



Neutral citation number: [2024] UKFTT 00751 (GRC)

Case Reference: EA/2024/0028

**First-tier Tribunal
General Regulatory Chamber
Information Rights
IC-260007-S6W6**

**Considered on the papers on: 30 July 2024
Decision given on: 20 August 2024**

Before

**TRIBUNAL JUDGE CHRIS HUGHES
TRIBUNAL MEMBER MIRIAM SCOTT
TRIBUNAL MEMBER EMMA YATES**

Between

GERRY WOODHOUSE

Appellant

and

**(1) INFORMATION COMMISSIONER
(2) POTTO PARISH COUNCIL**

Respondent(s)

Decision: The appeal is Dismissed

REASONS

Introduction and Request for Information

1. Potto is a small village with a parish council. It is one of 731 civil parishes in North Yorkshire (not all have a parish council) and has a population in the low

hundreds. At the time of the request the local MP was the Prime Minister. In 2022 its auditors made a Public Interest Report (PIR) to the parish council identifying issues of concern relating to its handling of Information Requests under the Freedom of Information Act 2000.

2. The Appellant made a 15-part request for information to the parish council on 3 July 2023 concerning the PIR and other matters. On 25 July 2023 the parish council replied, providing some information, drawing attention to other information on its website and stating that certain information was not held. The Appellant was dissatisfied, sought an internal review of the handling of part 5,6,7 and 14. He also complained to the Information Commissioner who investigated and issued a decision notice on 4 January 2024. In the decision notice the Commissioner concluded:

- in relation to request parts 5, 7 and 14, on the balance of probabilities, the council disclosed all the relevant information that it held and,
- in relation to part 6, the council wrongly applied the exemption in section 31 and that it should have relied on section 40(5B) of the FOIA to refuse to confirm or deny whether any information was held; the Commissioner decided to apply the section (40(5B) exemption himself proactively.
- the council breached section 10(1) and section 17(1) as it failed to issue a refusal notice within the statutory 20 working days.

3. The relevant parts of the request and the parish council's responses were:

Part 5

Potto council produced and published a 'letter', shortly after the July 2022 PIR, **see Press extract below:**

The letter states: "Not only does your parish council need your support (they are only volunteers trying to make our lives here in Potto better) but you need to protect your right to have control over your finances. If you value our current parish council and you appreciate all the good work they have done recently, show your support and attend the meeting. We may have to pay E500 this year, but what will it cost us all next year if these 'petty' complaints continue?"

This 'letter' was circulated only to carefully selected Potto households and to various members of the Press, following which it was subsequently quoted at length 'on-line' and in a number of Newspapers.

Please provide a full and dated copy of this 'letter'.

PPC Response to Part 5:

PPC did not publish the letter noted.

Part 6

The 2023 minutes - Jan item 8.2, Feb item 11.0, March item 4.3.3 and also item 4.10.2, April item 4.3.4 and May item 6.3 record that Potto council forwarded complaints and several other items of public correspondence to the Police. I understand that the Police response to Potto council about this correspondence extends only to 'one or two very short emails' and that it provides a clear record of the Police actions or Police advice to Potto council about this serious issue.

Please provide a full and dated copy of all the information (emails or letters, etc) received from the Police about the correspondence noted above.

PPC Response to Part 6: Please see a copy of the email attached.

Part 7

I cannot find any information in the council's published data that confirms the Council's draft PIR action plan has been approved by the auditor. This approval is required under S10(1)(b) of the 2014 Act.

Please provide a dated copy (email or letter, etc) of the auditor's approval – this information is also required to be 'open for inspection' under S10(4) of the Act.

PPC Response to Part 7:

There is no requirement for the auditors to approve the PIR Action Plan, please note that para 10(4) refers to Local Government Act 1972 section 100 applies to principal authorities not smaller authorities

Part 14

If a council's financial reserves are too high, an explanation must be provided to the auditor. The data in the 2022-23 accounts indicate excessive reserves (of above 150% of the council's entire annual precept income), which is a breach of S49A(2)(c) of the 1992 Act. This weakness exposes the council's grossly inadequate (and unlawful) budgeting process.

Please provide a copy of the explanation provided to the auditor for the 2022-23 accounts.

PPC Response to Part 14:

The parish Council does not hold reserves of above 150% of its precept.

4. The Appellant lodged an appeal with lengthy grounds of appeal (24 pages) and a substantial amount of supporting material. The Commissioner resisted the

appeal. Different issues arise in respect of the various parts of the appeal and it is appropriate to consider them separately.

The Appeal with respect to requests 5,7,14

Request Part 5

5. The Appellant noted the explanation given by the Council to the Commissioner:

"...we understand that it was addressed to residents directly, it may have gone to individual councillors personal emails but we cannot confirm this, we also believe that it was published on the local village Facebook pages (Potto Patter) which are not in any way part of the parish council, we can confirm that it was not received by the parish council therefore we do not hold a copy."

But he argued that

I contend that the council's response is deceitful, misleading, evasive, vague and disingenuous. If someone other than a councillor really had published or circulated this letter, it is simply not plausible that this person (who is writing for and in support of the council) would not have sent a copy of the letter to each councillor, and possibly the clerk.

6. The Commissioner in resisting the appeal stated:

It was on the basis of this clear statement of PPC's position that the Commissioner concluded that, on the balance of probabilities, PPC did not hold a copy of the document in question.

Request Part 7

7. In arguing that the Commissioner is wrong to accept the council's statement the Appellant contended that the response was fallacious and relied on the Local Government Act 1972 which he felt was irrelevant to the request whereas the duty arose under the Local Audit and Accountability Act 2014.

"...the ICO again accepts the council's utterly false assertion (that it does not need to have its PIR action plan approved by its auditor) without challenge and, for that false reason, asserts that 'it holds no relevant information'. This is a paradigm example of a false conclusion facilitated by a false basis of fact."

8. The Commissioner had accepted an explanation provided by Council in correspondence and explained in the response to the appeal:

"There is no requirement for the auditors to approve the PIR Action Plan, please note that para 10(4) refers to Local Government Act 1972 section 100 applies to principal authorities not smaller authorities" this statement was provided by the auditors.

[The Appellant] has been informed on multiple occasions that the PIR as approved at the public meeting is available on the [Council] website .. Therefore [the Appellant's] initial statement is incorrect as has been pointed out .."

33. In view of PPC's representations the Commissioner understood its position to be that there is no requirement for it to take the action which the Appellant suggests it should and, for that reason, it says it holds no relevant information [DN para 19].

34. The issue here is whether or not PPC holds the information requested. The Council says that it does not. The Appellant says that it should. Given the clear statement of the Council's position (that it does not hold the information requested), the Commissioner was entitled to accept its position."

Request Part 14

9. The Appellant stated that the Council *"argued that its financial reserves are not excessive."* He contended that this (as were the other arguments advanced by the Council) lacked *"any sound basis of fact; indeed it is quite obvious they are each malicious and quite untrue."*

10. The Commissioner set out how the Council had justified its position:

"the question is based on an incorrect assumption by [the Appellant] that the PPC reserves are 150% above our entire precept, this is incorrect, therefore there cannot possibly be any documentation to explain this as it is an incorrect statement .."

11. The Commissioner set out his rationale for the decision that material within request 14 was not held:

The issue under appeal is whether or not PPC holds the information requested. The Council says that it does not because the Appellant's request is based on an incorrect assumption. The Appellant appears to stand by his underlying assumption; and, further, seems to say the Council should hold the information. Given the clear statement of the Council's position (that it does not hold the information requested), the Commissioner was entitled to accept its position.

Joinder of the Council

12. In responding to the appeal the Commissioner, noting the difference in interpretation of the legal and factual position between the Appellant and the parish council with respect to the obligations of the council with respect to the issues raised by requests 7 and 14, suggested that the parish council be joined as a respondent to the appeal. On 15 March 2024 the learned Registrar made a direction to that effect. On 30 May, noting that the parish council had not responded to the direction, stated in a further direction:

In the circumstances, I consider that PCC do not intend to respond to the appeal. At this stage I have not removed them as a party to the proceedings, the Tribunal may exercise its powers under section 58 of the Freedom of Information Act 2000 and any decision will bind PCC.

