

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2018

Public Authority: Kirby Cane & Ellingham Parish Council

Address: kceclerk@gmail.com

Decision (including any steps ordered)

1. The complainant made two information requests with regards to local charities in Kirby Cane & Ellingham Parish Council's (the council) meeting minutes. The council refused the requests under section 14(1) of the FOIA as it considered it to be vexatious.
2. The Commissioner's decision is that section 14(1) of the FOIA is engaged to these two requests.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 9 February 2017 the complainant made the following two information requests to the council with regards to Item 18 of its 15 November 2016 meeting¹ - correspondence relating to local charities:

"I am now asking via the Freedom of Information Act 2000 for copies of the correspondence, email or otherwise, between the Clerk, Chair and other councillors concerning Item 18 from below the minutes of the November 15th 2016 meeting. I am also asking for full details of councillors present for Item 18, those who took part in discussions, what dispensations were asked for and given and what interests were declared."

¹ <http://kirbycaneandellinghampc.norfolkparishes.gov.uk/files/2015/12/16-1115-approved-minutes-full.pdf>

5. And:

"Owing to the absurdity of the above statements, I am now asking via the Freedom of Information Act 2000 for copies of the correspondence, email or otherwise, between the Clerk, Chair and the NP Law solicitor; or, copies of minutes taken, or notes made, during face to face meetings, or telephone conversations with the NP Law solicitor. Also copies of any memos, emails, or other communications between the Clerk and the Chair, other councillors. I also wish to have the reference from NP Law so that I, or my legal representative, can contact them."

6. The council responded on the 8 March 2017 refusing the requests as vexatious and substantially repeated requests as per section 14 of the FOIA.
7. On the same day as the response, the complainant requested the council to conduct an internal review of its refusal of the requests.
8. The council provided its internal review response on the 19 April 2017 upholding its initial refusal.

Scope of the case

9. The complainant contacted the Commissioner on the 25 April 2017 to complain about the council refusing his requests.
10. The Commissioner considers the scope of the case is to determine whether the council is able to rely on section 14 of the FOIA to refuse the complainant's two requests. As the council considers the request to be both vexatious and repeated, the Commissioner will firstly consider section 14(1) of the FOIA – vexatious requests.
11. The Commissioner will only go on to consider section 14(2) of the FOIA – repeated requests – if she finds section 14(1) of the FOIA is not engaged.

Reasons for decision

Section 14(1) of the FOIA – Vexatious Requests

12. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

13. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*². 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.
14. 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.
15. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in her published guidance³. 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.
16. The council has provided the Commissioner with its reasons as to why it has applied on section 14(1) of the FOIA to the complainant’s requests.
17. The council has advised the Commissioner that the crux of the matter is the complainant’s contention that the council owns certain lands given to the community prior to 1894 for the relief of the poor and which have been, for many years, managed by groups of volunteer resident Trustees, some of whom are appointed by the council.
18. These lands are vested in the Charity Commission and the council has told the Commissioner that its understanding is that the Charity Commission has no problems with the current operation of these charities.
19. The council has advised the Commissioner that it has taken the position that beyond its responsibilities to appoint trustees, which it does on a regular basis, the council takes no part in the running of the charities.

² <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The council says that this position is supported by legal advice as well as advice from the Norfolk Association of Local Councils.

20. The council has stated to the Commissioner that it has referred the complainant to the Charity Commission, the regulatory body for charities, on several occasions. However, he has persisted in his belief that the local charities are illegally or fraudulently holding the lands and that the income derived from them is somehow being improperly used, despite being given access to the charities' accounts.
21. The council has advised the Commissioner that this has included the complainant making accusations of fraud and mismanagement and having the police called to a councillor's door.
22. It has told the Commissioner that Kirby Cane & Ellingham is a small parish and the council meets once a month, with the clerk employed part time for eight hours per week to carry out varied tasks associated with the running of a small vibrant village.
23. The council has told the Commissioner that its understanding is that the previous clerk received hundreds of emails from the complainant every month, but after policies were put in place by the interim council, the quantity of emails received from the complainant did reduce following the appointment of the present clerk.
24. Although the correspondence has reduced, the council has advised the Commissioner that the present clerk has received 215 emails from the complainant since early 2014. This averages almost six emails per month from one person, over a three year period.
25. The council has stated to the Commissioner that the amount of time taken on dealing with correspondence received from the complainant can vary, but during periods when he is actively corresponding with the council, it can take up to as much as 5 hours in a month to deal with his correspondence.
26. Even though the amount of correspondence from the complainant has reduced since the current clerk has been appointed, the Commissioner can see how the amount of correspondence still being sent by the complainant over the last three years could have a detrimental impact on the council's resources.
27. With the clerk only employed for 8 hours per week, and dealing with the correspondence that can take up to 5 hours a month, this equates to one sixth of the clerk's time in dealing with one person.
28. The Commissioner is of the view that this would place a burden on the council over a sustained period.

29. The council has stated to the Commissioner that the relentlessness of correspondence being received is discouraging and the language the complainant uses in relation to councillors and the charity trustees as well as questioning the integrity of their motives and behaviour, without justification, has also been very demotivating.
30. The Commissioner is of the view that public figures should expect to be subject to some scrutiny from the public, as they have input on the way things such as public funds are being spent and decisions that are made which may impact the public.
31. However, if the tone and/or language of a complainant's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive then this would add to any weight of support to a request being considered vexatious.
32. In this case, the council has provided some examples of correspondence in which the complainant has stated:
 - On 18 June 2014: *"should I find no reference to ownership of Parish Lands and Assets that I have brought to the attention of councillors and the Clerks, I will relay my findings to the External Auditor. I understand councillors are fully aware that their failure to investigate these matters could result in very costly procedures being taken by the External Auditor"*
 - On 15 December 2016, on making a request to inspect minutes, the complainant made mention *"I understand that, should this request be refused, there is a Standard Level fine of £200 that can be imposed"*.
 - On 25 October 2016: *"I do believe that I have now provided enough concrete evidence for councillors to act upon and to bring these parish assets back into the full contrail of KC&EPC. I shall be copying this correspondence to the MP and asking for further advice regarding any legal steps that I can take in order to ensure that KC&EPC accepts its legal responsibilities regarding parish land and assets. I do hope that legal steps will not be required."*
33. On reviewing these types of comments from the complainant, they do not appear overly aggressive or confrontational and the complainant has, as would anyone, a right to make a complaint. The Commissioner can see, though, how the council may feel that unless it acts in the way the complainant expects, it will potentially result in investigations, complaints and fines against it. This in turn could have a negative effect

on the morale of the council especially when considering the impact and time it could potentially have on its limited resources.

34. The council has also provided a statement from one of its councillors in which he states:

"At a parish meeting, the date of which I cannot remember, [the complainant] alleged I did not make a declaration of interest on an item that was on the agenda.

He reported it to the monitoring officer at South Norfolk Council, who did not want to do anything about it. I think he also reported it to our MP for South Norfolk.

He then reported it to the Police, and by law they had to interview me.

Two policemen came to see me at my home one Sunday morning. They said they were wasting their time and my time, but were required by law to interview me. I heard no more from the police or any one else."

35. The Commissioner can see how this action could have a detrimental effect on the council's morale – especially when it seems that neither the monitoring officer nor police saw any reasons to take action.
36. The council has also pointed out to the Commissioner that the eight parish councillors are volunteers giving their time freely for the benefit of the community including fundraising and other projects of benefit for the parish. It is felt that these projects are being given less focus as a result of the ongoing correspondence from the complainant.
37. In addition to the volume of correspondence, the council has told the Commissioner that the length and convoluted nature of the communication from the complainant can make it difficult to decipher, taking up extra time and causing confusion.
38. The council says that the responses are often followed up with further communication from the requestor, taking a slightly different tangent and then can descend into another complaint. Thus further adding to the time required to deal with his communications.
39. The council has advised the Commissioner that in May 2013 it was necessary for South Norfolk District Council to send in interim councillors, who appointed a locum clerk, to run the council as the previous clerk and other councillors resigned solely due to the complainant's behaviour when he was a councillor.

40. During this time, a number of policies to enable the council to deal with this and similar situations, such as a communications policy, a complaints procedure, a protocol on bullying and harassment and a protocol on member/ officer relations were introduced.
41. The council has told the Commissioner that as the Charity Commission will no longer respond to the complainant, he seems to have directed his attentions solely towards the council and it has had to deal with FOI requests, complaints against staff and councillors, a SAR and an enquiry from an external auditor (the audit alone cost the council £1200, and the complaint was not upheld).
42. The council has provided the Commissioner with a copy of the External Auditors findings, dated 18 December 2014, in which it noted the complainant's over-riding concern to be that he believes the council is custodian trustee of three charities and has failed to discharge its duties.
43. The auditors overall decision found no identified failure of governance or other concerns that would justify issuing a report in the public interest.
44. The council has further advised the Commissioner that it has also been threatened with the Local Government Ombudsman, the Local MP and others. This has put the council in a situation where it has felt it has no option but to subscribe to the services of a Law firm at an annual cost of £400 and make provisions against legal and professional costs at a reserve of £2000 for the 2016/17 year. These arrangements have been continued into the 2017/18 year.
45. Inadvertently or otherwise, the Commissioner sees that the complainant's contact with the council has caused the council to incur costs in order to cover itself from potential legal action taken against it.
46. The council has provided the Commissioner with copies of correspondence from the complainant in which he references these various bodies.
47. The council has told the Commissioner that in addition to these costs, the Clerk has worked over her paid for hours in handling the complainant's correspondence.
48. The council even set up an appointment on 30 August 2016, at the complainant's request, in order for him to be able to physically view the accounts.
49. The council has concluded by telling the Commissioner that it considers that it has made every effort to address the complainant's concerns but that it has got to the point where it has to say that enough is enough in terms of the amount of time and public money that has been spent on

one individual's issues and it would appear that no matter what response it sends, further correspondence will continue to be received from the complainant. Therefore it considers there is no option but to refuse the request as vexatious.

50. The complainant has told the Commissioner that he has asked the council for a number of years to take legal advice concerning land and asset ownership in the two villages of the council. He says that the council has refused to acknowledge evidence sent to them and have deliberately, in his view, conducted affairs so as to keep the evidence out of official record. So this request relates to the council's latest attempt to 'hide' the evidence.
51. The complainant has explained to the Commissioner that at the council meeting of 15 November 2016, the matter of land and asset ownership was placed as a confidential item to be considered after the closure of the main meeting. The complainant has stated that there were councillors present who would have needed to declare an interest, but none were recorded and no dispensations were recorded in the minutes.
52. The complainant says that the council have kept his evidence along with any responses it has received from its own advisors out of public record, which is why he made the two requests.
53. The complainant has told the Commissioner that as his two requests relate specifically to the meeting of 15 November 2016, it is difficult to see how his requests can be deemed as vexatious. His request was made in an effort to make the council comply with the law and the Nolan Principles. He questions how electors can hold councillors to account if they continue to conduct their affairs in secret.
54. The Commissioner acknowledges that there is a differing view between the council and the complainant over the ownership of land and that the complainant considers that the council and its councillors are not conducting themselves appropriately over this.
55. The complainant even goes as far to state in his email to the council on 9 February 2017, which also contained his information request: *"Were it not for the fact that local councils have been placed above the law by the last coalition government I believe you, our present councillors, would have been disqualified from office long ago."*
56. The complainant is making these requests in order to make a determination as to whether the council and councillors are conducting themselves appropriately over this matter. However, if the complainant considers this, then there are regulatory bodies that can look into this

concerns and the Commissioner has not been presented with any evidence from any regulatory body stating wrong doing by the council.

57. It is outside the Commissioner's remit to make a determination on how or whether certain declarations are needed to be made at particular council meetings.
58. The complainant states that these requests are stand alone, but at the same time emphasises that the overall issue has been ongoing with the council for some years. The Commissioner takes the view that the council would have justification in considering the wider context and history when applying section 14 of the FOIA to these requests.
59. The Commissioner has not be provided with any evidence from regulatory bodies finding the council to be acting inappropriately, other than the complainant's own assertions and accusations. She appreciates that the complainant has his concerns, but without the finding of wrongdoing, it is hard for the Commissioner to support his view.
60. In contrast to this, the council has provided the report from an external auditors which did not find any wrongdoing to report on.
61. The Commissioner agrees with the council's assertion that, unless it was to amend its view to that of the complainant's, even if it were to respond to these requests, the complainant will still continue to make further requests or write further correspondence on the matter to the council with no end.
62. The amount of time that has been spent receiving and responding to the complainant on this issue has spanned several years and the Commissioner can see how this would impact on the council's resources in order to respond to the complainant. There has to be a point where the council is able to say that the matter is closed.
63. On consideration of the above, the Commissioner is of the view that the council, in having to respond to these two requests, would be placed under an unjustified and disproportionate burden, further impacting its ability to carry out its other functions as a council. She therefore finds that that the council is able to rely on section 14(1) of the FOIA to refuse the two requests.

Right of appeal

64. 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

65. 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.
66. 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

Andrew White
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