

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 7 August 2007**

**Public Authority:** Great Sankey Parish Council  
**Address:** Whittle Hall Community Centre  
Lonsdale Close  
Off Kingsdale Road  
Whittle Hall  
Warrington  
WA5 3UA

### Summary

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The complainant alleged that Great Sankey Parish Council (the "Council") withheld certain items of information when responding to his request for information about its 2005/2006 end-of-year audit. The Information Commissioner considered that the request fell within the scope of section 15(1) of the Audit Commission Act 1998 (the "ACA") which provides specific rights of access to end-of-year account information in the period prior to its annual audit. The Commissioner decided that at the time of the request the information was reasonably accessible to the complainant otherwise than under section 1 of the Freedom of Information Act 2000 (the "Act"). The Commissioner therefore considered that the information was exempt from disclosure under the Act by virtue of section 21.

### The Commissioner's Role

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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 Freedom of Information Act 2000. This Notice sets out his decision.

### The Request

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2. On 7 July 2006 the complainant made the following written request:

"In accordance with the published notice (SI2003/533) Audit Commission Act 1998, being an elector of this parish I wish to exercise my right to view the year end accounts, if convenient, on either Thurs 13<sup>th</sup> July or Mon 17<sup>th</sup> July, at 10.00 am. In compliance with instructions issued by Chair of Employment, Cllr Litton,

(reference letter dated 5<sup>th</sup> Nov 2005) I submit the attached list of documents I would like to view during my visit.

- 1) Summary of Accounts
- 2) Income and Expenditure Sheets
- 3) Annual Return
- 4) Bank Statements
- 5) Invoices and Receipts
- 6) Minutes Book of all Council Meetings
- 7) Cheque Stubs
- 8) Monthly Balance Reports to Finance Committee
- 9) Current Hire Charges
- 10) Criteria for Hire Support
- 11) Centre User Groups
- 12) Standing Orders
- 13) Financial Regulations
- 14) Internal Audit Report
- 15) Deeds and Leases"

3. The Council wrote to the complainant on 13 July 2006 asking for alternative dates. The letter also included the following refusal notice:

"...the documents you listed will all be available, with the following exceptions

5) Invoices and receipts. You may see invoices that have been presented to the Council. You may see selected receipts and invoices generated by the Council except in so far as it would be a breach of confidence. Freedom of Information Act 2000 sections 41 and 43 refers. This means you may see copies of specific invoices you request, but with identifying details which could cause the Council to infringe the Data Protection Act deleted.

7) Cheque stubs. You may see selected cheque stubs except in so far as it would be a breach of confidence. Freedom of Information Act 2000 sections 41 and 43 refers. This means you may see copies of specific cheque stubs you request, but not any which relate to staff wages.

11) Centre User Groups. You may see a list of those users who have consented to have their details made available to a third party. There will not be a full list of user groups available. This is third party data, and also may be commercially sensitive, so it is not appropriate to release it to the public. Freedom of Information Act 2000, sections 41 and 43 refers.

15) Deeds and Leases. I am taking advice about the lease for Wroxham Road. This has not previously been available as it was the subject of negotiation between GSPC and WBC and was therefore commercially sensitive (Freedom of Information Act 2000, sections 41 and 43 refer). I am querying with WBC whether they are content for it to be made available at this stage, as it is now subject to change."

