

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 16 October 2014

Public Authority: Mevagissey Parish Council (the "Council")
Address: Trevellion
School Hill
Mevagissey
Cornwall PL26 6TH

Decision (including any steps)

1. The complainant has requested information from the Council concerning the consultation and decision making process adopted by the Council relating to the introduction of a dog control order on Portmellon Beach. The Council provided a late response to the request and initially did not provide any information relying upon section 14 of the FOIA. Subsequent to the Commissioner's involvement the Council provided some information.
2. The Commissioner's decision is that the Council has met its obligations under regulation 12(4)(a) of the EIR in that no further information is held. However it has failed to provide a response to the request within the statutory time frame of 20 working days. He upholds this part of the complaint but requires no further action to be taken as a response has now been provided to the complainant.

Request and response

3. On 19 December 2013, the complainant wrote to the public authority and requested information concerning the introduction of a dog control order in relation to Portmellon Beach including details as to the public consultation undertaken and other related matters. The wording of the request can be found in Appendix A.

4. On 15 January 2014 the complainant wrote to the Council to enquire as to the progress in dealing with the request.
5. On 27 February 2014 the complainant wrote to the Council again to enquire as to progress.
6. On the same date the Council advised that due to absence from the office the request had not been dealt with but would be considered and a response provided. No indication was given by the Council as to when a response would be received although it was explained to the complainant that the delay had been due to the fact that the Council had only one part time employee who had not been available for a period of time.
7. On 6 March 2014 the Council provided a response to the request. It advised that it was refusing the request under section 14 of the FOIA on the grounds that responding to the request in its entirety would cause a disproportionate amount of disruption given the limited resources available to the Council.

Scope of the case

8. The complainant wrote to the Information Commissioner ("the Commissioner") on 18 March 2014 stating he was not satisfied with the response to his request for information in that the response had not been dealt with within the required timescales and that he did not accept that the request represented an unreasonable burden upon the resources of the Council in view of concerns about the way in which the Council had reached an agreement to impose a dog control order.
9. Since the commencement of the investigation by the Commissioner the Council has provided a more detailed response to the complainant including the provision of a significant volume of information which was held by the Council and falling both within and outside of the scope of the request. In addition further information has been made publicly available by way of an extensive report which has been prepared to consider the validity of the decision making process in relation to the introduction of the dog control order on Portmellon Beach.
10. The information released by the Council has resulted in the scope of the complaint being narrowed to the extent that the only issue remaining is whether any further information is held in respect of point 8 of the request dated 19 December 2013.

11. The complainant has advised the Commissioner that he believes further information exists and remains concerned about the issue of timeliness on the part of the Council in relation to his request and the way in which his request was handled.
12. Therefore the scope of this case has been to consider whether further information is held by the Council in respect of part 8 of the request and whether the Council has met its obligations under the applicable statutory regime including in relation to the issues of timeliness.

Reasons for decision

Is the requested information "environmental"?

13. "Environmental Information" is defined at regulation 2 of the EIR. In order for it to be environmental, information must fall within one or more of the definitions set out at regulation 2(1)(a) to (f) of the EIR – constituting "information on" any of the subjects covered by those six sub-sections.
14. The complainant has requested information concerning the consultation and decision making process leading to the implementation by the Council of a dog control order on Portmellon beach.
15. As part of his investigation as to whether these requests fall under the FOIA or the EIR the Commissioner has considered documentation and information provided by the Council and complainant which detail the matters which are the subject of the request.
16. Having considered the documentation provided, the Commissioner is satisfied that this request falls to be considered under the EIR as the information sought relates to consideration of a factor which affects or is likely to affect the environment, i.e. the control of dogs and dog related activities on a public beach during the summer months.

Regulation 5 – Duty to make environmental information available

17. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request.
18. A claim that information is not held is covered by an exception under regulation 12(4)(a) of the EIR.

