

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2021

Public Authority: Swards End Parish Council

Address:

Decision (including any steps ordered)

1. The complainant requested information, across two requests for information, relating to four topics.
2. Swards End Parish Council (the Parish Council) refused to provide the requested information, relying on section 14(1) (vexatious request) of the FOIA.
3. The Commissioner's decision is that the Parish Council was entitled to cite section 14 of the FOIA to refuse to comply with the requests.
4. However, she finds a procedural breach in that the Parish Council's refusal notice did not comply with section 17 of the FOIA.
5. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

6. On 7 October 2019, the complainant wrote to the Parish Council and requested information about reseeding the goalmouths in the following terms:

"With reference to your email of 1.10.19...I would like answers to the following questions.

Are you pursuing any redress from the supplier?

I understand that you have accepted that the dry weather was the reason for failure ... If this was the case and it still failed have you sought other reasons like poor soil preparation and/or low quality seed. Have you addressed either of these potential reasons with the supplier?

Whose idea was it to protect the area with the high cage structures?...

What do you intend to do next? (and perhaps the third time you might get it right)"

7. In his correspondence he also requested information relating to the annual audit reports:

"So the variance document for 2018/19 is incorrect so you need to decide which method you are going to use and reset the variance/accounts documents accordingly.

The recommended method for small councils is the one of receipts and payments.

I would like to be informed of what method you are to use and to receive a copy of the adjusted accounts.

The chairman also acknowledged that he had signed off the accounts yet when he wrote to me ... he said the annual accounts were not available. So can he explain this apparent contradiction".

8. As the complainant was dissatisfied with the response he received, he wrote to the Parish Council on 16 December 2019, expressing dissatisfaction and also requesting further information:

"Reseeding the goalmouths.

You state that this was discussed at the meeting. As it was an agenda item why wasn't it recorded in the minutes?

...

[name redacted]'s contradiction on availability of annual accounts.

... I find your response lamentable. Can you please explain the process relative to your suggested External Auditor review in September.

...

Finally, you have not responded to:

VAT receipts when are you making this claim?

Timing differences is my suggestion a solution?

Clerks payments and EALC grant how was your salary of [redacted] arrived at and where was the grant shown on the variance report?".

9. With respect to the Annual Variance Report, he also made observations about the validity of the figures provided and referred to there being errors on the Variance and Accounting Statements.
10. The Parish Council responded on 23 January 2020 in relation to both sets of requests for information. It denied holding further information relating to reseeding the goalmouths, clerks payments and EALC grants. It confirmed that the misunderstanding about the accounts had been explained and told the complainant he had been given the opportunity to inspect the accounts.
11. The Parish Council told the complainant it considered that all matters had been adequately dealt with and that it would not enter into further discussion about matters relating to the goalmouths, statement of variance for accounts, the availability of the annual accounts 2019/20 or the clerk's receipt of the EALC Transparency grant. It cited section 14(1) (vexatious request) of the FOIA.
12. Following an internal review the Parish Council wrote to the complainant on 20 February 2020 confirming its view that section 14 applied.

Scope of the case

13. Following earlier correspondence, on 12 August 2020 the complainant provided the Commissioner with the necessary documentation to support his complaint about the way his request for information had been handled.
14. He disputed the Parish Council's application of section 14(1) to the four topics covered by his requests, namely:
 - reseeding of two goalmouths on the Village Green;
 - Chairman's contradictory responses to availability of annual accounts;
 - errors on Annual Variance Report; and
 - omission of grant on Variance Report re EALC Transparency grant .

15. For the purposes of this decision notice, the Commissioner will refer to them as 'the four topics'.
16. The analysis below considers the Parish Council's application of section 14(1) of the FOIA to the requested information.

Reasons for decision

Section 14 vexatious request

17. 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.
18. 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*. The Tribunal commented that vexatious 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.
19. 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 or distress of and to staff.
20. 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).
21. The Commissioner has published guidance on dealing with vexatious requests¹. That guidance includes a number of indicators that may apply

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

in the case of a vexatious request. 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 or not a request is vexatious.

22. 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.

23. In that respect, the Commissioner's guidance states:

"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. Sometimes it will be obvious when a request is vexatious, but sometimes it may not be. On that point, 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

25. While the burden of proof always lies with the public authority in demonstrating why a particular request would engage section 14(1), the Commissioner accepts that complainants may wish to advance their own arguments as to why a request was not vexatious.