4. On or around 14 July 2006 the complainant emailed the Council to complain about its refusal to allow him to visit on his chosen dates, claiming that it was not complying with its obligations under SI2003/533 of the Audit Regulations, as imposed by the ACA. He also asked the Council to review its decision with regard to withholding items 5, 7, 11 and 15 on his list.
5. On 22 July 2006 the Council emailed the complainant to confirm a visit date of July 26th. It advised that it would not be reviewing its decision to withhold information and that he should forward his complaint to the Commissioner.
6. On 26 July 2006 the complainant visited the Council offices to view the accounts and supporting paperwork.
7. On 27 July 2006 the complainant wrote to the Council asking for hard copies of a selection of the invoices and receipts that he had viewed. He also requested copies of seven cheque stubs in respect of payments made by the Council and a copy of the list of community centre users who had consented to having their details made public, together with a copy of the Council's opt-out disclosure notice.
8. On 10 August 2006 the Council replied, enclosing hard copies of some of the information the complainant had requested. It explained that certain invoices were not being supplied as they related to the 2004/05 accounts, and were therefore not within the scope of the 2005/06 Audit. It explained that two of the items he requested were actually references to bank statement pages and that there were no cheque stubs which related to the sample he had specified. It explained that he had already been given a list of community centre user groups which were happy to have their details in the public domain, via the Parish Newsletter, and that no separate list existed. It declined to provide a copy of the opt-out notice on the grounds that to do so would breach the Data Protection Act 1998.
9. The complainant responded on 14 August 2006, reiterating that he wished to see the named invoices as they were collected and recorded in the returns which were the subject of the current audit. He asked for copies of the bank statement pages and for any seven cheque stubs relating to the 2005/06 audit. He distinguished between the community centre user groups' right to privacy and the Council's duty to record full details of the income gained from them in the accounts, and asked for a copy of a blank opt-out form.
10. Also on 14 August 2006, the complainant emailed a Councillor and alleged that some of the invoices he had checked contained errors, suggesting that all invoices should be checked.
11. On 15 August 2006 the Councillor emailed the complainant and agreed that the invoices contained errors but that the errors were very minor and due to human error. (These errors were subsequently examined at a meeting of the Council's Finance Committee on 4 September 2006.)
12. On 10 September 2006 the complainant referred the matter to the Commissioner.

13. Prior to the Commissioner commencing his investigation, on 28 September 2006 the Council wrote to the complainant explaining that it had reviewed its handling of the matter at a Council meeting on 13 September 2006. It enclosed redacted copies of the requested invoices, the bank statements, cheque stubs and the blank opt-out notice.

## The Investigation

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### Scope of the case

14. The Commissioner was already dealing with a similar complaint from the complainant about access to the Council's 2004/05 accounts when, on 10 September 2006, he wrote to complain about the way his request for information about the 2005/06 accounts had been handled. The complainant specifically asked the Commissioner to consider the Council's response to his request for items 5 (Invoices and Receipts), 7 (cheque stubs), 11 (community centre user groups) and 15 (deeds and leases) of his list. However during the course of the investigation it became apparent to the Commissioner that the exemption at section 21 was engaged and it is this which this Decision Notice focuses on.
15. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

16. On 4 October 2006 the Commissioner acknowledged the complainant's letter and explained that it would be investigated in due course. The Commissioner also wrote to the Council to inform it that a complaint had been received and would be investigated in due course.
17. On 17 October 2006 the Commissioner wrote to the complainant confirming that his latest complaint would be investigated concurrently with his existing complaints.
18. Also on 17 October 2006 the Commissioner wrote to the Council, formally setting out the details of complaints submitted by the complainant about his requests for access to the Council's 2004/05 and 2005/06 accounts. The Council was asked to supply copies of the information that had been withheld and further clarifying information in support of its claims that the exemptions at sections 41 and 43 applied in respect of the withheld information.
19. The Council responded on 7 November 2006, addressing both complaints. It explained that after the on-site inspection on 26 July 2006 it had complied with the complainant's request for hard copies of certain items that he had viewed. It explained that hard copies of certain invoices were initially withheld because they related to a year which was not the subject of the current audit, but that they were subsequently supplied to him when he challenged the refusal. The invoices had been cleansed of personal information about each community centre user group