Regulation 12(4)(a) EIR

19. Section 12(4)(a) of EIR states that, "For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that – (a) it does not hold that information when an applicant's request is received."
20. In situations where there is a dispute between a public authority and a complainant about whether the requested information is held, the Commissioner applies the civil standard of the balance of probabilities. The Commissioner must therefore decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. In making this decision the Commissioner will in particular consider the extent of the scope and quality of the searches and other explanations offered as to why the information is not held.
21. The Council has provided the Commissioner with some of the documentation it has already given the complainant and advised the Commissioner of the other documentation that has been provided. However, as the complainant has now limited the scope of his complaint to the issue of point 8 in his requested dated 19 December 2013 the Commissioner has only considered this point in his decision.
22. As part of his investigations the Commissioner has become aware of the local debate that has been ongoing centred upon the issue of whether a dog control order should be introduced on Portmellon Beach at specific times of the year. From the information provided by both parties the issue has been discussed for some time with public consultations undertaken. The complainant is concerned that there have been irregularities in the way in which the Council took the decision to impose a dog control order. This has been subject to scrutiny by Cornwall Council.
23. Whilst being aware of the complainant's concerns about alleged irregularities in decision making processes, the investigation of the Commissioner has focussed upon whether the Council has met its obligations under the EIR in respect of part 8 of the request dated 19 December 2013. i.e. whether any further information is likely to be held by the Council up to and including the date of the request.
24. As part of his investigation the Council has advised of the searches made for the requested information. These searches were carried out after the involvement of the Commissioner. As a consequence a considerable amount of documentation was provided to the complainant which was not provided in the original response to the request.

25. From the enquiries made by the Commissioner it was clear that the amount of information retained by the Council appeared to be fairly limited in scope as the current clerk would appear to have inherited a limited amount of documentation from the previous clerk. The current clerk has held his position since August 2013.
26. Enquiries made by the present clerk of the previous clerk revealed that no email correspondence had been retained. It would appear that correspondence was deleted fairly quickly as part of the normal course of business. Some physical hard copy documentation was retained and was in the possession of the present clerk.
27. The complainant has advised the Commissioner that he is aware that the Council has received correspondence from members of the public and believes that there must have been more communications between the Chairman of the Council with other Councillors and the Clerk and Cornwall Council about the issue of a dog control order on Portmellon beach than has already been provided.
28. The Commissioner is of the view that information may well have existed at some point, especially in 2012/2013 when the public consultation was ongoing in relation to this issue. However, it is clear from the investigation that a clear retention policy had not been established with the previous clerk not having retained any information on his personal computer following his resignation from his position in August 2013. The present clerk is only able to access information that he retained on his own computer or which is held in hard copy.
29. Shortly before the conclusion of the Commissioner's investigations the complainant advised that he is aware discussions have been ongoing between Cornwall Council and the Council about the practicalities involved in the introduction of a dog control order.
30. The Commissioner has established with the Council that documents do exist in relation to such discussions with some email correspondence existing between October 2013 and the date of the request between the Council and Cornwall Council. This further information has been provided to the complainant.
31. Having considered the explanations provided by the Council including, the extent of the information disclosed during the Commissioner's investigation; the lack of continuity that would appear to have existed previously in the managing of records following a change of clerk; the nature of the subject matter itself; and how such information is likely to be recorded, the Commissioner considers that, on the balance of probabilities, the outstanding information is not held.

The Public Interest Test

32. Regulation 12(1)(b) of the EIR requires that all exceptions, including regulation 12(4)(a), are subjected to a public interest test. However, it is not possible for the Commissioner to do this given his finding that the Council does not hold any additional information falling within the remaining scope of the request to which the public interest could apply.

Regulation 5(2) of the EIR

33. Regulation 5(2) of the EIR states:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

34. The Council has confirmed to the Commissioner that it was late in providing a response to the complainant as it has one part time employee who holds the position on a voluntary basis. This individual was unavailable for a period of five weeks and the request was not dealt with. The Council has apologised to the Commissioner and explained its difficulties to the complainant at the time of the acknowledgement of receipt of the request.
35. The Commissioner has had to consider whether the Council has met its obligations under the EIR in relation to the issue of timeliness of response to the request. The request was made on the 19 December 2013 and the council did not provide its response until 6 March 2014. This is outside the required 20 working days. Therefore the Commissioner finds that the council has breached regulation 5(2) of the EIR.

