



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2018/0146

Decided without a hearing

Before

JUDGE DAVID THOMAS

**MARION SAUNDERS AND ALISON LOWTON
TRIBUNAL MEMBERS**

Between

KEITH KILBANE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

SWINFORD PARISH COUNCIL

Second Respondent

DECISION AND REASONS

Decision

The Commissioner's decision is upheld. No action is required of Swinford Parish Council.

NB Numbers in [square brackets] refer to the bundle

1. This is the appeal by Mr Keith Kilbane against the rejection by the Information Commissioner (the Commissioner) on 26 June 2018 of his complaint that Swinford Parish Council (the Parish Council) had wrongly refused to disclose certain

information to him under section 1(1)(b) Freedom of Information Act 2000 (FOIA). The Parish Council was added as a Respondent to the appeal.

2. The parties opted for paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).¹

Factual background

3. Until December 2016, Mr Kilbane was a councillor of the Parish Council. For a time he was chair. The Parish Council has around five councillors. Parish councils lie at the base of the pyramid of local authorities but are generally considered to perform a valuable service for their communities.
4. There were disagreements amongst the councillors which became highly personal. The principal protagonists were Mr Kilbane and Councillor Jane Robson, although others were involved too. Although Mr Kilbane disclaims any desire to use FOIA and the local government complaints process to denigrate Councillor Robson personally, there is no doubt that there is a great deal of antipathy between them both.
5. The genesis of the dispute appears to be the consultation on housing options in which the Parish Council was required to engage in the summer of 2015. Mr Kilbane, then a councillor, helped to compile a report for the exercise but Councillor Robson wrote to the planning officer disassociating herself and another councillor from it. Mr Kilbane took exception to this and to comments (said by Mr Kilbane to be defamatory) Councillor Robson made about two fellow councillors as part of that process. When, as chair, he asked her to withdraw the statement, she responded, he says, with a statement defamatory of him. Between October 2015 and February 2016, Mr Kilbane made a number of complaints about Councillor Robson to Harborough District Council (HDC), the Parish Council's parent council. This followed a FOIA request to obtain the correspondence sent to HDC by Councillor Robson. There appear to have been other complaints relating to the Parish Council submitted to HDC around this time, too. In 2017, Mr Kilbane also made a complaint about Councillor Robson and complaints about the Parish Council itself (in fact, it appears that district councils do not have jurisdiction to entertain complaints against parish councils themselves).
6. The 2015/6 complaints were dealt with by HDC's Ethical Governance Committee (EGC). The EGC made its decision on the various complaints on 1 June 2016 and communicated the outcome on the complaint most relevant for present purposes in separate letters to councillors on 7 June 2016 (Mr Kilbane's is at **[155]**).² It recommended that: (i) Mr Kilbane and Parish Council members about whom he had made complaint be offered training on the relevant Code of Conduct and email etiquette; (ii) the Parish Council look for mediation 'to repair apparent relationship

¹ SI 2009 No 1976

² There is some confusion in the papers about whether this was complaint SC26 or SC28 (the latter submitted on 19 February 2016)

difficulties between its members'; and (iii) the Parish Council seek support from a qualified person to help in the conduct of parish meetings. Mr Kilbane's complaints were not upheld but nor were they explicitly dismissed (he argues that the EGC would not have made recommendations if it had not found basis to the complaints but that does not appear to be correct). The EGC's powers on a complaint against a parish councillor are taking no action, making a recommendation or referring the matter for further investigation (with the only sanction then being censure) (see the email from Ms Verina Wenham, head of legal and democratic services and monitoring officer at HDC, to Mr Kilbane on 6 November 2017 [156]). None of the complaints in question was referred for further investigation.³

7. In February 2016, prior to the EGC decision the then parish clerk had resigned [138]. She wrote to Mr Kilbane:

'At the Parish Council meeting on 2/3/2016 you made a Chairman's statement in which your criticised my conduct in a well attended public meeting where I have no redress. This is not the first time you have undermined me and questioned my ability in a public meeting. I consider this a step too far. I am continuously being harassed by Parish Councillor Underhill and receive no support whatsoever from the Chair.

...

I find your manner intimidating and you impossible to work with.

...'

