

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 13 June 2011

**Public Authority:** Nether Poppleton Parish Council  
**Address:** Chawton Cottage  
22a Long Ridge Lane  
Nether Poppleton  
York  
YO26 6LX

### Summary

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The complainant requested copies of letters between the Poppleton Community Trust (PCT) and Nether Poppleton Parish Council (NPPC) on specific dates. NPPC responded providing copies of a number of letters but refused to comply with the remainder of the request on the grounds that the letter in question was of a personal nature and did not concern council business. The Commissioner investigated and has found that the information was not held by NPPC at the time of the request. However, NPPC breached certain procedural requirements of the Freedom of Information Act. The Commissioner requires no steps to be taken.

### The Commissioner's Role

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24. 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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25. On 14 September 2009 the complainant requested the following information:

*"Copies of the letters from the Chairman of the PCT to the NPPC dated 25 April 2008, his subsequent letter and your replies would also be appreciated, please."*

26. On 18 December 2009 NPPC responded to the complainant providing copies of two letters: one dated 3 May 2008 from NPPC to the PCT, and one dated 20 May 2008 from the PCT to NPPC. However, NPPC refused to provide the letter of 25 April 2008 from the PCT to NPPC named in the request stating that the letter had not been recorded as a Parish Council document but a personal letter and therefore did not fall under the scope of the Act.
27. On 5 February 2010 the complainant requested an internal review of NPPC's decision. He wrote: *"I believe that the letter was mainly, if not wholly, about Parish Council business I would be grateful if you would initiate an internal review of your decision."*
28. To date the complainant has not received a written response regarding the outcome of the internal review.

## **The Investigation**

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### **Scope of the case**

29. On 19 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the fact that the information had been refused on the grounds that the letter did not concern parish council business, and also the delay in the internal review process.

### **Chronology**

30. On 10 February 2011 the Commissioner wrote to NPPC to detail the scope of the case. The investigation initially focussed on whether NPPC was correct to withhold the information under section 40(2) concerning third party personal data which was the implied exemption in the response of 18 December 2009. The Commissioner also asked for a copy of the withheld information to be made available to him.
31. On 10 February 2011 NPPC telephoned the Commissioner on receipt of his letter. NPPC stated that the requested information was not held by the parish council and therefore it could not provide the Commissioner with a copy. In order to try to ascertain the facts regarding when the information was held and how, the Commissioner discussed the case at

length with NPPC. The Commissioner asked for further clarification to be provided in writing in order to support NPPC's position.

32. On 17 February 2011 the Commissioner received further correspondence from NPPC. NPPC attached one of the letters that the complainant had already been provided with and confirmed that the letter of 25 April 2008 had been the source of the enquiry. NPPC stated that this letter had been taken away after it had been responded to, and that NPPC did not have a copy of it. NPPC stated that subsequent enquiries had determined that the Chairman of NPPC had not retained the letter and that the Chairman of the PCT had not kept a copy. NPPC reiterated that all information held pertaining to the request had been provided to the complainant.

## Analysis

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### Substantive Procedural Matters

33. Section 1 of the Act (full wording in Legal Annex) states that on receipt of a request for information a public authority is obliged to confirm or deny in writing whether information is held and if information is held, subject to any exemptions which may prevent disclosure, provide the information to the complainant.
34. The initial response provided by NPPC to the complainant was ambiguous as to whether the letter of 25 April 2008 was held by the parish council at the time of the request. NPPC asserted that the information was a personal letter and as such exempt but gave no clear indication as to whether it was held.
35. The Commissioner noted the fact that further correspondence on the case, namely an email from NPPC to the complainant dated 10 September 2010, suggested that the requested information was not held. NPPC wrote: *"neither [named individual] or myself have a copy of the letter to which you refer. I can confirm I didn't take a copy of it and have absolutely no idea if copies exist"*. The Commissioner sought clarification regarding how, where and when the information was held and ceased to be held by NPPC.
36. The telephone discussion between the Commissioner and NPPC on 10 February 2011 enabled the Commissioner to form a better understanding of the chronology of events leading up to the complainant's request. The Commissioner was able to refocus his investigation along the lines of whether information was held at the time of the request rather than continuing with enquiries concerned with whether the requested information constituted personal information.

37. NPPC made it clear to the Commissioner that the requested information was received at a personal address and replied to shortly after receipt. The original letter that was the source of the information already provided to the complainant was then discarded and not retained elsewhere as recorded parish council business.
38. The Commissioner has no further suitable lines of enquiry he can take up with the NPPC and is satisfied that the original letter was not held by NPPC at the time of the request.
39. The Commissioner has noted that NPPC failed to confirm this to the complainant in its response and he has therefore provided guidance to NPPC on dealing with information requests in an attempt to prevent complaints of this nature recurring in the future.

## **The Decision**

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40. The Commissioner's decision is that NPPC did not deal with the request for information in accordance with the Act, since it gave an incorrect response to the complainant and failed to respond within the statutory time frame.
  - It did not issue a response to the request within the statutory time limit, and therefore breached section 17(1).
  - It failed to confirm that one element of the information was not held and therefore breached its obligation under section 1(1)(a).
  - In failing to provide this confirmation within the time limit it breached section 10(1).

## **Steps Required**

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41. The Commissioner requires no steps to be taken.

## **Other matters**

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42. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

## Handling requests for information

43. All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While in many cases such requests will be dealt with in the course of normal business, it is essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that sufficient staff are familiar with the requirements of the Act and the Codes of Practice issued under its provisions. Staff dealing with correspondence should also take account of any relevant guidance on good practice issued by the Commissioner. Although the introduction does not form part of the Code itself, the Commissioner would echo its recommendations and advise the public authority to refer to both the Code and the Commissioner's published guidance when dealing with future requests for information.

## Time for internal review

21. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, NPPC failed to communicate the outcome of any internal review carried out within this time frame, despite the publication of his guidance on the matter.

## Right of Appeal

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22. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

23. 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.
24. 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 13<sup>th</sup> day of June 2011**

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### General Right of Access

#### **Section 1(1) 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."

### Time for Compliance

#### **Section 10(1) provides that –**

"Subject to subsections (2) and (3), 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."