26. In support of his view that the Parish Council is not entitled to apply section 14 in this case, the complainant told the Commissioner:

"...they are abusing this procedure to cover their failure to answer questions, if at all, in an honest, non-contradictory manner".

27. In the course of his correspondence the complainant sent the Commissioner a comprehensive submission, in which he provided details

of the correspondence he has had with the Parish Council on the topics under consideration in this case.

28. Under the heading '*Emails relevant to topic of Reseeded Goalmouths*', he provided details of 12 items of correspondence sent and received between 3 June 2019 and 23 January 2020.
29. Similarly, on the subject of '*Emails relevant to topic of Chairman's contradictory statement re Annual Accounts*', he listed nine emails, and one meeting, between 30 June 2019 and 23 January 2020.
30. On the subject of '*Emails relevant to topic of EALC grant*', he listed six emails between 29 August 2019 and 23 January 2020. With regard to '*Annual Variance*', he referred to a meeting held in September 2019 and four emails sent and received between 7 October 2019 and 21 January 2020.
31. The complainant also confirmed that there were four emails relevant to all four topics, dated between 7 October 2019 and 23 January 2020.
32. The Commissioner accepts that the correspondence between the two parties invariably covers two or more of the four topics under consideration, and that some of the emails listed by the complainant therefore occur under more than one of the headings in his list.

The Parish Council's view

33. In its correspondence of 23 January 2020, the Parish Council told the complainant:

"The PC [Parish Council] agreed that all the above questions to [sic] have been adequately answered at our meeting or in emails and will not enter into discussion about goal mouths, statement of variance for accounts, the availability of the annual accounts 2019/20 or the clerk's receipt of the EALC Transparency Grant. This decision has been made until [sic] section 14 of the FOI".

34. In its correspondence of 20 February 2020, having reviewed its application of section 14, it told him:

"The Parish Council is of the opinion that many of your requests are similar in nature and the volume of requests are excessive and frequent (virtually every month).

...

Your persistent enquiries are proving disruptive and we therefore do feel the necessity to use a section 14 as planned".

35. Confirming its application of section 14 in this case the Parish Council told the Commissioner:

"The PC [Parish Council] do not wish to change the Section 14(1) as they strongly believe that the questions have all been answered in previous emails with all the information that is available".

36. In its submission to the Commissioner, the Parish Council described the impact of the complainant's requests on the Parish Council. It told her:

"... [the requests] are having a detrimental effect on the PC and taking up a disproportionate amount of time for the Clerk and the PC as a whole".

37. Describing the level of correspondence as having a serious impact on the authority, it explained that the Parish Council spends "a disproportionate time answering emails about the same subjects".

38. By way of background to the amount of time spent on handling requests for information and follow-up correspondence from the complainant, the Parish Council explained to the Commissioner that the Parish Council meets monthly for approximately two hours to discuss all Council business. However, it advised that "nearly every meeting for the last year" has included discussing emails and complaints from the complainant.

39. It argued that it spends a disproportionate amount of time at those meetings on one Parishioner. It told the Commissioner:

"Each email and complaint takes about 30 mins to discuss and agree a response".

40. Summarising the level of interaction with the complainant in this case, the Parish Council told the Commissioner that the complainant had sent "about 10 emails/letters" on the subject of reseeding the goalmouths. Similarly, with respect to the availability of the annual accounts, it told the Commissioner:

"The PC has received about 15 emails about the accounts and [the complainant] chases every email after one day of sending them".

41. The Parish Council also confirmed receiving "about 10 emails" from the complainant about the Annual Variance report and, with respect to the Variance Report, again about eight emails.

42. The Parish Council also told the Commissioner:

"The PC receives at least one email from [the complainant] a month and as soon as it is answered another email is received re-asking for the information or disagreeing with the information sent".

43. In its submission, the Parish Council referred to the complainant's 'constant correspondence'. It explained:

"When I [the Clerk] send information asked for to [the complainant] he complains that it is not the correct information or not on time or asks more of the same questionsAs soon as I/or the PC send a response I have another email asking the same questions or complaining about the information sent".

44. With respect to the burden on the authority, the Parish Council explained that the Parish Clerk is employed for seven hours per week. It considered that the amount of the time she spends researching and drafting responses to the complainant's emails and enquiries is disproportionate.
45. With regard to the bigger picture, the Parish Council confirmed that it has received requests for information/advice from other members of the parish. However, it told the Commissioner that such requests have not been as numerous as those from the complainant.

The Commissioner's view

46. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them.
47. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
48. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
49. The Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

50. The Commissioner does, however, recognise that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

Were the requests vexatious?

