

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 March 2011

Public Authority: **Eltisley Parish Council**
Address: **45 Caxton End**
 Eltisley
 Cambridgeshire
 PE19 6TJ

Summary

The complainant submitted a series of requests to Eltisley Parish Council (the 'Council') for information about the Council's finances, assets and agreed contracts. These are classes of information listed as being available under the Council's publication scheme. The Council refused to comply with the requests on the grounds they were vexatious and applied section 14(1) of the Freedom of Information Act 2000 (the 'Act'). Having considered the arguments provided by the Council, the Commissioner does not consider that the Council has demonstrated that section 14(1) applies in this case.

The Commissioner's Role

1. 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 Act. This Notice sets out his decision.

The Request

2. The complainant made a series of requests for information to the Council on 12, 15, 21 and 30 March 2010 and 6 April 2010. The requests are listed in full in Annex A of this Notice.
3. On 8 April 2010 the Council responded to the complainant and confirmed that it holds some of the requested information. However, it

explained that it considered the series of requests to be vexatious and refused to comply with them under section 14(1) of the Act.

4. The complainant wrote to the Council on 17 April 2010 to appeal against the Council's application of section 14(1). The complainant also alleged that the Council was failing to disclose information in accordance with its model publication scheme.
5. On 10 May 2010 the Council wrote to the complainant and said that, following an internal review, it had decided to uphold the application of section 14(1).

The Investigation

Scope of the case

6. On 20 May 2010 the complainant contacted the Commissioner to complain about the Council's handling of his requests for information. The complainant specifically asked the Commissioner to consider the application of section 14(1) to the requests listed in Annex A of this Notice.

Chronology

7. On 23 August 2010 the Commissioner wrote to the Council via email and requested further arguments in support of its application of section 14(1). The Commissioner also referred to the Council's publication scheme and the possibility of future correspondence on that issue.
8. On 22 September 2010 the Council responded to the Commissioner and explained why it considered section 14(1) of the Act applied to the requests. The Council also provided background correspondence relating to the requests.

Analysis

Substantive Procedural Matters

Exemption

Section 14(1) - vexatious requests

9. Deciding whether a request is vexatious is a balancing exercise and, in weighing up the issue, the Commissioner considers the following factors:
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or distressing to staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
10. In establishing which, if any, of these factors apply, the Commissioner considers the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exemption to be engaged.
11. It is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. The Commissioner has considered the five factors in relation to this case and his conclusions are outlined below.
12. When considering this case, the Commissioner has also considered the Council's model publication scheme which was provided as part of supporting documentation relating to the requests. The Commissioner considers that the complainant's requests for breakdowns of the Council's expenditure, audit information, current contracts awarded and information relating to its assets register would be particularly likely to fall within the classes of information listed in the scheme. These make up the vast majority of the requests listed in Annex A. However, the complainant was not provided with this information when he requested it, and the Council instead applied section 14(1) of the Act.

13. In addition to the above point, the Commissioner notes that there is some disagreement between the Council and the complainant regarding whether or not the Council has a website. The Council's publication scheme states that certain types of information can be obtained via its website. The complainant has noted that the Council appears to have a dedicated web page on a village website www.eltisleyvillage.co.uk, and that the Council has used the page to publish meeting minutes, an annual report, and contact details and a regular column by the Chairman. The Commissioner has viewed the website and notes that this information remains accessible. However, in correspondence with the Commissioner the Council has maintained that it does not own a website and has no control over the village website, which is run by a resident.
14. The Commissioner notes that, if the Council does not have control over a website, this appears to contradict the Council's publication scheme which lists certain classes of information as being routinely accessible via a website. However, if it is the case that the Council does not in fact have a website, the Commissioner would in any event expect the Council to make information listed in the publication scheme available upon request. The Commissioner has taken this into account when considering the Council's arguments in relation to the five factors he considers when section 14(1) of the Act is applied by a public authority.

Could the request fairly be seen as obsessive?

