

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2017

Public Authority: Castle Bromwich Parish Council
Address: Council Offices
Arden Hall
Water Orton Road
Castle Bromwich
Solihull
B36 9PB

Decision (including any steps ordered)

1. The complainant requested information from Castle Bromwich Parish Council ("the council"). She sought a photocopy of all signed agendas, minutes and meeting papers from 30 March 2016 onwards, or draft minutes if signed minutes were not available. The council refused to comply with the request on the basis that the exemptions under section 21 and section 22 were engaged under the Freedom of Information Act 2000 ("the FOIA"). These exemptions relate to information that is already reasonably accessible and information intended for future publication. The complaint about the use of these exemptions was informally resolved however there remained a complaint about access to the meeting papers requested. The council sought to rely on the exemption under section 14(1) relating to vexatious requests. The Commissioner was not persuaded that this exemption was engaged. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:

- Regarding information relating to the minutes and agendas referred to by the complainant as “meeting papers” (identified specifically by the complainant in a list provided to the council on 13 July 2017), the council should:

(a) Confirm whether or not it held this information at the time of the complainant’s request on 12 September 2016 in accordance with its obligation under section 1(1)(a) of the FOIA. It should write directly to the complainant to comply with section 1(1)(a).

(b) If the information was held, the council should either provide that information directly to the complainant in accordance with section 1(1)(b) of the FOIA or, if the information is considered to be exempt, provide a valid refusal notice to the complainant in accordance with its obligations under section 17 of the FOIA. This should state that an exemption is considered to be engaged, state which one applies to the information and explain why it is considered to be engaged. This should include any relevant public interest considerations. The council should not seek to rely on section 14(1) as the Commissioner has found that this was not applied correctly.

(c) To the extent that any of the information within the scope of the request is “environmental information”, the council should consider the information in accordance with the provisions of the EIR. It should either make the information available to the complainant in accordance with regulation 5(1) or rely on a relevant exception in accordance with regulation 14 of the EIR.

2. The public authority 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

3. On 12 September 2016, the complainant requested information from the council in the following terms:

“Please can I request that you send me a photocopy of all agendas, meeting papers and signed minutes of the Parish Council, committees and youth council meetings that have been arranged from 30th March 2016 onwards? If signed minutes aren’t yet available, could I have a copy of draft minutes?”

I am happy to arrange for these to be collected if that is easier but would need you to let me know when they will be ready”.

4. On 21 September 2016, the complainant sent a reminder and said that she wanted the information for a forthcoming meeting. She said that she would like to receive it by 28 September 2016.
5. The council replied on 6 October 2016. It referred to staff shortages and said that as soon as the minutes are done they will be on the website. It said that this would hopefully be in the near future. The council also sent a further reply on 26 September 2016 stating that the documents requested were dated after the grievance raised by the complainant. It asked the complainant to explain why she needed the information.
6. The complainant replied on 27 September 2016 highlighting that the information should be publicly available.
7. Following the Commissioner's intervention, the council wrote to the complainant again on 29 November 2016 and said that it was refusing her request in reliance on the exemptions at section 21 and 22 of the FOIA. These exemptions relate to information that is already reasonably accessible and information intended for future publication.
8. On 30 November 2016, the complainant wrote to the council asking it to conduct an internal review.
9. The council said that it completed an internal review but did not provide this evidence to the Commissioner as requested.

Scope of the case

10. The complainant contacted the Commissioner on 17 October 2016 to complain about the way her request for information had been handled. She complained to the Commissioner in the following terms:
 - The council's website does not publish the supporting papers for meetings as requested.
 - The complainant was seeking signed hardcopies of the minutes and agendas but the council had instead directed her to the website where this information was not available.
 - It is unreasonable for the council to take so long to place minutes on its website. Although the complainant had been able to download some minutes that had appeared since her request, not all the information was available.
11. During the Commissioner's investigation, the council clarified that the complainant was permitted to attend its offices to take copies of the

signed minutes and agendas. This had not previously been clear to the complainant and this informally resolved her complaint about the use of section 21 of the FOIA. The council also clarified that all of the signed minutes and agendas held falling within the scope of the request were now available because of the passage of time and could be made available to the complainant for photocopying so section 22 was no longer considered to apply. This aspect of the complaint has therefore also been informally resolved.