8. Mr Kilbane himself resigned in December 2016, along with two other Parish Councillors. The following month, Councillor Robson was elected as chair.
9. On 10 January 2017, Mr Kilbane attempted to put these questions to a Parish Council meeting:

'1. Why did Parish Councillor Robson secretly conspire to mislead the Parish Council

2. Why did Parish Councillor Robson try to suppress the report detailing to Harborough District Parish Council (HDC) the very real concerns volunteered by residents during the HDC Housing Options consultation?

3. Why did Parish Councillor Robson seek to persuade HDC the report of the residents' concerns was a "minority report" when it was passed by a majority vote of 60%.

10. The Parish Council refused to allow the questions to be discussed at the meeting. In an email to Mr Kilbane of 8 March 2017 [194], the then parish clerk explained why: conduct complaints were exclusively the domain of HDC as the principal authority and the matters he wished to raise did not relate to the current or recent business of the Parish Council but rather pertained to a personal grievance about an individual councillor (which should be dealt with by the District Council). She added that HDC had informed Mr Kilbane that there were no grounds for any of his complaints against Councillor Robson made in late 2015 and early 2016.

³ One, SC29, concerned adherence to financial regulations, was referred for further investigation but that does not appear to have been one of Mr Kilbane's

11. Mr Kilbane then took matters into his own hand. He distributed the questions, with a detailed explanation [139], to all the residents of the parish. An accompanying petition [172] called upon the Parish Council to 'admit to the agenda of the next Council meeting those questions which were refused at the meeting on 10 January 2017'. In fact, the Parish Council merely noted the petition at its meeting on 7 February 2017.

12. The Parish Council met again on 7 March 2017. It is the minutes of this meeting which led to Mr Kilbane's FOIA request. The relevant part records:

'[Councillor Robson] confirmed that the correspondence received at the February meeting from Keith Kilbane had been looked into by the PC, the PC felt that this had nothing to do with the Current PC and was concerning an individual Councillor, this had been submitted to HDC and HDC had responded and advised that there were no grounds for complaint.'

13. Mr Kilbane took issue with the accuracy of this paragraph and asked for a correction. The Parish Council subsequently said that it had taken legal advice, via HDC. In September 2017, he made a complaint to HDC about the minutes. He believes that the Parish Council elided the outcome of the 2015/6 complaints with the questions he wanted to ask at the January 2017 meeting, which HDC did not consider.

14. On 9 October 2017, the Parish Council sent Mr Kilbane an email: ⁴

'As a direct result of the advice received from the legal team at NALC, it is the intention of the Parish Council to include the matter on the agenda at the next meeting of the Parish Council on 7th November 2017, where it will be proposed that for completeness the minutes of the council meeting held on 7th March 2017 be annotated as to record the decision of the standards committee held on 1st June 2016, as detailed in the redacted letter to be attached to the minutes. A hand-written note will then be placed on the minutes of the meeting held on 7th March 2017 directing readers to the proposed resolution. The Parish Council considers that the matter will then be closed and will not engage in any further correspondence.'

15. The Parish Council carried out its promise at the 7 November 2017 meeting (attended by Mr Kilbane). Importantly, this was just prior to Mr Kilbane's FOIA request the subject of the present appeal. ⁵ The HDC 7 June 2016 letter was subsequently published on the Parish Council's website with the minutes (incorporating the annotation).

⁴ See p2 of the Parish Council's Final Submission

⁵ The minutes of that meeting read [145]:

'The Chair explained the legal advice received from NALC through LRALC. As a result of this advice it was proposed that for completeness the minutes of the Parish Council meeting held on 7th March 2017 be annotated as to record the decision of the [EGC] of [HDC] at their meeting on 1st June 2016, as detailed in the redacted letter [of 7 June 2016] to accompany the minutes of the meeting ... The Councillor's (sic) present expressed a need to move forward in a positive manner, the Parish Council must follow the legal advice received ...'

