

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2022

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

Decision (including any steps ordered)

1. The complainant requested information from Potto Parish Council ("the Parish Council") about various topics including records of audit and monitoring activities. The Parish Council refused the request under section 14(1) of the FOIA: vexatious requests.
2. The Commissioner's decision is that the request was vexatious and therefore the Parish Council was entitled to rely on section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any further steps.

Request and response

4. On 3 May 2021, the complainant wrote to the Parish Council and requested information in the following terms:
 - "1. I refer to a detailed objection letter, submitted to Potto council on 1st September 2020, about your 2019-20 accounts. Please advise if the council has (as per previous years) sent a response to the External Audit team about this matter and, I so, I wish to request a full copy of the council's response.
 2. Regular reviews are required to monitor the effectiveness of arrangements to protect public money, but I cannot find this information published on your website. I wish to request the

page number of the meeting minutes (if there is one), and the minuted item reference number on this page, that specifically records of the council's two most recent acts of monitoring and also records the results of this monitoring.

3. I refer to the two Audit remedial Action Plans that were deleted from the council's website around June 2019, apparently in contravention of the council's Retention of Documents Policy, which states "indefinite" for all Audit records (I note that all the other Audit data remains published on your website). What information do you have to explain or substantiate why these Action Plans are no longer published (noting also that all the Audit Actions in these Plans still remain outstanding)?

4. I am advised that your External Auditor provides Potto council with financial updates from time to time, regarding the additional Audit fees now being incurred for additional Audit work. Please provide the date and the financial fee, as per the most recent update.

5. I note that there is an undesignated date written at the top of recent agendas. What information does this date signify (eg, date compiled or date published, etc)?

6. Thank you for sending me a copy of the council's 2019-20 asset register on 12 May 2020. However, as the asset registers are still not published on the council's website, I wish to request a copy of the 2020-21 asset register. I also request a copy of any supporting ledgers, etc, stating the financial details for each of these assets, both for 2019-20 and 2020-21.

7. In your email dated 26 November 2020 you reiterate allegations and threats of harassment under the Prevention of Harassment Act 1997. What advice, information or evidence has Potto council received from third parties (eg, YLCA), to support these persistent threats?"

5. The Parish Council responded on 14 May 2021. It provided some information within the scope of the request, denied it held information within scope of some parts of the request, refused to provide the information requested in part 4 of the request and asked the complainant to clarify some aspects of part 6 of the request.

6. Following an internal review the Parish Council wrote to the complainant on 29 July 2021. It revised its position to refuse the request. It referred to both 'vexatious correspondence' and section 14(2) of FOIA (repeated requests).

Scope of the case

7. The complainant contacted the Commissioner on 20 July 2021 to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation the Parish Council confirmed to the Commissioner that its basis for refusing the request under FOIA was section 14(1) – vexatious requests.
9. This notice covers whether the Parish Council correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
11. The word “vexatious” is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)¹ states, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
13. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
14. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013)

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

("Dransfield")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.

15. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
17. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

The complainant's view

18. The complainant argues that the request has a clear value and serious purpose as the information requested relates primarily to audit activity and additional audit fees. The complainant argues that this is a matter of substantial public interest given that the Parish Council's audits from each year since 2016/2017 remain open (due to objections to the annual returns made by a member of the public) and that the additional audit fees have been passed on to residents as an increase in council tax.
19. The complainant also argues that the Parish Council, contrary to the ICO's guidance, has considered them as an individual to be vexatious rather than considering this request on its own merits, and he provided some supporting evidence for this view.

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

20. The complainant also argues that the request was for information that the Council has a duty to publish as a matter of routine, so as to be transparent and accountable and to discharge its obligations under regulations other than FOIA. They therefore state that they believe that the information should have been publicly available without the need for them to make a request and that, in addition, no time consuming work would have been required to retrieve the information, meaning the burden of dealing with the request would be minimal.