12. In view of the above, this decision notice is concerned with the information requested referred to as "meeting papers". The complainant described this information as "supporting" or "background" papers relating to the meetings in question and she provided a list of the specific documents she required. This was made available to the council for clarification on 13 July 2017.
13. It may be the case that some of the information caught by the scope of this particular request is actually personal data about the complainant. Personal data must be considered separately in accordance with the rights of subject access provided by section 7 of the Data Protection Act 1998 ("the DPA"). The Commissioner is aware that the council has been considering a separate subject access request at the same time as this request. The Commissioner has not therefore considered access to the complainant's own personal data as part of his investigation.

Reasons for decision

Section 14(1) of the FOIA – Vexatious requests

14. Public authorities do not have to comply with requests for information if they are vexatious under section 14(1) of the FOIA. The Commissioner has published guidance on vexatious requests and for ease of reference, this can be accessed here:

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious rather than the individual submitting it. Sometimes, it will be patently obvious that the request is vexatious. In cases where it is not so clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the

request. Public authorities may also take into account the context and history of the request where relevant.

16. As in many cases that give rise to the question of a whether a request is vexatious, the evidence shows that a grievance exists between the parties. At the time of the request, the complainant was an employee of the council. Prior to the request, the complainant had submitted a complaint that the council had not followed its grievance procedure relating to a personal matter. The complainant subsequently left her post and is pursuing an Employment Tribunal claim against the council.
17. The Commissioner drew her guidance to the complainant's attention and asked her for supporting evidence and argument to justify her view that her request was not vexatious. The complainant highlighted that this was the first information request she had made to the council and her reason for making it was to understand how the council had made decisions at meetings and the process that it has democratically chosen to follow. The complainant considers that the information requested should be available through the council's publication scheme. She has explained that she established a council policy where paper copies of all documents were always produced to be available at every meeting for any members of the public attending.
18. The complainant said that it should not take an excessive amount of time to comply with the request. She said that she is of the view that her request is a straightforward request to copy some basic information and highlights that it is not a request involving complex calculations or deep research. She said that the council is responsible for discharging its obligations under the legislation and should ensure that it has sufficiently skilled staff in order to do this.
19. The complainant argued that the council had compounded any impact upon it by handling the request poorly. The complainant highlights that the council did not keep the information published on its website up to date and did not make it clear how signed copies of agendas and minutes could be accessed. She also said that the council had asked her to explain why she wanted the information, which made it appear that it had viewed the request with suspicion from the outset. The complainant alleges that her request has been mishandled by the council employees who have been involved in her grievance and that these individuals have been unable to deal impartially with the request.
20. The complainant said that she believed that the council could have taken a more conciliatory approach to her request. She acknowledges that she has requested a long list of information however she said that this was produced in order to try to help the council understand more precisely what information was required. She said that if the council had endeavoured to supply what was readily available, she may have found

that information sufficient. She said that without any particular engagement about the content of the information, she could not make that judgement.

21. The complainant denied that her request was too broad with no serious purpose or value. She explained that at the time she had made the request, she was still an employee of the council and fully expected to return to her role there. She said that in part the request had been made as an attempt to keep in touch with decision-making at the council. However, the complainant said that she had some concerns about how the council was being run and was also in part seeking to bring about greater transparency to those processes, and to bring any concerns to the attention of the public.
22. The council said that the complainant had requested large volumes of information. It argued that the complainant was trying to make as much work as possible and requesting information for no valid reason, knowing that it would be difficult to comply due to staff shortages. The council alleges that the complainant was seeking to cause maximum disruption. It argued that the clerk is being prevented from undertaking her general work and has increased work relating to the forthcoming Employment Tribunal instigated by the complainant.
23. The council said that the time taken to look for all of the information requested would be excessive. It highlighted that some of the information requested is already publicly available, for example, a copy of the National Salary Award 2016-2018. It also said that a copy of the loss adjuster's report regarding damage to Arden Hall Roof and reports of representations to outside bodies are requested. The council said that it would particularly question why this information was required other than to bring pressure to bear on the council for personal reasons. The council said that it should be borne in mind that the complainant had not made a request for information involving a specific area but had made a request involving totally widespread coverage which served no valid purpose. While the council had expressed that it was happy for the complainant to call in to take signed copies of the minutes and agendas, similarly, it questioned the value of this exercise.
24. The council argues that the complainant is pursuing a personal grievance against one of the council's employees. It says that a grievance submitted about the complainant's behaviour during her time as an employee at the council is motivating the behaviour.
25. The complainant has explained that there was a serious purpose and value to her request. She has argued that although some minutes and agendas were on the website, these were not signed copies and were not up to date. Information on the website was subject to significant delays and supporting papers for the minutes and agendas is never

published online. According to the complainant, this information was generally made available to the public in paper form in the past.