16. In fairness to Mr Kilbane, he has not always been the complainant in this sorry saga. For example, Councillor Robson complained to the police about him for alleged harassment and criminal proceedings were subsequently taken. However, at the hearing on 31 October 2018, the CPS dropped the charge and their claim for a restraining order was rejected (see Mr Kilbane's Final Submission). Mr Kilbane says that the magistrates told him that he had done nothing wrong and was free to leave without any blemish on his record [221]. He was awarded his costs. In its Final Submission, the Parish Council counters that Councillor Robson had been advised by the CPS 'to continue to collect evidence and report further to the Police should Mr Kilbane continue his anti-social behaviour', but it is important to make the point that he has not been found guilty of such behaviour.
17. In addition, according to the resignation letter of 4 December 2016 sent by another councillor, Mr Hayward Underhill, Councillor Robson had (in part with another councillor) tabled a report seeking his resignation, made a complaint against him to HDC and threatened libel proceedings via her solicitor.
18. It is not for the Tribunal to determine the rights and wrongs of the internecine warfare which had evidently broken out in the Parish Council. It is fair to point out, however, that Councillor Robson seems to have made as liberal use of complaints as Mr Kilbane.

The request and initial response

19. On 16 November 2017, Mr Kilbane made the following request of the Parish Council [75]:

'Regarding the falsehoods in the minutes of 7 March 2017 Swinford Parish Council sought advice from NALC [National Association of Local Parish Councils] via LRALC [Leicestershire and Rutland Association of Local Parish Councils].

Under the terms of the Freedom of Information Act, please provide me with the following information:

- 1. What documents were submitted in support of the request?*
- 2. Did the provider of the legal advice have sight of the letter referred to?*
- 3. Were the contents of the letter (i.e. its text, not merely a general precis) made known to the adviser*
- 4. Was the author of the letter made known?*
- 5. What was the actual request for advice?*
- 6. Did that request state or imply that I referred to a letter?*
- 7. What was the advice offered?*
- 8. Was the advice dependent upon the letter?*
- 9. What ticket or reference number was assigned to the Swinford PC request for advice, by NALC, or by LRALC prior to the request being forwarded to NALC?*
- 10. Since the proffered letter is now proven to refer to a totally different matter, would the NALC consider its advice to be still pertinent?'*

21. It will be seen that all the questions relate to legal advice which the Parish Council says it obtained around its meeting on 7 March 2017. However, the meaning of the first line is not clear and Mr Kilbane does not explain what request he is referring to in point 1 (though presumably it is the request for advice) or what letter he is referring to in point 2. The lack of clarity is not determinative but has not helped Mr Kilbane's cause. It is also surprising given the precision with which he expresses himself elsewhere.
22. Ms Katherine Clarke, by this time the parish clerk, replied on 17 November 2017 [76]. She said that the Parish Council considered the request to be vexatious under section 14(1) FOIA, which allowed it to consider 'the wider interactions with a requester beyond the parameters of the request itself when determining whether a request is vexatious'. She added that a number of the 'indicators' set out in guidance issued by the Commissioner applied.
23. Mr Kilbane responded the same day [77]. He disputed that his request could have been properly considered given that there had been no Parish Council meeting since 7 November. He asked for the agenda and attendees of such a meeting and for the indicators which the meeting found to point towards vexatiousness.
24. It is not clear whether Mr Kilbane intended this as a request for an internal review or a separate request but the Commissioner saw it as the former.⁶ In any event, he did not wait for a response before, on 1 December 2017, making a complaint to the Commissioner (see below). At the prompting of her office (the ICO), the Parish Council did eventually carry out an internal review, which upheld the original decision. It communicated that decision to Mr Kilbane on 12 March 2018 [78].
25. A note from the Parish Council meeting on 22 February 2018 at which the review request was discussed [137] said: '[Mr Kilbane] ... questions and challenges individual members of the Parish Council outside Parish Council meetings. He attends Parish Council meetings in a threatening way and displays a recording device ...'. The Parish Council concluded: 'Provision of the information would be of no benefit to parishioners, it would cost the Parish Council money and use the resources of the Parish Council to satisfy a personal grievance of one parishioner'. Mr Kilbane will only have seen that note in the course of the appeal.

Proceedings before the Commissioner

26. In his complaint to the Commissioner [79], Mr Kilbane alleged that the 7 March 2017 minutes contained a falsehood. He expressed scepticism that the Parish Council had obtained legal advice from HDC (i.e. prior to the meeting) and suggested that the letter on which the advice was said to be based went through a number of incarnations (see also his email to the ICO dated 15 March 2018 [105]).
27. On 18 May 2018, Ms Clarke replied on behalf of the Parish Council to queries from the ICO [134]. She said that Mr Kilbane's resignation in December 2016 followed several disagreements with his fellow councillors and since then there had been a

⁶ See para 5 of her decision

long history of his objecting to Parish Council discussion and decisions. He persisted in demanding background information to try to find a way to challenge decisions and often shouted out questions about Councillor Robson at meetings. Ms Clarke says that, during the 7 March 2017 meeting, 'a comment was made about the fact that he had already complained about all of this to HDC and the matter had been judged not to require investigation'.