51. The Commissioner considered both the complainant's position and the Parish Council's arguments regarding the information requests in this case. She has been assisted by the submissions and supporting documents provided by both parties in reaching her decision.
52. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a previous engagement between the parties. Clearly in this case, the Parish Council considered that the particular context and history strengthened its argument that, at the time of the requests, the requests were vexatious.
53. The Commissioner is mindful that the complainant's correspondence typically asks questions, points out issues and seeks clarification of the parish council's actions. In that respect, she acknowledges that any request for information may be treated as an information access request, whether it is stipulated as being made under the FOIA or not. She also accepts that the FOIA only extends to requests for recorded information and does not require public authorities to answer questions generally.
54. From the evidence she has seen, previous correspondence from the complainant on the four topics was responded to by the Parish Council as normal course of business correspondence. However, on 23 January 2020 the Parish Council responded under the FOIA, citing section 14 in relation to the requested information.
55. The Commissioner recognises that the Parish Council is a small organisation and that the Clerk works limited part-time hours. The Commissioner accepts that the Parish Council told her that it receives at least one email a month from the complainant and that its responses lead to follow-up requests or complaints. On the basis that most, if not all, is handled by the Clerk during her seven working hours per week, the Commissioner considers that it would create a significant burden on the Parish Council to deal with this level of correspondence from one particular individual.
56. The Commissioner has considered whether there is any value or serious purpose which would be served by the disclosure of the requested information and, if the requests were complied with, whether they would satisfy this purpose.

57. Neither party put forward any evidence of the wider value or likely public interest in the four topics. Nevertheless the Commissioner accepts that there will likely be some local interest in the Parish Council's accounts and other financial matters. However, she considers that the public interest would appear to be satisfied to a considerable extent by the publication of financial and audit information on the Parish Council's website.
58. With regard to the reseeded of the goalmouth, in the absence of evidence that the information requested will be of wider benefit to the public, the Commissioner is not satisfied that the purpose and value of that request are enough to justify the impact on the Parish Council.
59. The purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can overburden a public authority and disrupt its ability to perform its core functions.
60. In the circumstances of this case, the Commissioner considers that responding to the requests would only be likely to result in further requests and complaints, and runs the risk of preventing the Parish Council from dealing with other important matters in the parish.
61. Furthermore, she considers that the purpose and motive behind the requests carry insufficient weight to be capable of justifying this impact.
62. Taking all the above into account, the Commissioner is satisfied that the Parish Council has demonstrated to her that the requests in this case are part of a wider pattern of requests, complaints and challenges made by the complainant, and that, when viewed in that context, they go beyond what it would be reasonable to expect a small parish council, with limited resources and a member of staff who works seven hours a week, to absorb in the name of transparency and accountability. He considers that the Parish Council has shown that it is having to spend disproportionate amounts of time and resources on dealing with the complainant's approaches to it and that this risks undermining its ability to carry out its core functions.
63. Accordingly, she is satisfied that the Parish Council was entitled to apply section 14(1) of the FOIA.

Section 17 refusal of request

64. Public authorities have two basic duties under the FOIA: to confirm or deny whether requested information is held and to provide the requester with that information. If a public authority is refusing to meet either of these duties it will usually need to issue a refusal notice to the requester explaining why.

65. The Commissioner's guidance² '*Refusing a request*' explains when and how to refuse a request made under the FOIA.
66. In this case, the Commissioner considers that the refusal notice issued on 23 January 2020 was inadequate because it did not inform the complainant of any internal review procedure the Parish Council had and did not inform him of his right, under section 50 of the FOIA, to bring a complaint to the Commissioner. She therefore considers that the Parish Council breached section 17 of the FOIA in responding to the request.

Other matters

67. The Commissioner considers that the tone of the complainant's correspondence, while persistent, is not generally discourteous. The complainant does however persist in criticising the actions of the Parish Council and providing his opinions as to better ways in which the Parish Council could have dealt with matters.
68. The Commissioner's website includes a section entitled '*Information request dos and don'ts*'³. She recommends that quick reference tool to requesters who are considering making a request for information.
69. The Commissioner recommends her guidance on writing a refusal notice, referenced above, to the Parish Council.

² [https://ico.org.uk/media/for-organisations/documents/1211/refusing a request writing a refusal notice_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1211/refusing_a_request_writing_a_refusal_notice_foi.pdf)

³ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

70. 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

71. 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.

72. 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

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