

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2018

Public Authority: Potto Parish Council
Address: 34 The Birches
Coulby Newham
Middlesbrough
TS8 0VA

Decision (including any steps ordered)

1. The complainant requested a copy of the Parish Council's plan of action in response to the recommendations of its auditors.
2. The Commissioner's decision is that Potto Parish Council ("the Parish Council") failed to respond to the request within 20 working days and has therefore breached Section 10 of the FOIA. She also considers that the Parish Council's response did not amount to discharging its duty under Section 1(1)(b) of the FOIA and therefore breached Section 1 of the FOIA.
3. As the complainant now has access to the information he originally sought, the Commissioner considers that ordering further steps would serve no useful purpose.

Request and response

4. 15 December 2017, the complainant wrote to the Parish Council, citing minutes from August 2017 which mentioned an Action Plan resulting from an Auditors' Report and asked:

"Please provide me with a copy of this Action Plan."

5. On 25 January 2018, the Parish Council responded saying that:

"The 2015-16 Annual Return Action plan is available to view on the Parish Web Site; <http://www.potto.org.uk/ppc.php>."

6. On 26 February 2018, in response to correspondence from the Commissioner's Office, the Parish Council carried out an internal review. It admitted that it had not provided the complainant with a copy of the information, but noted that it had signposted him to where the information could be found.

Scope of the case

7. The complainant contacted the Commissioner on 4 June 2018 to complain about the failure, by the Parish Council, to respond to the request in accordance with the procedural requirements of the FOIA.
8. In that correspondence, the complainant stated that, although he now had access to the information that he initially requested, he felt that a decision notice was required to record, on a formal basis, the Parish Council's breaches of the FOIA.
9. The scope of the Commissioner's investigation was to determine whether or not the Parish Council handled the request in accordance with the procedural requirements of the FOIA.

Reasons for decision

Timeliness

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.*

11. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

12. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
13. Section 10(1) of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
14. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days of receipt, the Parish Council breached Section 10(1) of the FOIA.

Duty to provide information

15. When a public authority receives a valid request for information and confirms to the requestor that some, or all, of the information is held, it must do one of two things: communicate that information to the requestor or; issue a refusal notice which complies with the requirements of Section 17 of the FOIA.
16. In a case involving information which is "reasonably accessible to the requestor," the duty remains the same: the public authority must either provide the information in a permanent format or refuse the request, citing Section 21 of the FOIA.
17. Section 11 of the FOIA defines the methods of providing information as:
 - (a) *the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,*
 - (b) *the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and*
 - (c) *the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,*
18. In this case, the Parish Council – whilst clearly attempting to be helpful – did not fulfil either of the criteria mentioned in paragraphs 15 and 16 above. It provided a link to a document silo where it said the information could be found.
19. The information at the URL provided will necessarily change over time as new documents are added and old ones deleted. The Commissioner does not consider the provision of a link to be a valid way for a public authority to communicate requested information in a permanent form.

She therefore considers that the Parish Council did not properly discharge its duties under Section 1(1)(b) of FOIA.

Other matters

20. The Commissioner is conscious that Potto Parish Council is a small public authority and does not have the same level of resources and expertise to assist it in responding to information requests as larger public authorities.
21. The Commissioner's purpose in issuing this decision notice is not to punish the Parish Council for its breaches but to assist it in complying with the FOIA – should it receive further requests.
22. The complainant would appear to engage in a considerable amount of correspondence with the Parish Council, including the making of requests for information. These requests often result in complaints to the Commissioner about procedural breaches of the FOIA. It is therefore important that the Parish Council is familiar with the procedural requirements for responding to or refusing requests.
23. It is not clear whether, at the time the request was made, the requested information was available on the Parish Council's website. The complainant has provided a screenshot suggesting that it may not have been. However, if the document had been uploaded to the site within 20 working days of the request having been made, the Parish Council would still have been entitled to withhold the information under Section 21.
24. Finally the Commissioner would note her own guidance to public authorities¹ and the comments of the First Tier Tribunal at paragraph 19 of *Ames v Information Commissioner* EA/2007/0110.² In rejecting the suggestion that merely signposting a requester to a website containing multiple documents showed that information was "reasonably accessible", the Tribunal stated that "*It may be different if the public authority were to provide a link or some other direct reference to where the requested information can actually be found*".

¹ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i122/Ames.pdf>

25. In line with this judgement, where the Parish Council cites section 21 on the basis of information being available on a website, it should direct the requester to exactly where the requested information can be found. Referring to a webpage containing a list of information, most of which is not relevant to the request, will not be sufficient.

Right of appeal

26. 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

27. 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.
28. 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
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