28. She also explained that, after Mr Kilbane complained about the minutes, the Parish Council took legal advice from LRALC who referred the matter to the NALC. The Parish Council was advised in a telephone conversation that ideally the exact wording of the HDC decision (i.e. that of June 2016) should have been recorded but that, once approved, minutes could not be changed. NALC advised that a handwritten note should be placed with the minutes.
29. Ms Clarke pointed to the burden which Mr Kilbane's stream of communications represented for the Parish Council. A simple search of her email account for the year since she joined in May 2017 revealed over four hundred emails relating to his complaints (not all sent by him). The Parish Council was keen to move on, with three councillors co-opted in Spring 2017, but Mr Kilbane was making this impossible with his constant demands.

The Commissioner's decision

30. In her decision, the Commissioner said that, just as Mr Kilbane had prayed in aid the wider context, so was the Parish Council entitled to when applying section 14. Although he said that his concerns were about the conduct of the Parish Council as a whole, it did appear that much of his focus was on the behaviour of Councillor Robson. The Commissioner thought it highly likely that a response to the present request would generate further requests and this 'would extend the life of [Mr Kilbane's] use of the FOIA to address his grievances about the other councillor and the Parish Council'. Although the number of requests made by Mr Kilbane was not excessive, the Commissioner acknowledged the cumulative impact on the Parish Council's limited administrative resources of dealing with this request, the complaints and various queries. It was a very small public authority. She found that Mr Kilbane 'persists in directing complaints and correspondence about the other councillor to the Parish Councillor, often in a very public and robust fashion, at Parish Council meetings, and with the leafleting of local households'. The present request, with its 'lack of identifiable purpose other than to possibly catch the Parish Council in a lie, could reasonably be seen as part of that pattern'.
31. The Commissioner acknowledged that local and parish councillors should expect to be subject to scrutiny from the public. At the same time, they were volunteers giving their time freely for the benefit of the community. Mr Kilbane's persistent attempts to re-open a matter which the HDC was satisfied had been dealt with, and particularly his leafleting of the local area with allegations about another councillor, went beyond the level of criticism that a public authority or its employees should reasonably expect to receive. FOIA was not an appropriate mechanism for pursuing personal grievances: there were other channels which could be used. There was no public interest in their being played out in public under FOIA.

32. In all the circumstances, the request was a ‘manifestly unjustified, inappropriate or improper use of a formal procedure’ – the phrase sanctioned by Upper Tribunal Judge Wikeley in *Information Commissioner v Devon County Council and Dransfield (Dransfield)*.⁷

The pleadings

33. Mr Kilbane has put in a number of lengthy documents in support of his appeal. They run to 44 closely-typed pages, even though the request is about the provenance of legal advice relating to a single sentence in a single set of minutes. Some background is useful, and Mr Kilbane needed to explain the reason for his request and to address the factors relied on by the Commissioner for her finding of vexatiousness, but much of what he writes is of tangential relevance at best.

34. In his **Grounds of Appeal [15]**, he accuses the Parish Council of mendacity and half-truths. He could not, he says, identify in the Commissioner’s decision any reference to his declared concern that legal advice about correction of the ‘false minute’ was being misrepresented and misused.

35. Mr Kilbane’s subsequent submissions take the form of detailed textual analysis of the decision notice and the submissions of the other parties. Mr Kilbane is not to be criticised for the method he has chosen to argue his case – he is not a lawyer – but the Tribunal has some sympathy for the Parish Council’s complaint in its Response that his arguments are ‘so confused and confusing it is difficult to extract a coherent line of thinking. There is a lot of irrelevant content which no bearing on the Decision Notice and unsubstantiated allegations regarding the behaviour of the Parish Council’. Mr Kilbane clearly has considerable forensic ability but his submissions demonstrate both an obsessiveness and an inability to see the wood from the trees, and it is hard to avoid the conclusion that this is typical of his dealings with the Parish Council: minor quibbles are given equal prominence as more serious allegations, inconsequential minutiae are elevated to matters of principle. The problem with this approach is that good points are liable to be lost in a forest of factual detail, allegation and rebuttal.