- organiser. The Council did not send the Commissioner unredacted copies of all the information requested because the documents withheld ran into the hundreds, and the Council stressed its limited resources. It supplied sample copies and was willing to supply further individual samples if the Commissioner had particular items in mind.
20. The Council offered no explanation for the application of the exemptions at section 40, 41 and 43 of the Act in respect of the complaint, instead referring the Commissioner to its response in respect of the complainant's 2004/05 access request, stating, "...all the reasoning that applied in 2005 still applies, see paragraphs relating to FS50093058". Those paragraphs, contained in the same letter, did not explicitly address the exemptions, but provided limited information about the Council's approach to questions of confidential information and commercial interests.
  21. The Council explained that the organisers of community centre users groups were advised of its intention to publish their details in the Parish Newsletter and also on the internet, and were given the opportunity to opt out of this. It claimed all community centre users were written to in this manner in 2004, 2005 and 2006. It considered it reasonable for those who opted out to expect that their details would be held in confidence. It cited an incident in 2003 when hoax letters were sent to community centre users telling them that the Council had shared their details with third parties over the internet and claimed that the reaction of the recipients demonstrated this expectation. It also drew attention to the fact that the only information withheld from the invoices and receipts supplied to the complainant related to the "privacy" of community centre users. It clarified that the complainant had been given a copy of the public Parish Newsletter which contained the public list and supplied a copy for the Commissioner to view.
  22. The Council also argued that disclosure of the withheld information to the complainant would be detrimental to its own commercial interests. It pointed to the fact that the complainant had previously been a member of the Council, and during that time it alleged that he had attempted to influence Council policy on the use and funding of certain community centres [there is no suggestion here that there was anything unlawful about the complainant's alleged actions]. It alleged that the complainant continued to have an interest in the way in which certain community centres were used and the Council considered this interest conflicted with its own interests. It argued that in withholding the information it was acting to protect its own commercial interests and by extension, those of its users.
  23. In addressing the public interest test the Council commented, "...I weighed up the commercial and security needs of 34 groups of regular users against the interests of 1 individual who failed to give a valid reason as to why he wanted this data."
  24. The Council supplied the Commissioner with a copy of the lease for its Wroxham Road property. Its letter concluded with the suggestion that the complaint might be considered to be vexatious.
  25. The Commissioner wrote to the Council on 13 November 2006 and requested further samples of unredacted receipts, invoices and time sheets.

26. The Commissioner wrote to the complainant on 14 November 2006 asking for clarification as to what he had received from the Council, as it was not clear from previous correspondence that the Council had supplied him with certain documents in response to his complaint.
27. The Council supplied further sample documents on 20 November 2006.
28. On 20 November 2006 the complainant wrote to the Commissioner, claiming that he had sent the requested information in October 2006, although the Commissioner had no trace of this. The complainant emphasised that his principle concern was that he should have been permitted access to all this information at the time he inspected the end-of-year accounts.
29. On 9 January 2007, the Commissioner wrote to the complainant repeating the request for copies of what he had received from the Council. The complainant responded on 16 January 2007, with copies of the redacted receipts, invoices and time sheets he had been sent.
30. On 3 April 2007 the Commissioner wrote to the Council providing a preliminary assessment that the complainant was not entitled to see unredacted copies of invoices, receipts and cheque stubs. The letter queried whether a decision had been ever been made over the release of deeds to the complainant and asked for the Council's explanation of which exemptions applied if the information was being withheld.
31. The Council replied on 12 April 2007, indicating that, having taken advice from Warrington Borough Council, it was willing to release the lease for Wroxham Road. It asked for advice as to whether it should supply it to the complainant straight away or offer it to him when he came to view the following year's accounts.
32. On 1 May 2007 the Commissioner wrote to the Council to inform it that the complainant's access request was made under the ACA and as such it fell outside the scope of the Act by virtue of the exemption at section 21. The Commissioner stated he had no power to compel the release of the information under the Act.
33. On 1 May 2007 the Commissioner also wrote to the complainant to inform him of this decision.
34. The complainant replied on 10 May 2007 declining to withdraw his complaint and commenting that the Act offered his only realistic means of redress. He claimed to have been told by the Audit Commission that if he wished to enforce the rights provided by the ACA he would need to take the Council to court.



## Analysis

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35. The full text of the relevant regulations can be found in the legal annex, however the salient points are summarised below.