15. The Council has made a case that the complainant had been in regular correspondence with the Council since January 2009, and argues that the number of requests for information and frequency of his correspondence and constitute obsessive behaviour. The Council therefore determined that the ten requests received between 12 March 2010 and 6 April 2010 could be seen as obsessive when considered in light of the complainant's previous correspondence.
16. The Council has also argued that many of the complainant's correspondence contained repeated requests and that he would not wait for a response from the Council before submitting further or revised requests. The Council has provided the Commissioner with copies of correspondence between the parties from January to May 2010. The Council specifically notes that the complainant submitted eight requests for information to the Council in a letter of 16 January 2010, and that it had responded to each of them.
17. The complainant, in an enclosure with his letter to the Council of 17 April 2010, has listed correspondence between the parties and draws a

distinction between 'FOI requests' and other requests which he stated he did not wish the Council to handle under the Act. However, while not specifically relevant to consideration of the application of section 14(1) in this case, the Commissioner notes that a public authority is entitled and potentially required to respond under the Act to what may appear to be a simple query or question at first glance. This is because such a response may require a disclosure of recorded information held by the authority.

18. The complainant has also argued that many of his requests relate to information which should be routinely published under the model publication scheme adopted by the Council. As detailed at paragraph 12, the Commissioner notes that nearly all of the requests refused by the Council under section 14(1) of the Act are for information which would be likely to fall within the classes of information listed in the Council's publication scheme.
19. The Commissioner accepts that there is a fine line between behaviour which can be deemed obsessive and that which can be deemed persistent. However, having considered the supporting documentation in this case, the Commissioner notes that some of the complainant's previous correspondence to the Council also contained requests for information which should be likely to be available under the publication scheme. Other items or correspondence appear to request clarifications about responses to other requests or point out that some requests had not been answered.
20. The Commissioner has considered the previous correspondence between the parties in addition to the ten requests refused under section 14(1). He notes that there has been regular correspondence between the parties and that the Council has previously co-operated with requests from the complainant. However, he also notes that a number of the previous requests and the majority of those later refused under section 14(1) relate to information which should be available under the Council's publication scheme. The Commissioner therefore considers that, had the Council published information in accordance with its publication scheme, the level of correspondence between the parties might not have been necessary. In view of this, the Commissioner does not consider that the complainant's requests can fairly be characterised as obsessive in this case.

Is the request harassing the authority or distressing to staff?

21. The Council has stated that it considers the tone of much of the complainant's previous correspondence was argumentative and challenged the content of the responses provided. As examples, it has

cited the complainant's allegation of a "prima facie breach" by the Council, a claim that it was acting "ultra vires", and what the Council considers to be unfounded allegations about individual council members. The Council also believes that the tone of the complainant's responses sought to patronise and belittle responses it had provided. When viewed together, the Council considers that the complainant intended to cause distress to its staff through his correspondence.

22. When considering whether a request would have the effect of harassing or distressing staff, the Commissioner takes into account factors such as the use of offensive or threatening language in correspondence, unfounded accusations or complaints as part of a fixation on individual members of staff, and whether there is an unwarranted level of correspondence from an applicant.
23. The Commissioner does not consider that the Council has demonstrated that the nature of the complainant's requests was to harass or distress its staff in this case. On the basis of the information available to him, the Commissioner considers that the correspondence was temperate in tone and that its purpose was to make legitimate queries and requests for information to a public body. Furthermore, the Commissioner notes that an individual is fully within their rights to raise complaints with external bodies if they are dissatisfied with a service received from a public body. The Commissioner does not consider that there is compelling evidence that the complainant has sought to use the Act as a means of causing distress to the Council's staff in this case.

Would complying with the request impose a significant burden in terms of expense and distraction?

24. The Council makes the point that, as a parish council, it has limited resources and only one part time employee to conduct the Council's official functions such as responding to requests under the Act. The Council adds that, despite the volume of correspondence from the complainant, it has always responded within to requests within twenty working days, as required by the Act. However, it believes the requests impose a significant burden in terms of expense of distraction because of their volume, frequency, and also the complainant's tendency to chase the Council for response within a shorter timeframe than required by the Act.
25. While the Commissioner will take into account the context and history of a request when considering the application of section 14(1), he notes that the scope of this case remains the ten requests for information refused by the Council in its refusal notice of 8 April 2010.

