioner has had regard to the points the complainant raised in his grounds of appeal against her earlier decision notice, she considers that her original decision was correct and that the grounds of appeal do not provide her with sufficient evidence to change the analysis in respect of the present complaint.

28. The Commissioner has not sought further submissions from the Parish Council as she considered that to do so would be disproportionate. Having set out her analysis previously, she considers it sufficient to demonstrate that the patterns of behaviour described in that decision notice are relevant to the current request.

29. The Commissioner considers that most, if not all, of the traits she identified repeat themselves in the complainant's correspondence in relation to this request. For example, the previous decision notice cited the complainant's practice of chasing a response well in advance of the statutory response deadline of 20 working days (para 43) and his habit

of personalising his correspondence despite repeated requests not to do so (para 44). The Commissioner notes that all the complainant's correspondence in respect of this request was addressed to the clerk by her first name and that the complainant had submitted no fewer than three emails chasing a response before the 20 working day deadline had expired.

30. Whilst the Commissioner accepts that there may be some value to the request, she also considers that the analysis she set out in her previous decision notice applies equally here. She is therefore satisfied that the request was vexatious and thus the Parish Council was entitled to rely on section 14(1) of the FOIA to refuse it.

Timeliness

31. Section 17(5) of the FOIA requires a public authority which is relying on section 14 to refuse a request to inform the complainant of that fact within 20 working days of the request being submitted. As the Parish Council failed to issue such a refusal notice until 23 March 2019, it thus breached section 17(5) of the FOIA.

Other Matters

32. The complainant, when requesting a DN, made reference to the Openness of Local Government Bodies Regulations 2014. The Commissioner is not responsible for overseeing those regulations – however she notes that her decision notices, including those issued to the Parish Council, are published on her website for anyone who wishes to read them.

Right of appeal

33. 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

34. 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.
35. 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

Sarah O’Cathain
Senior Case Officer
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Wycliffe House
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