36. Both the Commissioner and the Parish Council lodged Responses and Mr Kilbane lodged Replies to each. He and the Parish Council put in Final Submissions.

Discussion

Was the request properly considered by the Parish Council?

37. Mr Kilbane claims that the request was not properly considered by the Parish Council: there was no Parish Council meeting between the request and the initial response, he says, and no indication of any delegation of the decision to a working party. This excited his suspicion that the decision was improperly made by Councillor Robson along with Ms Clarke, her daughter-in-law.

⁷ [2012] UKUT 440 (AAC) (28 January 2013) <http://www.bailii.org/uk/cases/UKUT/AAC/2013/440.html>

38. In its Response [43], the Parish Council says that a working group considered the request. The Tribunal has no reason to doubt this, or that the working group had appropriate authority. In any event, there is no dispute that the review decision was properly authorised.

The law on vexatiousness

39. Section 14(1) FOIA provides: 'Section 1(1) [which gives a requester a qualified right to information] does not oblige a public authority to comply with a request for information if the request is vexatious.

40. It is trite law that, for section 14(1) to apply, it is the request which must be vexatious, not the requester. Although the motives and behaviour of the requester may be relevant, vexatiousness looks at the effect on a public authority of having to deal with a request. The central question is: is the public authority vexed by the request?

41. The leading case is the Court of Appeal decision in *Dransfield*.⁸ The only substantive judgment was given by Lady Justice Arden. She cited,⁹ with apparent approval, this passage from the decision of Judge Wikeley in the Upper Tribunal:¹⁰

'27. ... I agree with the overall conclusion that the [Tribunal] in Lee [Lee v Information Commissioner and King's College Cambridge] reached, namely that "vexatious" connotes "manifestly unjustified, inappropriate or improper use of a formal procedure".

28. Such misuse of the FOIA procedure may be evidenced in a number of different ways. It may be helpful to consider the question of whether a request is truly vexatious by considering four broad issues or themes – (1) the burden (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request) and (4) any harassment or distress (of and to staff). However, these four considerations and the discussion that follows are not intended to be exhaustive, nor are they meant to create an alternative formulaic check-list. It is important to remember that Parliament has expressly declined to define the term "vexatious". Thus the observations that follow should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms'.

42. Arden LJ then said:

68. In my judgment, the UT [Upper Tribunal] was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the

⁸ [2015] EWCA Civ 454 (14 May 2015)

⁹ Paras 18 and 19

¹⁰ *Information Commissioner v Devon County Council and Dransfield*

public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available. I understood Mr Cross [Counsel for the Commissioner] to accept that proposition, which of course promotes the aims of FOIA.

...

72. Before I leave this appeal I note that the UT held that the purpose of section 14 was "to protect the resources (in the broadest sense of that word) of the authority from being squandered on disproportionate use of FOIA" (UT, Dransfield, Judgment, para. 10). For my own part, I would wish to qualify that aim as one only to be realised if the high standard set by vexatiousness is satisfied. This is one of the respects in which the public interest and the individual rights conferred by FOIA have, as Lord Sumption indicated in Kennedy [Kennedy v Charity Commission [2014] 2 WLR 808] (para. 2 above), been carefully calibrated.

43. There is, therefore, a high hurdle for a public authority to cross before it may rely on section 14(1). All the circumstances of the case have to be considered. On one side of the equation, these include the burden on the public authority, the motive of the requester and any harassment or distress caused to staff by the request. On the other side is the value of the information to the requester or the public at large. However, it is not a simple weighing of the two sides of the equation. Where information has value, that is likely to be a particularly important factor, because of the need to promote the aims of FOIA to facilitate transparency in public affairs, accountability of decision-making and so forth.

44. However, the fact that a request has value is not determinative. In *Parker v Information Commissioner*, Upper Tribunal Judge Knowles said: ¹¹ 'The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. It is clear from the Court of Appeal's decision that the public interest in the information which is the subject of the request cannot act as a trump card so as to tip the balance against a finding of vexatiousness'.

Application of the law to the facts of the case

45. The four themes identified by Judge Wikeley in *Dransfield* – burden, motive, value and harassment/distress – are neither exhaustive nor determinative but they do

¹¹ [2016] UKUT 0427

provide a useful starting-point and the Tribunal will therefore consider them, leaving value to last.

i. Burden

46. As the Commissioner said, one has to view burden in the overall context. This particular request might not, as Mr Kilbane says, take long to process. He has only made two other FOIA requests in the past year, with another two coming from people with whom he may be associated. However, it is also necessary to have regard to other correspondence and complaints which he has generated for the Parish Council, particularly relating to the same broad dispute. Ms Clarke, the clerk, says that, in the year to May 2018, there were over 400 emails in her inbox relating to Mr Kilbane's complaints, albeit that he did not send all of them. There has been considerable further correspondence since then. Mr Kilbane has made a number of complaints about the Parish Council and Councillor Robson, which have inevitably involved the Parish Council in additional work. He has sought to involve the local MP. The Parish Council is a small authority. Ms Clarke is likely to be its only employee and she only works eight hours a week. Mr Kilbane accepts that the emails represent a 'daunting workload' (while wondering, cynically, why so many internal emails were warranted) [25].

47. The Tribunal accepts that Mr Kilbane has caused significant burden for the Parish Council and that this has made it more difficult for it to serve the needs of the community and to move on from past disagreements.

48. As the Commissioner said, there is every likelihood that, if the present request were answered, Mr Kilbane would make further requests for information, within or without FOIA. Just about any FOIA response gives the opportunity for a further request and the history suggests that it is unlikely that Mr Kilbane would let the opportunity pass. He argues that the events around the 7 March 2017 meeting are distinct from his various other complaints against the Parish Council and Councillor Robson and the sole focus should therefore be on the minutes of the meeting. With respect, that is unrealistic. All roads lead back to the dispute with Councillor Robson over the housing options consultation.

ii. Harassment/distress

49. This is closely linked to burden. The Tribunal accepts that Mr Kilbane does not wish to harass or distress the Parish Council or its staff. However, a person may reasonably feel harassed or distressed even if the other person did not intend to harass or distress.

50. There is no doubt that Parish Council staff and members have felt harassed by Mr Kilbane, and with good reason. He routinely accuses others of lying, engaging in conspiracies and sending 'scurrilous communications',¹² without the cogency of evidence needed to make good such serious allegations. For the record, Councillor Robson denies the allegations made against her (see her response to his three questions at [141]).

¹² See, for example, the communications sent to parish households [114]

51. Mr Kilbane is unable or unwilling to draw a line under an old dispute, and it is no answer to say that the dispute has taken on a new dimension (as is almost inevitable when a complainant will not let go and challenges each fresh decision).

iii. Motive

52. On page 2 of his Grounds of Appeal [20], Mr Kilbane said: 'My motive is entirely – and solely – the removal of a defamatory statement injurious to my reputation'. Elsewhere in the same document he asserts a public interest [27]: 'Apart from establishing that the PC's published minutes contain falsehoods, it is definitely in the public interest to provide transparency on any legal advice the PC acted upon, how that was obtained, and whether it was mis-used'.

53. These two statements are not necessarily contradictory. It is possible to have a personal motive for doing something while asserting that it is also in the public interest. In any event, the Tribunal accepts that Mr Kilbane both wishes to protect his reputation and to ensure good governance within the Parish Council.

iv. Value

54. Whether the requested information has value is the key to the appeal, given the particular weight which should be given to it in the context of section 14(1). In assessing value, it is important to understand that, as Mr Kilbane himself stresses,¹³ the request is limited to finding out about the legal advice which the Parish Council says it obtained from HDC relating to the entry in 7 March 2017 minutes. It is not directed at finding out information about wider aspects of the history of his dealings with Councillor Robson and the Parish Council.

55. Arden LJ made it clear in *Dransfield* that a request had a reasonable foundation if it had value for the requester. The personal value he identifies is the opportunity to remedy the damage to his reputation he maintains the minutes cause. He says that specialist legal advice backs up his claim that the minutes are defamatory of him.

56. It is important to revisit what the minutes say:

'[Councillor Robson] confirmed that the correspondence received at the February meeting from Keith Kilbane had been looked into by the [Parish Council], the [Parish Council] felt that this had nothing to do with the Current [Parish Council] and was concerning an individual Councillor, this had been submitted to HDC and HDC had responded and advised that there were no grounds for complaint'.

57. Mr Kilbane's whole argument is predicated on the extract being false. The falsehood,¹⁴ he says, is that the Parish Council did not obtain legal advice about the correspondence received at the February 2017 meeting (a reference to his petition¹⁵). The Parish Council does not appear to dispute that – the advice it sought

¹³ See, for example, para 35 of his Grounds of Appeal [28]

¹⁴ In his email to the Parish Clerk on 5 August 2017 [107], he claimed that the falsehood was deliberate

¹⁵ See p2 of the Parish Council's Final Submission

and received, by telephone, in 2017 was after the meeting and related to correcting the minutes.

58. However, the minutes do not say explicitly that the February correspondence had been referred to HDC. Rather, they say that 'this' had been referred to the district council. Coming immediately after the phrase 'concerning an individual Councillor', this could equally refer to the complaints against Councillor Robson in 2015/6, which covered the same ground as the three questions in Mr Kilbane's petition. The Parish Council's emails to Mr Kilbane of 8 March and 9 October 2017, referred to above, are consistent with its position that HDC's involvement prior to the 7 March 2017 meeting was in relation to the 2015/6 complaints, not the February 2017 petition.
59. If the minutes are read in that way, they are broadly inaccurate. It is correct that the ECG did not uphold any of the complaints. It did make various recommendations for the better working of the Parish Council in future, but those recommendations were not said to be dependent on a finding that any of the complaints were established. It was obvious that the councillor team had become dysfunctional and natural that HDC should want to help it find solutions, irrespective of whether the complaints were made out. The HDC's letter of 7 June 2016 did not say in terms that it had found no grounds for the complaint in question but it did not refer it for further investigation, as one would have expected had it felt there was a basis for it.
60. In any event, it would not normally be defamatory of someone to say without more that no grounds were found for their complaint. The fact that an adjudicating body does not uphold a complaint does not mean that the complainant is lying or acting in bad faith. He may simply not have been aware of the full facts or understood the legal basis governing the actions of the person or body complained about.
61. Even if all that is wrong, and the minutes in their original form were defamatory of Mr Kilbane, by the time he made his FOIA request the Parish Council had added a note pointing to HDC's letter of 7 June 2016 and put the minutes (with the note) and the letter on its website. Anyone looking at the website would then have understood that HDC's involvement to which reference was made concerned the relevant earlier complaint (rather than the petition) and would have seen the outcome of the complaint. There could have been from that time no conceivable damage to Mr Kilbane's reputation arising from the minutes. It follows that his later request for information had no function in restoring reputation.
62. Mr Kilbane also says that he is concerned to ensure good governance and that to that end there is a public interest in the information he has sought being available. FOIA is undoubtedly an important tool in ensuring that public authorities, including parish councils, act lawfully and ethically. Though they may be concise, Parish Council minutes do, of course, have to be accurate¹⁶ and faithfully record the decisions which have been taken. But one cannot expect the precision one might expect of a legally-drafted document. To justify the level of burden which Mr Kilbane has created, including through the present FOIA request, there has to be at least

¹⁶ That may include something which was said at the meeting even if it is factually incorrect

some credible basis for believing that a public authority is being economical with the truth in a relevant respect. The Parish Council was not as clear in the 7 March minutes as it might have been. However, that is very different from saying that it has set out to mislead. Importantly, the complaints and the questions are on the same factual continuum. The Tribunal finds that the Parish Council did not deliberately mislead in the March 2017 minutes or in what followed.

63. For these reasons, the Tribunal has concluded that the request has little or no value and that, when set against the considerable burden on the Council, it is therefore vexatious. As the Commissioner held, the request is a manifestly unjustified, inappropriate or improper use of FOIA. That is not to say that Mr Kilbane may not have grounds for concern about how Councillor Robson and the Parish Council have conducted themselves – the Tribunal takes no position on that. But in all the circumstances the request was not a justified use of FOIA.

Conclusion

64. For these reasons, the appeal is dismissed. The decision is unanimous.

Signed

David Thomas
Judge of the First-tier Tribunal
Date: 15 April 2019
Promulgated: 16 April 2019