26. As outlined previously in this Notice, the Commissioner considers that the majority of the requests in this case were for information which should be readily made available in line with the Council's publication scheme. This is information which a public authority should expect to be able to locate and provide relatively easily. While the Commissioner accepts that the complainant had submitted a relatively large amount of correspondence to the Council prior to the requests, he considers that much of that correspondence related to information listed under the publication scheme. Therefore, on the basis of the evidence available to him, the Commissioner does not consider it reasonable to conclude that complying with the requests in this case would impose a significant burden on the Council's resources in terms of expense or distraction.

Is the request designed to cause disruption or annoyance?

27. The Commissioner recognises that this factor involves a judgement of the complainant's intentions when making a request, and is therefore difficult to prove. The Council has stated that it believes the complainant's correspondence was designed to cause disruption to the Council's routine business and annoying to the Council and its staff. However, as no arguments have been presented to demonstrate this and none are apparent from the submissions by either party, the Commissioner does not consider there is evidence that this factor is met by the requests in this case.

Does the request lack any serious purpose or value?

28. The Council has explained that it does not understand the purpose of the complainant's requests for information despite seeking to establish the reason for the requests on several occasions. The Chairman's statement to the Council during a meeting to conduct the internal review of the requests of 4 May 2010 said: "His questions revolved around a number of subjects and it was not possible to ascertain the purpose behind the question, whether he had genuine concerns or was researching a particular subject, and it seemed that it was simply a continued attack on the PC (the Council)."
29. The Commissioner notes a principle of the Act being that requests are 'motive-blind', and therefore the burden of proof is particularly high for a public authority to demonstrate that a request has no serious purpose or value at all. The requests in this case relate to information about the Council's financial records, assets and agreed contracts. The Commissioner does not consider that the requests' nature or history and context indicate that they have no serious purpose or value.

Therefore, based upon the evidence available, the Commissioner considers that the Council has not demonstrated that this factor attracts any weight when considering the application of section 14(1).

30. In view of the above considerations, the Commissioner's decision is that the Council has not demonstrated that the requests were vexatious. Also, the Commissioner notes that the Council is not relieved of its obligations under the Act by virtue of applying section 14(1) when initially responding to the requests.

The Decision

31. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act because it was not entitled to refuse to comply with the request under section 14(1).

Steps Required

32. The Commissioner requires the public authority to take the following step to ensure compliance with the Act:
- Provide the complainant with the information requested; or
 - Issue a valid refusal notice under section 17(1) explaining why the information should not be disclosed under the Act.
33. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

34. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

35. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 7th day of March 2011

Signed

**Andrew White
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex A

Requests for information

12 March 2010

- 1) A copy of the trust deed and governing document for Charity 285324 which the Charity Commissioners inform is entitled the Village Green Eltisley.
- 2) Please confirm that the Parish Council is both the legal and beneficial owner of The Green Eltisley?

15 March 2010

- 3) The names of the person or persons who (i) undertook the internal audit for Eltisley Parish Council in the year 2008/9 and (ii) are carrying out that role for the 2009/10 year.

21 March 2010

- 4) A copy of the latest annual financial statements for Eltisley Parish Council. In particular, I am looking for a breakdown of expenses and sources of income.

30 March 2010

- 5) Can you confirm that Eltisley Parish Council appoints the trustees to charity number 285324, the Village Green Eltisley?

6 April 2010

Please provide me with the following information in respect of Eltisley Parish Council:

- 6) the expense headings contained within the functional classification of "Admin support";
- 7) the total expenditure for the fiscal year to date (i.e. 6 April 2010) incurred under that functional classification;
- 8) the total expenditure for the fiscal year to date (i.e. 6 April 2010) incurred under the individual expense headings within that functional classification. Should there be no formal breakdown of expenses under the functional classification then please provide me with expenditure on (i) telephone, stationery and postage; (ii) rent, heat and lighting; (iii) labour, no matter how described and (iv) travelling expenses;
- 9) whether the contract for administrative services was put out to tender;

- 10) the contract terms and conditions between the parish council and the current provider of administrative services specifying the level and extent of services and whether there are any penalty clauses in that contract for failure to provide a service or failure to provide an adequate service.

Legal Annex

General Right of Access

1. (1) 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.

Vexatious or Repeated Requests

14. (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.