

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 July 2022

Public Authority: Egerton Parish Council
Address: Egerton Millennium Hall
Elm Close
Egerton
Ashford
Kent
TN27 9DS

Decision (including any steps ordered)

1. The complainant requested information from Egerton Parish Council ("the Council") relating to a housing needs survey. The Council refused the request because it argued that it had responded to a request for the same information already.
2. The Commissioner's decision is that the Council was not entitled to rely on section 14(2) of the FOIA to refuse the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, to the request, which does not rely on section 14(2) of the FOIA.
4. The 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 13 May 2021, the complainant wrote to the Council and requested information in the following terms:

“whether any named individuals from the housing needs survey are involved in or members of either the EPC or NEP. I do not need you to confirm who they are at this stage, however confirmation of whether there are or are not any known respondents who have failed to declare an interest will suffice.”
6. The Council responded on 14 June 2021. It stated that it was refusing the request under section 14(1) of FOIA (vexatious request), however the wording of the refusal, “Egerton Parish Council believes the request for the same information sent on 13th May 2021 engages Section 14 (1) of the Freedom of Information Act 2000”, appeared to refer to the repeated requests under section 14(2) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 30 May 2021 to complain about the way their request for information had been handled.
8. During the course of the Commissioner’s investigation the Council confirmed to both the Commissioner and the complainant that its basis for refusing the request under FOIA was section 14(2) – repeated requests.
9. The following analysis considers whether section 14(2) of FOIA was cited correctly.

Reasons for decision

Section 1 - access to information

10. Section 1(1) of the FOIA states 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.”

Section 14(2) - repeated requests

11. Section 14(2) of the FOIA states that:

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

12. As covered in the Commissioner’s guidance on section 14(2)¹ a public authority may only apply section 14(2) to a request where it has either previously;

- provided the information to the same requester in response to a previous FOIA request; or
- confirmed that the information is not held in response to an earlier FOIA request from the same requester.

13. The guidance clearly states that if neither of these conditions apply, then the public authority must deal with the request in the normal manner.

The Council’s position

14. The Council was asked by the Commissioner to explain why in the circumstances of this case, it relied on section 14(2) of the FOIA to refuse the request.

15. The Council argues that it complied with a previous request made by the complainant on 21 April 2021. The Council considers this request to be for the same information.

16. The complainant made a request to the Council on 21 April 2021 within an email:

“Further to my email to [redacted] on 17th April to which I have not yet had a response, please can you now provide me with the

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-repeat-requests/>

link or copies of the two surveys that the ENP are using in relation to housing needs within the proposed plan which [redacted] refers to in her email as shown below.

I ask as [redacted] informed me on 15th April, as per the below screenshot, that one of the two surveys includes the names of those who have shown in their responses an interest in the development of Older People's Housing in Egerton.

I would appreciate a copy of this particular survey and request that it be released to me under Freedom of Information, if as indicated by [redacted] that one of them contains names of individuals who have expressed a wish to downsize into any potential older people's housing as being examined by the ENP."

17. On 13 May 2021 the Council responded and informed the complainant that the 2018 Housing Needs Survey and the 2015 Older People's Housing Survey are available on the Neighbourhood Plan website. In effect, it was refusing to provide the information under the exemption at section 21 of FOIA: Information accessible to applicant by other means. It also explained that it would not be disclosing the names of private individuals who expressed an interest in downsizing into older people's accommodation.
18. The Council's position is that, "The request dated 13th May asks for the same information as the first request dated 21st April – the names of people who replied to a survey".

The Commissioner's position

19. The first requirement for the application of section 14(2) is to establish whether the multiple requests were all made by the same party.
20. In this case, the Commissioner confirms that both requests (of 21 April 2021 and 13 May 2021) were submitted to the Council by the same party.
21. The second requirement is to establish whether the request is identical or substantially similar to the previous one.
22. Having viewed the correspondence between the complainant and the Council, the Commissioner considers that the requests of 21 April 2021 and 13 May 2021 were not identical or substantially similar.
23. When the complainant made their request of 21 April 2021 they gave some context around their reasons for making the request and explained they believed one of the surveys they had requested contained "names of individuals who have expressed a wish to downsize

into any potential older people's housing as being examined by the ENP". The request itself, however, was for the two surveys. Of the email quoted in full at paragraph 16 the Commissioner considers that only the following is a request for information:

"please can you now provide me with the link or copies of the two surveys that the ENP are using in relation to housing needs within the proposed plan which [redacted] refers to in her email as shown below."

24. The request of 13 May 2021 was for, ""whether any named individuals from the housing needs survey are involved in or members of either the EPC or NEP." This is not the same information requested by the complainant on 21 April 2021, which was copies of the two surveys.
25. The Commissioner's decision is therefore that the Council incorrectly applied section 14(2) to the request of 13 May 2021.
26. The Council is now required at paragraph 3 of this decision notice to issue a fresh response to the request that does not rely on section 14(2) of the FOIA.

Right of appeal

27. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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
Group Manager
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