

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 10 June 2024

**Public Authority:** Alberbury with Cardeston Parish Council

**Address:** clerk2parishcouncil@yahoo.co.uk

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Alberbury with Cardeston Parish Council ("the Parish Council") relating to two pubs and the land surrounding them. The Parish Council has refused the request under section 12(1) of FOIA (cost limit).
2. The Commissioner's decision is that the Parish Council is entitled to refuse the request under section 12(1) of FOIA, however it has not met its obligations under section 16 of FOIA to provide advice and assistance.
3. The Commissioner requires the Parish Council to take the following step to ensure compliance with the legislation.
  - Provide advice and assistance to the complainant aimed to help them make a fresh request which will not exceed the cost limit, taking into consideration which activities may and may not be taken into account when forming a cost estimate.
4. The Parish Council must take these steps within 30 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**

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5. On 20 October 2023, the complainant wrote to the Parish Council and requested information relating to the Halfway House and/or Seven Stars Inn ("the pubs") from January 1988 to date:

- “1) Agendas and minutes of meetings at which the pubs (and their use of the land surrounding them) was discussed.
  - 2) Any correspondence relating to the pubs and their use of the land surrounding them that has passed between: a. Members of the Parish Council and their clerk b. Members of the Local Authority and Highways Authority c. Members of the public
  - 3) Any correspondence relating to the nomination of, and eventual listing of, the pubs as assets of community value.
  - 4) Any correspondence relating to the review and/or renewal of any such listings.
  - 5) Any plans, maps, photographs of the site during the period.”
6. The Parish Council responded on 27 October 2023 and refused the request; it did not state a valid reason for refusing the request.
  7. Following an internal review the Parish Council wrote to the complainant on 9 November 2023. It refused the request on the grounds of unreasonable costs, citing both section 12 of FOIA and regulation 12(4)(b) of the EIR.

### **Scope of the case**

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8. During the course of his investigation the Commissioner asked the Parish Council to confirm whether its position is that the information requested in some parts of the request is environmental information and other parts not, or whether some or all parts of the request are hybrid requests which cover both environmental and non-environmental information.
9. The Parish Council updated its position to refuse the request solely under section 12 of FOIA as it does not consider that any of the information requested would be environmental information as defined in regulation 2(1) of the EIR.
10. The Commissioner accepts that, from the wording of the request, it does not appear that information held within the scope of the request is likely to be environmental information.
11. This notice therefore considers whether the Parish Council is entitled to rely on section 12(1) of FOIA (cost limit) to refuse the request.

## Reasons for decision

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### Section 12(1) – cost of compliance

12. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit. The appropriate limit for local authorities such as the Parish Council is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the Parish Council.
13. A public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held,
  - locating the information, or a document containing it,
  - retrieving the information, or a document containing it,
  - and extracting the information from a document containing it.
14. It cannot take into account the time taken to communicate the information to the requestor. The Commissioner's guidance on fees that may be charged when the cost of compliance does not exceed the appropriate limit<sup>1</sup> makes it clear that activities such as reproducing any document containing the information, such as printing or photocopying and posting or otherwise transmitting the information, are considered to relate to communicating the information to the requestor rather than any of the four permitted activities listed in the paragraph above.
15. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/fees-that-may-be-charged-when-the-cost-of-compliance-does-not-exceed-the-appropriate-limit/#charge>

16. The Commissioner's guidance<sup>2</sup> is clear that the estimate should be based on how the public authority actually holds its records and that it should be reasonable in terms of the activities required to identify, locate and retrieve the information. It also states:

"There may well be different ways to search for the requested information. This does not mean that you have to consider every possible means of obtaining the information to produce a reasonable estimate. However, an estimate is unlikely to be reasonable where an authority has failed to consider an obvious and quick means of locating, retrieving or extracting the information."

17. At internal review the Parish Council stated, "...we estimate that with 35 years of records there will likely be at least 400 documents, the checking of which will exceed the 18 hours guideline...".
18. In its submissions to the Commissioner, the Parish Council provided further information regarding how it had estimated that the time taken to comply with the request would exceed the appropriate cost limit of £450/18 hours.
19. The Parish Council stated that its records for the years 1988 – 2012 are physically held, as paper records, in the Shropshire Archives on behalf of the Parish Council. The Parish Council is clear that it retains responsibility for and control of these records and that it therefore holds them for the purposes of FOIA. The information from 2013 to the date of the request is physically held by the Parish Council, as a mix of paper and electronic records.
20. The Parish Council stated that it had carried out a sampling exercise based on some of the post 2013 documents that it physically holds and used this to produce the following estimates for the time taken to extract the information in scope from the 1988-2012 and 2013-2023 records respectively.
21. It provided the following estimate for the information from 2013-2023, which it physically holds (numbering added for ease of reference):

"For each year:

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#produce-an-estimate>

- (i) Remove Year File from our storage and unseal. Separate all files into correspondence, planning matters, minutes and agendas: 1/2 hr.
- (ii) Although the complainant has not said this, we assume that the Minutes and Agendas can be sent as electronic files to him, so prepare and send 8 sets of Minutes and 8 Agendas onto several emails (because of the size of files): 1 hr.
- (iii) Search through all paper correspondence and Planning documents manually for any reference to the Halfway House Inn: 1 hr.
- (iv) Photocopy any documents found, prepare for posting and send: 1 hr.