26. The council concedes that there were delays and that it has struggled because of staff resources. The Commissioner also notes that the council's publication scheme does refer to reports to council meetings being publicly available in hardcopy so it is the case that there has been a commitment by the council to produce some of the information within the scope of the request as a matter of routine publication. It also appears that there was a procedure established in the past whereby more information was communicated to the public as a matter of routine. The difficulties encountered by the council appear to have caused a change to its level of transparency. The complainant has therefore validly highlighted an expectation that much of the information requested would be readily available and that there was a serious purpose in highlighting the change in the council's level of transparency.
27. The other purposes the complainant had for pursuing the request relates to her private concerns about how the council was being run, how it handled her grievance, and a desire to check what was happening during her absence. While the Commissioner can see why the council was concerned that this may have represented a "fishing expedition" to seek out information to use to discredit the council, other than the background circumstances, there is no particular evidence that would support this. It may be that subsequent requests made may have formed part of a pattern of behaviour that would demonstrate a disproportionately hostile approach more clearly but there is simply not sufficient evidence of this in the present complaint. Indeed, there is nothing vexatious *per se* about seeking out evidence of possible failings in public authorities. This is one of the benefits of the FOIA.
28. The Commissioner can see why, considering the background to this matter, the council was concerned about this request and what the motivation behind it may be. In the Commissioner's experience, a personal grievance is often the starting point for a vexatious request or a series of vexatious requests. Nonetheless, the Commissioner's overall impression was that the council had jumped to conclusions too early about the motivation for the request. While the council may believe that the requester had a personal motivation to cause maximum disruption to the council, this is not fully supported. While the request appears to have been a source of difficulty and concern for the council, there is no specific evidence to suggest that the request was made as part of a deliberate attempt by the complainant to harass the council or indeed that it would have had this impact on any reasonable public authority.
29. The Commissioner recognises that the council is a parish council, representing the smallest tier of government. She is therefore emphatic to its limited resources. It also appears that the council was

experiencing significant staffing difficulties around this time, so that is an added factor affecting its performance. However, the Commissioner is mindful that this was the first request that the complainant had made, and the evidence shows that it was not particularly well handled by the council. The Commissioner considers that the complainant has made a valid point about the inappropriate involvement of staff in this matter who were also involved in earlier grievance procedures, although she acknowledges that this is a more difficult aspect to manage in the case of small public authorities with limited resources.

30. The Commissioner also encountered delays and a lack of clarity during her own investigation. When there has been a poor level of engagement with a requester and subsequently with the Commissioner, this generally makes a case for section 14(1) weaker. The Commissioner notes that section 14(1) was relied upon a very late stage by the council and a thorough case was not made even at that stage.
31. The council has suggested that the request would be an excessive burden but this assertion was not well supported. The council has not explained to the Commissioner why it would be so burdensome to produce this information. It may be that the council's records management is not adequate, although the council has not made that case nor has it sought to engage the exemption under section 12(1) relating to costs limits under the FOIA. It is therefore difficult in the circumstances for the Commissioner to accept the council's argument about disproportionate burden when it seems to be the case that similar information had generally been readily available in the past. Again, it is not vexatious in itself to make a broad request, particularly when a serious purpose or value can be shown. Even in a scenario when section 12(1) was engaged, the Commissioner would expect a public authority to attempt to provide advice and assistance to the requester to help them to narrow down the request to bring it under the costs limit.
32. The Commissioner does not consider that the council has made a persuasive case that section 14(1) had been correctly applied in the circumstances of this particular case. The council has not demonstrated that the request represented a disproportionate approach in the circumstances of the case given the serious purpose and value that it had. There was insufficient evidence to show a deliberate attempt to harass, or that this ought to have been the impact of this request. It also did not adequately demonstrate that there was an excessive burden or that it had engaged appropriately to try to manage the request.

Other matters

33. The Commissioner's contact with the council during this investigation and how it has handled this particular request suggests that the council would benefit from reviewing the Commissioner's published guidance to help it to improve its request handling. This guidance is available on the Commissioner's website at www.ico.org.uk.

Right of appeal

34. 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

35. 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.
36. 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

Elizabeth Archer
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF