

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2022

Public Authority: Hampton Lucy Parish Council
Address: hamptonlucyclerk@gmail.com

Decision (including any steps ordered)

1. The complainant requested a recording of a meeting from Hampton Lucy Parish Council, Warwickshire ("the Parish Council"). 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 not a vexatious request.
3. The Commissioner requires the Parish Council to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the complainant, which does not rely on section 14(1) FOIA.
4. The Parish Council must take this step 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 24 September 2020, the complainant wrote to the Parish Council to request information of the following description:

"As you know, I have stated on more than one occasion over the past months that I wish to hear the recording on the PC meeting held on 28th January [2020] – and I have suggested below possible solutions as to how this could be arranged in my email below. I have not had a

reply from you to my latest email, so I am now repeating my request formally to you as a Freedom of Information request.”

6. On 22 October 2020, the Parish Council responded and said the request was being refused because it was vexatious.
7. Following an internal review, the Parish Council wrote to the complainant on 14 November 2020, upholding its position.

Scope of the case

8. The complainant contacted the Commissioner on 12 February 2021 to complain about the way her request for information had been handled.
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, it is established that 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. However, as the guidance explains, section 14(1) is concerned with the nature of the request, rather than any damage releasing the requested information may have.
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

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

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) ("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 Parish Council's view

18. The Parish Council explained that it had responded to the complainant's previous requests for the recording "in the normal course of business". Subsequently, after receiving the request set out previously in this notice, it considered the request under FOIA.
19. However, the Parish Council considered that the request had no serious purpose or value outside of the complainant's personal concerns, which,

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

it believed, had already been addressed, and it considered the request to be vexatious.

20. It explained the circumstances leading up to the request. It explained that the clerk makes notes during meetings, in a minute book, and also records meetings as an "aide-memoire". The Commissioner understands that the recordings are audio recordings rather than video recordings.
21. The clerk then produces draft minutes, which are distributed only to councillors, for comment. The Parish Council considers the drafts to be confidential, prior to being agreed and finalised.
22. After considering any comments from councillors, the clerk circulates the draft minutes (amended if necessary) to parishioners; these are then approved (or not), usually at the following meeting.
23. The Parish Council considers that this process represents an agreed process of collective governance, which it expects to be respected. Whilst it confirms that not all councillors' comments result in amendments being made to the clerk's first draft, it states that all comments are given credence, and evidently considers that its process is robust.
24. On this occasion, the Parish Council is aware that some councillors were unhappy that the minutes of the meeting in question, as originally drafted, suggested that a particular working party had come in for heavy criticism at the meeting. The draft minutes were subsequently amended, in line with some comments from a particular councillor.
25. The Parish Council became aware that the original draft had been shared, with some local repercussions. It appears to consider that this was done somewhat mischievously.
26. The Parish Council considers that the complainant has personal reasons for wanting the audio recording of the meeting to be disclosed, regardless of further repercussions, and does not have the public interest at heart.
27. It has not argued that obtaining the recording and providing it to the complainant would be onerous in itself. However, it evidently considers that the complainant is seeking only to further a personal agenda. It also appears to consider that disclosure of the recording may cause some concerns in the local community, resulting in an increased burden on the Parish Council and distraction from its key tasks.
28. The Parish Council therefore considers that complying with the request is disproportionately burdensome when considered alongside any serious purpose and value to the request.

The complainant's view

29. The complainant has confirmed that she wishes to recollect exactly what was said at the meeting, in light of the amendments which were made to the draft minutes.
30. The Commissioner understands that she considers that the amended version of the draft minutes, which were put forward for approval, does not accurately reflect what was said, nor indicate the tone that was adopted.

The Commissioner's decision

31. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
32. In this case, the Commissioner's understanding is that obtaining the recording and providing it to the complainant would not, in itself, be burdensome. He is not aware that the complainant showed any unreasonable persistence in trying to obtain the recording, such as might have caused harassment or distress to staff.
33. Whilst it may be the case that the information being requested – the recording – is largely of personal interest to the requester, this in itself is not sufficient to achieve the high hurdle necessary to refuse a request under section 14(1).
34. The Commissioner notes that the Parish Council's concerns about there being a disruptive effect on its day-to-day activities, and possible upset in the community, appear to relate to disclosing the content of the recording, and do not relate to the process itself of complying with the request. This is not reason enough to engage section 14(1).
35. Nor is it relevant to offer assurances that a robust system exists for producing draft minutes for approval; this, again, relates to the content of the information, rather than the process of handling the request.
36. If a public authority has concerns over disclosing the content of requested information, this can be addressed when considering information for disclosure; it is not a reason to conclude that the request itself is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA. As previously stated, the Commissioner's guidance explains that section 14(1) is concerned with the nature of the request, rather than any damage releasing the requested information may have.

37. The Commissioner's decision is that the request was not vexatious, and he orders the Parish Council to issue a fresh response which does not rely on section 14(1) FOIA.

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

Ben Tomes
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