The Parish Council's view

21. The Parish Council's view is that the complainant has a long history of vexatious behaviours against the Parish Council. In considering the correspondence from the complainant it explains it was guided by the outcome of a decision of the Information Rights tribunal which found that a request made by the complainant was vexatious, and that the pattern of requests made by the complainant was indicative of a vexatious approach. The Parish Council's position is that the request considered in this notice is a continuation of this pattern.
22. As a small Parish Council it has only very limited resources at its disposal. The Parish Council estimates that over 80% of its time is spent on dealing with correspondence from the complainant. The Parish Council provided the Commissioner with a summary of the contact it has received from the complainant since 2014. When the Parish Council received this request on 3 May 2021 it had received 1083 prior pieces of correspondence from the complainant since the beginning of 2014, although the Commissioner notes that only twelve of these emails were sent within the twelve months preceding the request.
23. The Parish Council argues that the complainant has undertaken an on-going campaign of harassment against the Clerk. They have made sixteen complaints against the clerk over the past eight years, none of which have been upheld. This has caused serious distress to the clerk and resulted in all correspondence from the complainant being directed away from the clerk, to be handled by other members of the Parish Council, adding to the burden.
24. The Parish Council also argues that the complainant has begun to harass its internal auditor, pressurising him to revise the results of internal audits past and present, which has disrupted the normal operations of the Parish Council.

The Commissioner's decision

25. The Commissioner accepts the importance of transparency over the financial activities of a public authority, in this case, information about

audit activity at a Parish Council. The Commissioner notes that its audits from each year since 2016/2017 remain open (albeit that this is due to objections to the annual returns made by a member of the public).

26. However, the Commissioner understands that external auditors, PKF Littlejohn, have almost completed their investigation into the objections to the Parish Council's annual returns of recent years made by a member of the public and that a public interest report will be completed by PKF Littlejohn to document their findings. As such, the Commissioner considers that although these findings have not yet been published, this independent scrutiny which will involve a report in to their findings being made available to the public in the near future reduces the value of the request. At the date of the request the process of independent scrutiny that would lead to this outcome had already been set in motion.
27. The Commissioner understands that the complainant has also made complaints to the Standards Board and the External Auditor. His view is that this further supports the fact that there is independent scrutiny of the actions of the Parish Council.
28. The Commissioner acknowledges the complainant's concern that this request should be considered on its own merits, nevertheless, as stated in the Commissioner's guidance, the context and history of the request is often a major factor in determining whether the request is vexatious and may support the view that section 14(1) applies³.
29. It is common for a potentially vexatious request to be the latest in a series of requests submitted by an individual. The greater the number of requests received, the more likely it is that the latest request is vexatious. This is because the collective burden of dealing with the previous requests, combined with the burden imposed by the latest request, may mean a tipping point has been reached, rendering the latest request vexatious.
30. From correspondence, the Commissioner has formed the view that the complainant has certain concerns which have become personal to them, and go beyond a general public interest in transparency and accountability.

³ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/does-the-value-and-purpose-of-the-request-justify-its-impact/>

31. The Commissioner also notes that, once the complainant has received a response from the Parish Council, they have tended to raise further questions and issues, demanding explanations and either raising new concerns or referring back to previous issues.
32. The Commissioner, therefore, considers that the complainant's practice of writing back asking for more details or asking more questions adds to the burden on the Parish Council without any obvious justification, and was a legitimate concern when it came to responding to this request.
33. In addition, the Commissioner notes that Potto Parish Council is a small organisation and as such only has very limited resources. Therefore, the threshold at which the burden becomes grossly oppressive is lower than for a larger public authority.
34. Given the context and history of the request, including the burden on the Parish Council the Commissioner considers the distress, disruption or irritation that would be incurred by complying with this request to be significant.
35. Balancing the value of the requested information to the public with the distress, disruption or irritation that would be incurred by complying with it, the Commissioner deems the high bar contained within section 14(1) is met.
36. The Commissioner's decision is that the request was vexatious and therefore the council was entitled to rely on section 14(1) of the FOIA to refuse the request in its entirety.

Right of appeal

37. 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

38. 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.
39. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF