

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 February 2019

**Public Authority:** Minting and Gautby Parish Council  
**Address:** Birchwood House  
Gautby  
LN8 5JP

#### Decision (including any steps ordered)

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1. The complainant has requested from Minting and Gautby Parish Council (the Council) information in relation to its value added tax (VAT) reclaim forms. The Council considered the request vexatious under section 14(1) of the FOIA and refused to comply with it.
2. The Commissioner's decision is that the Council correctly refused to respond to the request under section 14(1) of the FOIA (vexatious requests).
3. The Commissioner does not require the Council to take any steps.

#### Request and response

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4. On 19 March 2018, the complainants wrote to the Council and requested information in the following terms:

*"For each financial year 2011/12, 2012/13, 2013/14, 2014/15, 2015/16, 2016/17 and the current year to date, please provide:*

- 1. The Bank Reconciliation Report (where this is not already provided in the online Transparency documentation).*
- 2. The amount of the total VAT refund due for the year*
- 3. The date(s) on which the VAT refund was requested or applied for*
- 4. The total amount received in respect of the VAT refund for the year*

*5. The date(s) on which the VAT refund was credited to the Council's bank account"*

5. The Council responded in two parts. On 17 and 19 April 2018 the Council responded to the complainants, providing some materials to the complainants but not the information specified in their request of 19 March 2018.
6. The complainants requested an internal review on 25 April 2018. The complainant noted at this point that the information disclosed was not what had actually been requested.
7. The Council sent to the complainants the outcome of its internal review on 25 May 2018. It refused to provide the requested information. It relied on Section 14(1) (vexatious requests) as its basis for doing so.

### **Scope of the case**

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8. The complainants contacted the Commissioner on 28 June 2018 to complain about the way their request for information had been handled.
9. During the course of the investigation, the Commissioner corresponded with the Council to clarify its response to the request. The Council confirmed that it considered the information request of 19 March 2018 to be vexatious and provided arguments in support of its position.
10. The analysis which follows considers whether the Council was correct when it refused the request as vexatious by virtue of section 14(1) of the FOIA.

### **Reasons for decision**

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#### **Section 14(1) – vexatious requests**

11. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
12. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of *Information Commissioner vs Devon County Council & Dransfield* (GIA/3037/2011) ("*Dransfield*") and concluded that the term could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's decision

establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

13. In *Dransfield*, the Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment of, or distress to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to represent an exhaustive list. Rather, the Upper Tribunal stressed the *"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).
14. The task for the Commissioner, therefore, is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal. In doing so she has taken into account the representations of the Council and the complainant, as well as the evidence that is available to her.
15. In this decision notice, the Commissioner will also refer to her published guidance on defining and dealing with vexatious requests.

### **The complainant's position**

16. The complainants considered that the Council's refusal to comply with their request was in breach of the FOIA requirements since they believe that their request was perfectly reasonable as it concerned the Council's handling of public money.
17. The complainants believed that as former parishioners and council tax payers they were entitled to know whether the accounting practices of the Council are robust.
18. The complainants argued that the present information request should not be linked to a previous request. The complainants argued that the previous request *"...was submitted following a refusal by the [Parish Council] to answer our questions which arose from them sending pre-emptive inflammatory correspondence about us to the District Council which included numerous untruths, exaggerations and false information."*

