

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 August 2018

Public Authority: Old Somerby Parish Council
Address: The Orchards
School Lane
Old Somerby
Grantham
Lincolnshire
NG33 4AG

Decision (including any steps ordered)

1. The complainant requested records created since 1 April 2017 relating to a Neighbourhood Plan for Old Somerby. The complainant also submitted a subsequent clarified request. Old Somerby Parish Council refused to comply with the requests under section 14(1) (vexatious requests) of the FOIA.
2. The Commissioner's decision is that the Parish Council failed to provide any evidence to support the decision to refuse the requests for information and is not entitled to rely on section 14(1) of the FOIA with regard to these requests.
3. The Commissioner requires Old Somerby Parish Council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the requests for information of 16 August 2017 and 5 October 2017 that does not rely on section 14(1) of the FOIA.
4. Old Somerby Parish Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High

Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 August 2017, the complainant wrote to Old Somerby Parish Council and requested information in the following terms:

"Request for records created since 1 April 2017 relating to a consideration of Neighbourhood Plan for Old Somerby; including emails sent and received by Parish Councillors in respect of substantive and procedural matters in this connection; including in regard to the constitution of the Parish Council and Neighbourhood Plan Steering Group; including information distributed to putative members of a Steering Group."

6. Old Somerby Parish Council responded on 14 September 2017. It stated that the Parish Council refused the request under Section 14(1) of the Freedom of Information Act.

7. The Complainant wrote to Old Somerby Parish Council on 20 September 2017 expressing his dissatisfaction and requested that the Parish Council undertook an internal review of its decision.

8. Old Somerby Parish Council responded on 27 September 2017 stating it had no obligation to explain why the request had been refused under section 14(1). The Complainant asked the Parish Council for an update on the internal review on 4 October 2017 and on 16 November 2017.

9. The Parish Council wrote to the complainant on 16 November 2017. It indicated that an internal review would not be carried out.

10. On 5 October 2017, the complainant wrote again to Old Somerby Parish Council with an amended request for information in the following terms:

"Please accept this e-mail as a further FOI request to Old Somerby Parish Council for the records relating to the formulation of the Neighbourhood Plan. This request is for the same categories of records previously requested, as created during the period 16 August to even date inclusive; including the brief for [name redacted] and e-mails and other records relating to how this was formulated and intentions as to how it was to be represented; records relating to [name redacted]'s appointment; records relating to the handling of FOI requests made to the Parish Council in connection with the Neighbourhood Plan."

11. The complainant wrote to the Parish Council on 16 November 2017 asking it for an update on his 5 October 2017 request for information.

The Parish Council subsequently issued another refusal notice on 22 January 2018 refusing the request as vexatious.

Scope of the case

12. The complainant contacted the Commissioner on 29 December 2017 to complain about the way his request for information had been handled, including at that stage about the failure to respond to his request of 5 October 2017.
13. On 14 May 2018, the Commissioner wrote to the Parish Council for further explanation on the citing of section 14(1) of the FOIA.
14. The Parish Council failed to respond substantively to the Commissioner's investigation letter, despite an extension being granted to the time to respond. The Parish Council responded on 16 June 2018 and stated it was trying to resolve the matter informally, although the Commissioner understands this attempt was unsuccessful.
15. The Commissioner wrote to the Parish Council on 28 June 2018 stating no submissions had been received in response to the Commissioner's investigation letter. The Commissioner gave a final deadline to respond by 5 July 2018.
16. The Parish Council did not respond. In the absence of representations from the Parish Council on this matter the Commissioner has considered whether the requests above were vexatious without the benefit of any submissions from the Parish Council.
17. The Commissioner's investigation has focussed on whether the two requests submitted on 16 August 2017 and 5 October 2017 were vexatious under section 14(1) of the FOIA.

Reasons for decision

18. The Upper Tribunal and Court of Appeal in the Dransfield¹ case described the complainant's requests as representing a "manifestly unjustified, inappropriate or improper use of a formal procedure" and decided they were therefore vexatious.

¹ <http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

19. The Commissioner has not been provided any evidence that, at this point, the complainant's requests represent the same manifestly unjustified, inappropriate or improper use of the provisions of the FOIA.
20. The Commissioner has examined the number and frequency of requests made by the complainant to the Parish Council, and notes that they are not extensive in number, although the complainant was reasonably persistent in seeking a response to his requests.
21. The Commissioner does not consider that there is anything particularly objectionable or aggressive about the tone and language of the complainant's correspondence, or that there is any deliberate intention to cause annoyance to the Parish Council, rather that the complainant is frustrated with what he considers to be an important issue and is seeking information.
22. The Commissioner also considered whether the complainant was reasonable in providing sufficient time for the Parish Council to respond to his requests and any time to review their response when requested to do so. The Commissioner is satisfied that the Complainant was being reasonable in seeking a response to his requests.
23. In absence of any submissions from the Parish Council, the Commissioner looked into detail the requests and found no evidence for applying section 14.
24. The Commissioner has therefore decided that the requests were not vexatious and so the Parish Council cited section 14(1) incorrectly.

Right of appeal

25. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Ben Tomes
Team Manager
Information Commissioner's Office
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Wilmslow
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SK9 5AF