Other Matters

36. The Commissioner notes that it has taken some considerable time for the information that did exist to be provided to the complainant even after the involvement of the Commissioner. Whilst acknowledging the difficulties faced by small parish councils from a resource point of view the Commissioner has to reiterate that the obligations under the EIR must be met. In this case the length of time taken to provide basic information such as Council minutes was unacceptable.
37. In this instance the Commissioner notes that there are steps which the Council could have taken to have avoided a lengthy EIR request being made. It is noted that some of the Council Minutes were not publicly available at the time of the request (although the website has been updated since) and that a more proactive use of the Council's website,

such as the adoption of a publication scheme, could have avoided some of the issues faced in this matter.

38. The adoption of simple administrative procedures in relation to records management and ensuring publication of key information on a regularly maintained website would have avoided some of the frustrations clearly felt by the complainant who perceived the Council as not being open and transparent in its dealings with him.

Right of Appeal

39. 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 1234 504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

40. 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.
41. 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

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

Appendix A

Request of 19 December 2013

" I am writing to make a request for information and also have some queries relating to the disclosure and publication of information in the public interest, under the freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 and the Local Government Act 1972.

Please provide:

1. [i] A copy of the "Written Notice of Special Motion" regarding dogs, referred to in the Minutes of the Council Meeting held on 17 October 2013. [11] Please also include any papers or correspondence (postal & email) between the Council members (including the Clerk) and/or external bodies relating to this notice. [iii] Please provide a summary of notes taken of statements, comments or discussion on this item at the Council meeting held on 17 October 2013, if any.

Also, please state:

a. If not clearly stated within the Written Notice, any grounds and FOIA exemption/exclusion upon which the Written Notice was not published alongside the meeting minutes nor its content summarised within the minutes, so interested members of the public may understand why the Council's dog control order resolution of 20 June 2013 was rescinded and the status of the Council's pursuit of a dog control order on Portmellon Beach.

2. Analysis of the results of the public consultation conducted by Mevagissey parish council regarding dog controls on Portmellon Beach, which closed on 30 May 2013 and was discussed at the Council meeting on 20 June 2013. Including all email and postal responses sent directly to Mevagissey Parish Council, please state:

a. the total number of public consultations responses received between 26 April 2013 and 30 May 2013.

b. of the responses, the total number in favour of dog controls/restrictions

c. of the responses, the total number against dog controls/restrictions

d. of the responses, the total number unclassified/unclear/neutral/discounted/rejected

e. any grounds and FOIA exemption/exclusion as to why these results have not been published

3. Copies of all responses (postal and email) received by Megavissey Parish Council in reply to the public consultation referred to in item 2. Please

include any and all responses that were discounted (2d) and provide a reason for each response that fell into this or an equivalent category i.e. were not counted within total responses in favour (2b) or against (2c) dog controls/restrictions.

4. A copy of the papers sent to Mevagissey parish Councillors in preparation for discussion on agenda item 13 of the Council meeting held on 20 June 2013. Please include [i] any summary of the results of the public consultation and [ii] any notice/rationale for the proposed three-month dog ban, sent prior to the meeting.

5. The evidence received by Mevagissey Parish Council which led to the Chairman's statement at the Council meeting on 20 June 2013 that there had been an increase in the number of dogs on Portmellon Beach due to the Dogs Love Portmellon website. If no correspondence or documentary evidence exists, I would be grateful if the clerk could attempt to establish the source/date and basis of these assertions made at the Council meeting and additionally in correspondence with the public.

6. A copy of the petition (and any covering letter) received by Mevagissey parish Council in favour of dog controls/restrictions that was referred to at the Council Meeting 20 June 2013. If not clear on the document itself, please state the:

- a. date the petition was received by Mevagissey Parish Council*
- b. specific proposition /declaration upon which members of the public were asked to sign the petition*
- c. total number of signatures on the petition*
- d. name of the person(s) who collected/submitted the petition*
- e. method of collection of the signatures*

7. Regarding the original letter of complaint and request for a dog ban on Portmellon beach received by the Chairman from [Name redacted] dated 17 August 2012, Please state [i] the date this letter was received by the Chairman and [ii] the date this letter was provided to the Clerk – if this specific date is not stamped or recorded, please state if it was before, during or after the Council meeting on 16 August 2012.