13. The parish council has indicated that it does not have the resources to participate in the case.

Consideration

14. The starting point is to acknowledge that, as the Commissioner diplomatically phrased it:

It is clear that there is a tense relationship between the Appellant and PPC.

15. From the material before the tribunal, it appears that over the years the Appellant has made many FOIA requests of the parish council, there have been a large number of decision notices issued by the Commissioner relating to the Council and one information case considered by the Upper Tribunal, apparently on appeal by the parish council. In a letter of 9 January 2024 to his local MP complaining about the attitude of North Yorkshire Council (and its predecessor council for the Appellant's area) to the investigation of issues of councillor conduct. In a chart he indicated that between vesting day (when the new local government arrangements for North Yorkshire came into effect) of 1 April 2023 and 19 December 2023 111 complaints about councillors in the area had been made but none had at that date been assessed by the Standards Committee (neither he nor the tribunal is in a position to objectively assess the merits of any of these complaints). The Appellant wrote:

"NYC's policy of stonewalling, carried out by exactly the same people who were responsible at Hambleton and the other District Councils for creating and perpetuating this very same problem, is facilitating a culture of wild reckless activity by far too many local councillors.

This has led, for example, to all the councillors at Potto parish council, the most corrupted and dysfunctional small council in the UK, refusing to address the actions in its 2022 Public Interest Report and attempting (December 2023) to

'object' to the current audit investigation. The rule of law and the democratic processes of accountability have failed."

16. The original request was in 15 parts. Parts 1-4 relate to recommendations 9-12 of the PIR, 8 related to how the council addressed errors in its minutes (which the Appellant called a "safeguarding procedure"), 9 to declarations of interest by councillors, 10 to an annual data audit, 11 to budget/expenditure outturn for 2022/2023, 12 to the Chairman's annual report for several years, 13 to the consent needed from the highways authority for displaying a sign next to a road, 15 related to monitoring the effectiveness of the council. The parish council's response provided links, documents or explanations why there was no material held or how the issue was addressed in council minutes (for 9 – no documents held with a comment about the statutory position with respect to 9 which differed from the Appellant's view), with respect to 11:

11 I note the council's Budget and Actual expenditure data (for each budget item) has still not been published for 2022-23, albeit that this information was published for 2021-22. It is clear that the council's level of transparency and openness has deteriorated further, post the PIR.

Please provide a full copy of the unpublished 2022-23 data.

PPC Response: As you are fully aware the data for 2022/23 was specifically requested by yourself in a FOI request not specifically published, all information is freely available as noted in the Notice of Public Rights.

A copy of the data for 2022-23 is attached

17. It is clear therefore that for the bulk of the request the council was able either to provide the information requested or explain why it was not there and these accounts did not give rise to further comment.

18. The request 5 relates to a widely circulated communication which the Appellant considers was produced by the parish council. The reply by the parish council as a body corporate clearly points to an assumption the Appellant has made:

it may have gone to individual councillors personal emails but we cannot confirm this, we also believe that it was published on the local village Facebook pages (Potto Patter) which are not in any way part of the parish council, we can confirm that it was not received by the parish council therefore we do not hold a copy

19. The response says that it has not been received by the council, the Appellant says

If someone other than a councillor really had published or circulated this letter, it is simply not plausible that this person (who is writing for and in support of the council) would not have sent a copy of the letter to each councillor, and possibly the clerk

