

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 August 2014

Public Authority: Kingston Parish Council
Address: Kingston Community Pavilion
St Pancras Green
Church Lane
Kingston
Lewes
BN7 3LN

Decision (including any steps ordered)

1. The complainant has requested from Kingston Parish Council information including all documentation relevant to a specific councillor and specific projects relating to finance and accounts, and a particular audit including all instructions to the auditor. In addition she has requested general information about council finances and copies of documentation relating to informal or confidential meetings. Kingston Parish Council relied on section 14(1) and deemed the request to be vexatious.
2. The Commissioner's decision is that Kingston Parish Council has correctly applied section 14(1) to the request.
3. The Commissioner does not require the council to take any further steps.

Request and response

4. On 29 November 2013, the complainant wrote to the council and requested information in the following terms:
 1. *"all documents, including memos, notes of telephone conversations, notes and minutes of meetings, and emails, relating to the questions raised by [named councillor] in his email of 10th October 2012, with reference to the previous administration's accounts and the two main projects, and*

- subsequent audit, excepting those documents already supplied.*
2. *I particularly request any minute relating to this issue, **including the minute approving the audit.***
 3. *I request all correspondence and written instructions or notes of instructions to the auditor, [named individual] relating to the audit held in January 2013.*
 4. *all emails and correspondence relating to Council finance from the date of my earlier request, the 9th of November, 2012 to April 2013, and any finance papers that were considered by the Council between October 2012 and May 2013 excepting those available on the website.*
 5. *I request also, under the Freedom of Information Act, all minutes or notes of meetings, and agendas, for **all** the Council's informal, or confidential meetings, or Call-Over meetings as I understand the Council now calls them, from May 2011 to date, excepting those already supplied. I include in this request those notes or minutes taken by Councillors, which I believe are circulated to Councillors."*
5. The council responded on 19 December 2013. It stated that it considered the request to be vexatious in accordance with FOIA section 14(1).
 6. Following an internal review requested by the complainant, the council responded on 27 January 2014. It upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 5 February 2014 to complain about the way her request for information had been handled.
8. The Commissioner considers the scope of the investigation is to determine whether the council was correct to rely on section 14(1).

Reasons for decision

9. Section 14(1) FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
10. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*

(GIA/3037/2011). The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

11. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
12. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

“importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).

13. In the Commissioner’s view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests¹. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

The request has the effect of harassing the public authority

15. The council has explained that the complainant was formerly a member of the council and held a position within the council for a number of years up until 2011. She attained a senior position within the council.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

16. The council stated that since 2011 the complainant has submitted a large volume of correspondence including many requests made under the FOIA. All of the correspondence and requests have stemmed from interest in a pavilion project and finances, and proposals to dispose of the council's St Pancras Green property.
17. Some of the previous requests have already been dealt with by the Commissioner under decision notice FS50498238.
18. The council asserted that the requests and correspondence received from the complainant amount to a campaign against the council which is driven by personal interest. The request covered by this decision notice comprises five elements and the Council has stated that parts 1, 2 and 3 were, at the time of the request, subject of a complaint to the Commissioner which resulted in the issue of a decision notice. With regard to part 4, the complainant had already been advised that the information was already published and in respect of part 5 the council had already explained that call over meetings were held in between main meetings for the purpose of catching up on matters in hand and that anything discussed was taken forward to main meetings. There was no requirement to attend and no requirement for minutes to be taken. The council's view therefore was that the request had no serious value or purpose because it had already addressed the topics covered by the new requests.
19. In her submission to the Commissioner, the complainant explained that initially she wished to follow the progress of a project in which she had been involved. Her interest, she asserted, was frustrated as relevant papers were not made available to the public in the normal manner. This prompted her requests under the FOIA as she felt that it was apparent that the meaningful discussions were being conducted by email and during confidential meetings. In seeking a decision from the Commissioner, the complainant has stated that the matter is of some importance and public interest. The Commissioner notes that the assessment that the matter is of some importance and public interest has been made as a result of the complainant's frustration following the council's responses. There has been no evidence submitted to the Commissioner to suggest that there is any wider public interest in the information requested.
20. The Commissioner has considered the purpose of this request in the context of previous requests and in the context of the complainant's previous position within the council. The complainant would have understood the impact of her requests on the council in terms of time, cost and the implications for other work. She should also have known

that her most recent request was unlikely to yield the disclosure of further information given that the council had already addressed similar requests. In light of this, the Commissioner finds that the effect of the requests is to harass and disrupt the public authority.

21. The council has also argued that the complainant's correspondence has included accusations of the council withholding or misappropriating information and acting in secrecy. The council asserts that it publishes all of its papers and meeting information on its website and complies with all audit requirements. Furthermore, the council has apprised the Sussex Association of Local Councils of the details of the complainant's interaction with the council and states that it has the support of this regional advisory board.
22. In addition, the council asserted that the complainant has attended open meetings. Since August 2011, the complainant attended twelve meetings and the council asserts that following most of the meetings she would contact the council, sometimes with FOI requests or accusations that discussions had been prepared and not openly debated. She would level criticism at the council which included an accusation that the council purposely failed to put on outside lights to discourage attendance at meetings.
23. The council also asserted that at the last meeting attended by the complainant in March 2013, she became agitated and confrontational, raising her voice and levelling accusations regarding the pavilion project culminating in her storming out of the meeting. In providing the Commissioner with background to support its application of section 14, the council has further stated that the complainant has, during the course of her correspondence and interaction with the council, specifically questioned the actions of one Councillor and that relations had become strained between the Councillor and complainant.

The request imposes a burden on the public authority

24. The council has argued that the pattern of requests submitted by the complainant has imposed a significant burden on its limited resources.
25. The current clerk, who assumed the role in December 2012, has documented 82 hours of work time in administration, research and providing responses to the complainant's requests. The cost to the council is approximately £1000. The clerk is employed for 10-15 hours per week and based on the maximum hours worked, handling the requests has amounted to 1.5 months of work in the year. This indicates that the requests have diverted the council from its core business and

therefore attention to other village and council matters has necessarily been delayed.

26. The two individuals who held the position of clerk prior to the appointment of the current clerk had resigned citing work pressure and stress. At a public meeting held on 14 January 2014, a village resident asked about the high turnover in clerk recruitment. The recorded response stated that whilst the main reason was personal circumstances, there were other contributing factors. The recorded response cited onerous demands regarding Freedom of Information which took a disproportionate amount of Clerk time. The council has confirmed to the Commissioner that it has never received a request under the Freedom of Information Act other than from this complainant; therefore the reference to onerous demands and disproportionate time spent can relate only to correspondence from this complainant.
27. Taking into account the context and background to the request, the Commissioner also considers that the complainant's persistence in terms of communication has reached the stage where it could reasonably be described as obsessive. This in turn has led to the requests posing a significant burden on the council's limited resources and has diverted it from other business.
28. The Commissioner notes that the complainant is rarely satisfied with any response from the council and continues to submit correspondence. He accepts that it is therefore understandable that the council believes that there will be no end to the requests and correspondence.
29. The Commissioner has considered both the public authority's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that Kingston Parish Council was correct to find the request vexatious.

Right of appeal

30. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

31. 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.
32. 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

Alexander Ganotis
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