8. In addition to items above, please provide all information created, sent and received by the Clerk (current and previous), Chairman and Councillors, including documents, drafts, letters, emails/replies, notes and recordings on the matter of dogs on Portmellon Beach that I have not yet received.

For your convenience, Schedule A (at the foot of this letter) lists all the documents I received in a response listed in Schedule A; documents and

correspondence I have sent to, or received from Mevagissey Parish Council and documents that are publicly available on the Parish Council Website. To aid the Clerk and the Councillors, below is a list of some of the information I require. The response to this FOIA request should include, but not be limited to, all following documents and correspondence (postal and email):

- a. All correspondence to and from Cornwall Council regarding dogs on Portmellon beach, the proposed dog control orders (both six and three-month dog ban proposals) and dog control orders in general.*
- b. All correspondence to and from or regarding the three owners of Portmellon beach (identified at the Council meeting on 20 September 2012) about dogs on Portmellon beach and the proposed dog control order, including any notices sent to advise them that the matter would be on Council meeting agendas.*
- c. All correspondence to and from any advisory and membership bodies such as NALC and CALC regarding dog control orders. Please also include [i] the original request for legal advice from Mevagissey Parish Council that was responded to by the letter from NALC to CALC dated 11 October 2012 and [ii] the response from Mevagissey Parish Council to the request for further information within that letter.*
- d. All correspondence between members of the public and Mevagissey Parish Council regarding dogs and dog control orders, including but not limited to, [i] complaints about dogs and support or objection to dog controls/restrictions received between 1 January 2009 to the start of the informal public consultation on 26 April 2013. Please include copies of [ii] all letters of complaint about dogs received and held by the Chairman as referenced in Council meetings starting 20 September 2012 (to-date, one letter has been provided from [Name redacted]) [iii] Please also include a copy of the 4th letter objecting to the proposed ban (as voted for on 16 August 2012) which was referred to in the Council meeting on 18 October 2012 (to date, two letters have been provided – from [Names redacted] and I wrote the third, a copy of which is not required) and [iv] all letters received between 16 August 2012 and 20 September 2012 in support of the proposed ban, referred to by the chairman at the Council meeting on 20 September 2012 and 18 October 2012 (no letters have been provided to-date).*
- e. All email exchanges between Mevagissey Parish Council members, including the Clerk, in relation to dog control orders and dogs on Portmellon Beach in recent years.*
- f. All email exchanges between Mevagissey Parish Council members, including the Clerk and Chairman regarding my previous FOIA requests on 28 September 2012 and 21 March 2013.*
- g. All email exchanges between Mevagissey Parish Council members, including the Clerk and Chairman in relation to the Dogs Love Portmellon campaign, to myself and other campaign supporters, those opposed to dog restrictions on Portmellon Beach, the dogsloveportmellon.com website, the*

Dogs Love Portmellon Report and petition submitted on 30 May 2013 or interim petition submitted on 14 November 2012. Please include the emails from the Clerk originally distributing the Dogs Love Portmellon campaign report and petition file [i] on 30 May 2012, and interim petition [ii] dated 14 November 2012 to Councillors and any commentary, summary or analysis provided and any response to that email.

h. All correspondence and email exchanges between Council members themselves and/or members of the public (including the Beach owners) in consultation about the three-month July-September dog ban proposed by the Chairman at the Council meeting on 20 June 2013.

i. The full letter dated 15 June 2009 sent from [Name redacted] to Cornwall County Council requesting a sign, referred to by the Chairman at the Council meeting on 20 June 2013. The first/cover page only was provided to the FOIA response I received on 5 October 2012.

Not in relation specifically to dogs on Portmellon Beach, please also provide documents, which do not appear to be published on the parish council website:

9. A copy of the minutes of the Parish Annual Assembly held on 9 May 2013

10. A copy of the Minutes of the Parish Council GM and results of the election of officers held on 9 May 2013.

11. A copy of the Parish Council minutes of the meeting held on 4 July 2013 referred to in the minutes of the meeting held on 18 July 2013. Please note that the Parish Council website appears to have two entries for 20 June meeting, rather than minutes for the meetings) on 4 July 2013.

12. A copy of the Parish Council minutes of the meeting held on 12 September 2013. Please note that the Parish Council website link for the September meeting minutes downloads the October meeting minutes."