## Exemption

36. The Council claimed the exemptions under sections 40, 41 and 43, however during the course of the investigation it became apparent to the Commissioner that section 21 was the applicable exemption. Therefore this Decision Notice does not consider the exemptions identified by the Council.
37. Section 21 exempts information from the right of access under the Act where the information requested is reasonably accessible to the applicant by other means. In considering whether the exemption at section 21 applies the Commissioner therefore examined two things: –
- Was the information which was the subject of the request accessible otherwise than under the Freedom of Information Act 2000?
  - If so, was it reasonably accessible to the applicant?

## Was the information accessible otherwise than under section 1 of the Act?

38. The ACA provides a specific right for any person to inspect and makes copies of a Council's end of year accounts and related material.
39. On 7 July 2006 the complainant asked for access to several items in relation to the 2005/06 end of year accounts, and subsequently complained that information relating to invoices and receipts, cheque stubs, community centre user groups and deeds and leases was withheld, either in whole or in part. Each of these items would appear to be accommodated in the list of accessible information at 15(1)(a) of the ACA.
40. The complainant displays awareness of his rights under the ACA and associated Regulations and it seems to have been his intention to invoke those rights. Whilst not a requirement of the Act, his initial access request to the Council makes no reference to it (it is introduced by the Council, in its response) citing instead "(SI2003/533) Audit Commission Act 1998". His email, complaining about the slight delay in his appointment to inspect the accounts, points out the Council's duty to make them available in accordance with ACA requirements. In his letter to the Council of 14 August 2006, he insists he has a right to view invoices which the Council propose to withhold: "...these invoices may have been generated in the last financial year but were collected and recorded in the current audit returns".
41. In his letter of 20 November 2006 the complainant comments that he has inspected the end of year accounts on "many" previous occasions, and that it is only since his request to view the 2004/05 accounts that he has encountered

restrictions on what he has been permitted to see. The 2004/05 request coincided with the first year in which the Act's "right to know" was introduced and it seems reasonable to assume that prior to this his applications were dealt with as requests under section 15(1) of the ACA. The complainant has also displayed knowledge of the rights conferred by this legislation in correspondence on the complaint he submitted to the Commissioner about the handling of his request to see the 2004/05 end of year accounts.

42. The Commissioner therefore considers that the items withheld from the complainant's request to view the 2005/06 accounts fall within the scope of the information listed at 15(1)(a) of the ACA and are therefore accessible under that legislation.

### **Was the information reasonably accessible to the applicant?**

43. In order for information which is available other than under the Act to be exempted from disclosure under section 21, it must be reasonably accessible to the applicant. Section 21(2)(b) of the Act states

"Information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment".

44. The ACA establishes a right to inspect end-of-year accounts and related information, prior to its audit. However it also extends beyond the right of inspection and establishes, at section 15(1)(b), the right to "make copies of all or any part of the accounts and those other documents." The right is therefore also a right to a hard copy of the information, where the applicant requires it.
45. The Commissioner is mindful that the rights conferred by the Audit Commission Act only apply within a limited timeframe ("at each audit"). Section 14 of the Accounts and Audit Regulations 2003 (SI 533) sets this viewing window at twenty working days, with section 16 of those Regulations requiring Councils to publish a notice giving information about when and where the accounts and related material may be viewed.
46. The complainant submitted his access request on 7 July 2006, asking to be allowed to view the accounts at the Council offices on either 13 July or 17 July 2006. The Council was unable to accommodate these dates and asked him to specify mutually convenient alternatives. The visit eventually took place on 26 July 2006. The complainant therefore waited three weeks between submitting his request and accessing the information, which was within the time period specified by the ACA for viewing the accounts prior to their submission to an external auditor.
47. The Commissioner therefore considers that the information which was the subject of the request was reasonably accessible to the applicant. This, taken with his



view that the information is available otherwise than under section 1 of the Act, means the Commissioner considers that the exemption at section 21 applies.

48. The Commissioner considers that this exemption applies irrespective of whether the requested information was actually made available to the applicant. The Commissioner recognises that he has no power to examine the Council's compliance with the requirements of the ACA; this is discussed below, in the "Other Matters" Section.

