

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 January 2022

Public Authority: Tintagel Parish Council
Address: clerk@tintagelparishcouncil.gov.uk

Decision (including any steps ordered)

1. The complainant submitted a multi-part request for financial information to Tintagel Parish Council (TPC). TPC initially refused the request as vexatious within the meaning of section 14 of the FOIA. It later withdrew reliance on section 14 and disclosed some information to the complainant. However, it said it was unable to ascertain whether it held any further information falling within the request's scope, as some information relating to parish council business was not currently in its physical possession.
2. The Commissioner is not satisfied that TPC has conducted sufficiently comprehensive and rigorous searches in order to locate all the information it holds which falls within the scope of the request. By failing to properly ascertain whether or not it holds the information specified in each part of the request, and inform the complainant accordingly, TPC breached section 1(1)(a) of the FOIA. By failing to provide this confirmation or denial within the statutory time for compliance, TPC breached section 10(1) of the FOIA.
3. The Commissioner requires TPC to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request under the FOIA, confirming whether or not the information specified in points (3) – (7) of the request is held by TPC for the purposes of the FOIA. With the exception of the information which has already been disclosed, if information is held, it should be disclosed unless a non-disclosure exemption applies or complying with the request would exceed the appropriate cost limit at section 12 of the FOIA, in which case these provisions should be explained.

4. TPC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 20 September 2020, the complainant made the following request for information under the FOIA (numbering added by the Commissioner for ease of reference):

"Could I please be sent copies of the items listed below...

1. *Copy of the spreadsheet or scanned copies of the cash book 1st April 2019 to 31st March 2020*
2. *Copies of the bank statements for all the PC's accounts for February and March 2020*
3. *A copy of the internal auditor's report, not an accountant's report as they are not auditors*

These should be readily available as [personal data redacted] reported that he had seen everything and was happy with the report.

4. *Could you please explain why in the AGAR¹ 2019/20 [personal data redacted] states in the variances that [personal data redacted] has not had a pay rise for three years, in 2018/19 [personal data redacted] had a pay rise of approximately 80% from £12,000 to £22,000 and in 2019/20 another 30% from £22,000 to £33,000, an approximate increase of 110% in two years, when NALC² and the NJC³ have recommended a pay rise of 2% in 2018/19 and 2.75% in 2019/20. Please explain why [personal data redacted] has lied on the AGAR 2019/20 and tried to mislead the external auditors PKF Littlejohn*

¹ Annual Governance and Accountability Return

² National Association of Local Councils

³ National Joint Council

5. *Could you please explain where the £70,000 ring fenced for alterations to the TVC⁴ and legal costs is held, what account?*
 6. *Who checks and approves all the POC (Debit Card) payments as shown on the monthly report?*
 7. *I would also like to have information regarding the books and all the equipment that was in the TVC, have you sold it? Or have you disposed of it in another way?"*
6. TPC responded on 16 October 2020. It refused the request on the grounds that it was vexatious within the meaning of section 14(1) of the FOIA.
 7. The complainant requested an internal review of the decision to apply section 14(1) on 31 October 2020. He did not receive a response.

Scope of the case

8. The complainant contacted the Commissioner on 23 December 2020 to complain about the way his request for information had been handled. He disagreed with TPC's decision to apply section 14 to refuse his request.
9. During the investigation, TPC indicated to the Commissioner that it no longer regarded the request as vexatious. It disclosed some information to the complainant and said that, whilst it likely held more information, it was not in a position to consider it for disclosure, as it was not currently in its possession.
10. Having regard to the particular wording of the request, the Commissioner does not consider the following part of question (4) to be a valid request for information under the FOIA:

"Please explain why [personal data redacted] has lied on the AGAR 2019/20 and tried to mislead the external auditors PKF Littlejohn".
11. This is because it primarily seeks an opinion from TPC regarding an allegation (ie that someone has 'lied'). Under the FOIA, public authorities are not required to provide opinions in response to requests, only recorded information (if held). The complainant has been advised

⁴ Tintagel Visitor Centre

accordingly and the Commissioner has excluded this question from the scope of his investigation.

12. The analysis below considers TPC's compliance with the requirements imposed by section 1 (General right of access) and section 10 (Time for compliance) of the FOIA. The Commissioner has not considered section 14 as this is no longer being relied on.
13. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 – General right of access

Section 10 – Time for compliance

14. Section 1(1) of the FOIA provides 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."*

15. Section 10(1) provides that -

"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

16. As is customary when investigating complaints about parish councils, on 29 April 2021 the Commissioner wrote to TPC via the parish clerk email address listed on its website. He asked TPC to provide detailed information in support of its decision to apply section 14 to refuse the request.
17. He received no response and so, on 6 July 2021, he served an information notice, formally requiring TPC to respond to his enquiries.