Total 3.5 hrs, multiplied by the number of affected years 2013 - 2023 (10) equals 35 hrs"

22. It provided the following estimate for the information from 1988-2012, which is physically held at the Shropshire Archive (numbering added for ease of reference):

"(v) Travel to Shrewsbury, visit Archives and withdraw the documents, then return to the office: 1 hr.

For each year:

- (vi) Photocopy 8 sets of Minutes and 8 Agendas. Based on our sampling this will take 45 mins.
- (vii) Search through all paper correspondence and Planning documents manually for any reference to the Halfway House Inn: 1 hr.
- (viii) Photocopy any documents found, prepare for posting and send: 1 hr.

Total 2hrs 45 mins, multiplied by the number of years affected (25), equals 68.75 hrs plus the one hour travel time to Shrewsbury, so a total of 70 hrs say"

23. The Parish Council's total estimate for the time it would take to comply with the request is therefore 105 hours, equivalent to £2625.
24. The commissioner has first considered whether the activities listed in the Parish Council's estimate relate to the permitted activities as listed in paragraph 13 of this notice.

25. The Commissioner considers activities (ii), (iv), (vi) and (viii) as listed above to relate to communicating the information to the requestor, rather than any of the four permitted activities, as they refer to photocopying information, posting information and sending the information by email. These activities cannot be taken into account when estimating the time it would take to comply with the request.
26. In addition, with respect to activity (i), the Commissioner does not consider that it is necessary to spend time separating files into correspondence, planning matters, minutes and agendas as the information requested would fall into all of these categories. It is therefore unclear how this would assist with locating the information requested. Removing the file from storage and unsealing it does fall under location and retrieval of the information or a document containing it. However, in the absence of further information about this process from the Parish Council, the Commissioner expects that the time taken to do this would be negligible.
27. The Commissioner considers the remaining activities, activities (iii), (v) and (vii), to relate to the permitted activities as set out in paragraph 13 of this notice.
28. Taking into account only the permitted activities, therefore gives an estimate of 10 hours for the information from 2013-2023 and 26 hours for the information from 1988-2012. The Parish Council's total estimate for the time to complete the permitted activities is therefore 36 hours, which is twice the limit of 18 hours.
29. The Commissioner will now consider whether the Parish Council's estimate of 1 hour per year covered by the request, plus one additional hour for the physical retrieval of the archived records to be a reasonable estimate for the time it would take to carry out the permitted activities.
30. With regards to the quantity of documents held that may contain information within the scope of the request and the time it would take to identify information within the scope of the request, the Parish Council has indicated that it meets eight times a year, so there are eight sets of minutes and agendas for each year to review. It also considers, supported by its experience of having carried out a sampling exercise, that it is identifying information relating to the pubs within correspondence and planning documents that would take up most of this time.
31. Given the high proportion of records held in paper rather than electronic format that would need to be reviewed in order to identify information within scope of the request, the Commissioner considers an hour per year of records to be a reasonable estimate of the time required to carry

out these searches. He also accepts an hour to be a reasonable amount of time to ascribe to the physical retrieval of the records held in the archives.

32. The Commissioner therefore accepts that 36 hours is a reasonable estimate of the time it would take to comply with the request.
33. The Commissioner's decision is that the Parish Council estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Parish Council is entitled to rely on section 12(1) of FOIA to refuse to comply with the request.

### **Section 16 – advice and assistance**

34. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>3</sup> in providing advice and assistance, it will have complied with section 16(1).
35. The Commissioner's guidance on the provision of advice and assistance where a request has been refused on the basis of cost<sup>4</sup> states that the aim of this advice and assistance should be to help the applicant make a fresh request which the public authority can deal with within the appropriate limit.
36. The Commissioner considers it good practice to adopt a constructive approach, aimed at putting the applicant in a position whereby they understand the costs involved in dealing with their request. They can then use that knowledge to make a fresh request which targets the information of most interest to them and which the public authority can deal with within the appropriate limit.
37. When asked how it had met its obligations under section 16 in relation to this request, the Parish Council referred to some advice and assistance it provided at internal review. It had explained to the complainant that they could arrange to view the minutes for the years 1988 to 2012 at the Shropshire Archives, that some of the more recent minutes and agendas were available on its website and that it could provide paper copies of some information from 2013 at a cost. While this information may well have been

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<sup>3</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

<sup>4</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#advice>

useful to the complainant, the Commissioner does not consider that this constitutes advice and assistance that would allow the complainant to make a fresh request which the Parish Council can deal with within the appropriate limit.

38. The Commissioner's decision is therefore that the Parish Council has not complied with section 16(1) of FOIA and it should now provide advice and assistance to the complainant aimed to help them make a fresh request which it can deal with within the appropriate limit, taking in to consideration which activities may and may not be taken in to account in relation to the appropriate limit.

### **Other matters**

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39. Although the Commissioner requires the Parish Council to provide advice and assistance to the complainant aimed to help them make a fresh request which will not exceed the cost limit, the complainant may also wish to consider simply reducing the number of years covered by the request in order to achieve this.



## Right of appeal

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40. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**