20. It is however possible that, in a small community of about 300 with an active facebook page, an individual writing such a communication would not need to send it to the parish council because all those interested in the council would see it on the facebook page. In this respect a useful analogy is to consider the local MP who at the time would have received and sent communications as Prime Minister, but also communications as the Leader of the Conservative Party which should have been held separately and not within the Government systems. The communications as Leader of the Conservative Party outside the government's IT systems would not be disclosed in response to a request under FOIA. The parish councillors are separate entities from the council who may or may not have received the communication as residents of the parish.
21. Whatever the Appellant's suspicions about the author of the communication the issue for this tribunal is whether or not it was held by the parish council. The Commissioner, on the balance of probabilities decided that it was not. There is no evidence upon which that conclusion may be overturned.
22. Requests 7 and 14 are related; in each case the Appellant claims that the parish council has statutory responsibilities to perform certain actions and the parish council claims that it does not, that the statutory arrangements are different for parish councils from principal councils so there is no information held with respect to 7 and the size of its reserves do not require any special action therefore there is no information with respect to 14 – no explanation to the auditor. It is important to disentangle the threads of argument. In both cases the Appellant asserts a state of affairs which gives rise to a need for information to exist. The council states that no information exists, it also states that the circumstances which would give rise to the need for such information do not apply to the council in its current circumstances. The paradoxical position is that the Appellant, who shows such hostility to the council, in pursuing these parts of the request is asserting that the council has done something it does not believe it needs to and generated information it claims that it does not need. This appeal relates to the holding of information not compliance with the intricacies of local government law. The Appellant may or may not be correct that the parish council should have acted differently, however there are no grounds to conclude that it did. The Commissioner's suggestion that the parish council become a party to explain the legal position (which resulted in the Registrar's direction) was not to the

point. There are no grounds for believing that the parish council holds the requested information.

The appeal with respect to Request 6

23. The request relates to contact with the police the Appellant stated in his request:

Potto council forwarded complaints and several other items of public correspondence to the Police. I understand that the Police response to Potto council about this correspondence extends only to 'one or two very short emails' and that it provides a clear record of the Police actions or Police advice to Potto council about this serious issue

24. The parish council initially in its discussion with the Commissioner sought to rely on the exemption in s31 (Law Enforcement)

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,

25. The Commissioner, in the course of his investigation considered the interaction of two statutory regimes he is responsible for, Information Rights and Data Protection. Personal data relates to an identifiable living person and any information within the scope of the request would clearly be the personal information of an identified or identifiable individual. He explained:

"From the wording of the request, the Commissioner is satisfied that the requested information clearly relates to an alleged criminal offence.

Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held in response to a request for information under FOIA, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.

The Commissioner has considered each of these conditions and whether any of them could be relied on by the council to confirm or deny whether it holds criminal offence data falling within the scope of this request. The Commissioner has considered these on his own merit and finds that, having regard for the restrictive nature of the Schedule 1, Parts 1 to 3 conditions, none of the conditions can be met.

As none of the conditions required for processing criminal offence data are satisfied there can be no legal basis for confirming whether or not the requested information is held; providing such a confirmation or denial would breach data protection principle (a)

The Commissioner, therefore, concludes that the council should have cited section 40(5B) of the FOIA to neither confirm nor deny holding information within the scope of the request, as it could not do so without disclosing personal information relating to the individual to whom the request relates. He now applies this exemption himself in order to prevent any further disclosure of personal information.

26. The relevant principle is that “personal data must be processed in a way that is fair, lawful, and transparent in relation to the data subject.” The tribunal is satisfied by and adopts the Commissioner’s reasoning. The request is for personal information. S40 FOIA provides protection from disclosure under FOIA of information if it would breach the data protection regime for personal information.

27. In the course of the investigation by the Commissioner’s officer he explored with the parish council issues around FOIA/data protection in order to assist the council in complying with its duties under both legal regimes. The response of the Appellant to this proper discharge of the Information Commissioner’s responsibilities is that on a number of occasions he has made intemperate and abusive comments about the officer:

had appointed himself as Judge, Jury and Executioner

has wittingly corrupted due process and acted to pervert the course of justice

has chosen not to discharge justice. He has acted with heavy and persistent bias

It exposes his ‘consciousness of guilt’ and it could not have been written by an innocent person.

28. These comments are inappropriate and unjustified.

29. For the reasons stated above the tribunal is satisfied that the appeal must fail.

Signed Hughes

Date: 15 August 2024

Promulgated on: 20 August 2024