## **The Decision**

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49. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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50. The Commissioner requires no steps to be taken.

## **Other matters**

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

## **Procedural Matters**

52. The Council's initial refusal notice did not meet the standard set out at section 17 of the Act. It did not give sufficient information about why the exemptions which it identified applied (albeit the Commissioner subsequently identified section 21 as the appropriate exemption); it did not explain how the public interest had been considered in its decision to withhold information in reliance of section 43; and it failed to give information about the complainant's rights of appeal.
53. The Commissioner has dealt with this separately by drawing the Council's attention to the requirements of section 17.

## **Claiming the appropriate exemption**

54. The ACA provides clear rights of access to the sort of end-of-year account information the complainant is seeking. The Commissioner has no authority to examine the decisions made by Councils in discharging their obligations under this legislation.
55. The Council has not itself claimed that the exemption at section 21 applies, however the Commissioner has exercised his discretion in treating it as though it

had and directing the applicant to pursue his rights under the ACA. The Commissioner considers that section 21(2)(b) of the Act is aimed at preserving intact existing legal regimes which provide access to information. The Act is not designed to subsume other legal access rights, or to give alternative routes of access where existing regimes are already available. The Act's access rights are therefore supplementary in character; they build on but do not replace existing access rights, unless the Act or other legislation specifically revokes them. Those existing rights, and the separate procedural regimes which are tailored to them, continue in place, and the Act observes corresponding limits to its role. This acknowledges both the distinctive policy considerations underlying those discrete access regimes, and also the need for orderliness in avoiding confusion between regimes.

56. In reaching this view the Commissioner is mindful of the Tribunal's thinking in *England and Bexley v the Information Commissioner* (EA/2006/0060 & 0066), in which it commented that it could see nothing in the Information Tribunal (Enforcement Appeal) Rules 2005 (SI 2005 No 14) which would prevent the Tribunal from allowing a party to amend a Notice of Appeal to claim an exemption it had not previously claimed.

## Right of Appeal

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57. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 7<sup>th</sup> day of August 2007**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Freedom of Information Act 2000

#### Refusal of Request

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

#### Information Accessible by other Means

**Section 21(1)** provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

**Section 21(2)** provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

**Section 21(3)** provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”

## **Audit Commission Act 1998**

### **Access to end of year accounts**

**Section 15(1)** provides that –

“At each audit under this Act, other than an audit of accounts of a health service body, any persons interested may-

- (a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and
- (b) make copies of all or any part of the accounts and those other documents.”

## **The Accounts and Audit Regulations 2003 (SI 2003 533)**

### **Public inspection of accounts**

**Section 14 (1)** provides that –

“Subject to paragraph (2), the relevant body or, as the case may be, the chairman, notified under regulation 13, shall make the accounts and other documents mentioned in section 15 of the 1998 Act available for public inspection for 20 working days before the date appointed by the auditor under that regulation.”

**Section 14 (2)** provides that –

“The council of a parish, or the chairman of a parish meeting of a parish not having a separate council, notified under regulation 13, shall make the accounts and other documents in relation to a period to which regulation 9(3) applies available for public inspection on reasonable notice.”

### **Notice of public rights**

**Section 16 (1)** provides that –

“Not later than 14 days before the commencement of the period during which the accounts and other documents are made available in pursuance of regulation 14, a relevant body to which regulation 11(2) applies, or in the case of a parish meeting, the chairman of the meeting, shall give notice by advertisement of the matters set out in paragraph (2).”

**Section 16 (2)** provides that –

“The matters referred to in paragraph (1) are -

- (a) the period during which the accounts and other documents referred to in paragraph (1) will be available for inspection in accordance with regulation 14;
- (b) the place at which, and the hours during which, they will be so available;
- (c) the name and address of the auditor;

Reference: FS50136185



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- (d) the provisions contained in section 15 and section 16 of the 1998 Act; and
- (e) the date appointed under regulation 13.”