18. He received no response to the information notice. He then ascertained from TPC's website that a locum parish clerk had recently been appointed and he sent a copy of the information notice to the locum clerk, at an alternative email address, with a request that it be responded to.
19. TPC then engaged with the Commissioner, explaining that the locum clerk had only gained access to the parish clerk email inbox two weeks earlier, and had not spotted the information notice.
20. TPC said that it no longer regarded the request as vexatious and it offered to liaise with the complainant to see whether the matter could be informally resolved.
21. TPC subsequently met with the complainant to discuss his request. As a result of this meeting, it disclosed TPC's current bank account statements for April 2018 – March 2020. The complainant confirmed that while helpful, statements from other accounts, and the other information he asked for, had not been disclosed.
22. TPC told the Commissioner that a previous parish clerk was physically in possession of a significant amount of official information from her time as clerk, which TPC was currently unable to consult, as the previous clerk had not returned it. TPC told the Commissioner that it expected that further information falling within the parameters of the request was among the information in the previous clerk's possession, but it was uncertain as to precisely what information was held. Consequently, it said it was not in a position to disclose any further information which might be covered by the complainant's request, nor was it able to forward the information for the Commissioner to review.
23. The Commissioner's guidance on information held by a public authority for the purposes of the Freedom of Information Act⁵ says:

"Information will be held by the public authority if the information is held to any extent for its own purposes."
24. TPC did not dispute that although the information in question was physically in the possession of the previous parish clerk, it was 'held' by TPC as a public authority for the purposes of executing its public

⁵ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

functions. It is therefore accepted that any information that may be held would be covered by the FOIA.

25. Whilst the Commissioner is sympathetic to the situation in which TPC finds itself, it has been told several times that it needs to comply with its obligations under the FOIA and issue a full response to the request. It has been explained that this process will involve consulting not only the information it currently holds, but also the information it said was still in the previous clerk's possession, as this information is also 'held' by TPC. In view of the legal issues TPC had alluded to, the Commissioner suggested that it consult its presiding local district, borough, or county council, for advice or to ask it to intervene in the matter.
26. On 22 September 2021, as matters did not appear to have moved any further forward, the Commissioner wrote to TPC as follows:

"...it is now necessary for you to respond to each of the seven points of [the complainant]'s request, either by disclosing the remaining information he has asked for or, if any of the information is exempt from disclosure, citing the FOI exemption in question and explaining why it applies. To do this, you will firstly need to identify all the information that has been requested and establish whether TPC holds it."

27. He asked TPC to arrange for this to be done by 20 October 2021, and to be copied in to anything it sent to the complainant.
28. The Commissioner did not receive any response from TPC. However, on 21 October 2021, the complainant forwarded to the Commissioner an email he had received that day from TPC, which read as follows:

"On instruction from The information Commissioner's Office I am attaching the requested documents. I do not have all the information, only that which [the previous clerk] has sent me or that which I have found on Tintagel Website.

- 1. Copy of her accounts April 2019 to March 2020. (Attached)*
- 2. Bank Statements. Already handed to you on 26th August 2021.*
- 3. Copy of External Auditors Report. Accounts audited to 31st March 2020. (Attached)*
- 4. Having scrutinised the Council Minutes I can find no reference to Council agreeing to [personal data redacted]'s pay increases, but the accounts do suggest such increases. [Comment relating to out of scope information redacted.]*

5. I cannot find any evidence of £70,000 having been ring fenced for alterations to the TVC and / or Legal Costs in any of the Council's accounts.

6. I have no knowledge of any Council Debit Card being held, or transactions carried out using a Debit Card.

7. I do not know of any books being removed from TVC. However, certain items of furniture / equipment were removed on the orders of the Clerk. These items have been securely stored and could be re-instated, to my knowledge, nothing has been sold."

29. Following this disclosure, and having consulted with the complainant, the Commissioner remained unconvinced that TPC had complied with the following parts of the request:

- Part (3), on the grounds that the complainant asked for the *internal* auditors report, and TPC supplied the *external* auditors report.
- Parts (4), (5), (6) and (7) on the grounds that they were responded to only by reference to the information the locum clerk had access to at the time of responding, rather than by reference to *all* the information TPC holds.

The Commissioner's decision

30. By failing to ascertain whether or not it holds the information specified in each part of the request, and inform the complainant accordingly, TPC breached section 1(1)(a) of the FOIA.
31. By failing to provide this confirmation or denial within the statutory time for compliance, TPC breached section 10(1) of the FOIA.
32. TPC must now take the steps specified in paragraph 3.

Other matters

Section 45 – internal review

33. 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.

34. In this case the complainant requested an internal review on 31 October 2020, but TPC did not conduct one, although its refusal notice had invited the complainant to request one if dissatisfied.
35. TPC therefore did not act in accordance with the section 45 code of practice.

Information notice

36. As TPC failed to respond to the Commissioner's enquiries in a timely manner it was necessary for him to issue an Information Notice in this case, formally requiring a response. The Information Notice will be published on the Commissioner's website.
37. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"⁶ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"⁷.

⁶ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁷ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

38. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.

40. 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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