### **The Council's position**

19. The Commissioner wrote to the Council requesting a submission in respect of a number of questions relating to the points raised by the complainants. The questions were focused on the factors that the Council took into account when it decided to refuse the complainants' requests for information.
20. The Council explained that it took the decision to consider the request vexatious based primarily on a previous pattern of dealings with the complainants.
21. By way of background, the Council explained that the complainants have been in ongoing correspondence with the Council since 2017, when the Council decided to object the complainants' planning application submitted to East Lindsey District Council for change of a business property into a private dwelling.
22. The Council asserted that following this objection, the complainants began writing to the Council requesting explanations and also submitting information requests which, according to the Council, led *"...from being a Council which usually endeavoured to hold four Council meetings a year to one forced to hold at least 12 formal meetings in this calendar year."*
23. The Council also referred to a previous complaint<sup>1</sup> that the complainants submitted to the Commissioner following an information request relating to their business property. The Council explained that in that case, despite having to spend more 30 working hours in order to search for and provide any relevant information, the complainants were still dissatisfied with the outcome.
24. The Council explained that initially it tried to comply with the complainants' request of 19 March 2018, by providing the information which it considered to hold within the scope of the request, as described above in paragraph 5 of this decision notice. Despite the fact that, in the process of responding to the complainant, the Council went through around 700 items identified when it searched using the keyword "VAT", the Council did not reject the request at once.
25. However, based on its previous experience with the complainants, when the Council received further correspondence and a request for internal review, it decided to refuse to comply with the request as it considered it vexatious.

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<sup>1</sup> Decision Notice of 27 September 2018 on case FS50716748, to be found at: <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259921/fs50716748.pdf>

26. The Council explained that it is a very small parish council with no permanent staff. It stated *"We had already been overwhelmed by complaints, FOI requests, emails, reminders etc. from [complainants' name redacted] and were in process of auditing and working through the VAT underclaims, whilst trying to keep the council afloat. We had already endured 8 months of their abusive emails and unnecessary workload and were frankly running out of steam, unable to do anything else but respond to their seemingly endless demands."*
27. The Council stated that *"the high volume of unpleasant correspondence we have been subjected to by them is a deliberate attempt to bully, intimidate and harass community-minded Councillors and stretch the resources of this tiny Parish Council, which has effectively had no Clerk since August 2017, to breaking point, corrupting the democratic process by frustrating the normal activities of the Parish Council and severely hindering our ability to function."*

### **The Commissioner's view**

28. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be considered vexatious, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgment about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow theme. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
29. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.
30. In the present case, the Commissioner notes that from the background of this case it is clear that the relationship between the complainant and the Council is significantly impaired. In an email of 25 April 2018 sent to a parish councillor, the complainants stated that the Council's decision *"...to challenge how we chose to deal with the future of our property and our business has directly led to our scrutiny of your running of the PC."*

31. The Commissioner wishes to reiterate that the purpose of the FOIA is to promote transparency and accountability to the general public and it should not serve as a mechanism for addressing personal grievances.
32. The Commissioner notes that, although the number of information requests submitted by the complainants during a recent period of time is not excessive in itself, when considered along with the frequent correspondence and the voluminous nature of other material generated as a result of the complainants' approach to the Parish Council, it can be concluded that the cumulative impact may impose an unreasonable burden on the Council's limited administrative resources.
33. It is clear that the issues between the Council and the complainants have been ongoing for some time and do not appear to be at a stage where they will be resolved soon. The Council believes that the complainant will never be content with the outcome of any information provided and will continue to ask questions in order to reopen the debate and issues which have already been considered and addressed by the Council.
34. The Commissioner appreciates that the information the complainants have requested is of interest to them. However, the Commissioner has to consider whether the request is of sufficient wider public interest or value that it would be reasonable for the Council to comply with it, despite the burden involved.
35. The Commissioner acknowledges that the Council and parish councillors should expect to be subject to scrutiny from the public, as they have input into publicly-funded spending decisions which may impact the local community. At the same time, they are volunteers giving their time freely for the benefit of the community, including involvement in projects for the benefit of the parish.
36. On this occasion, the Commissioner notes that the Council has already dedicated a considerable amount of time and effort to respond to the issues raised by the complainants. It is the Commissioner's view that if the Council were to comply with the request it would create a burden that is disproportionate to the request's wider value. In reaching this conclusion, the Commissioner also took into account the size of the Council and its limited resources available to it in performing its duties.
37. The Commissioner also notes that the complainants strongly believe that the Council has engaged in maladministration and improper use of the Council's resources. This was also raised by the complainants in the course of the Commissioner's investigation, when further explanation was provided by the Council. The Commissioner is not, however, aware

of any independent evidence that supports the allegations made by the complainants.

38. The Commissioner has given consideration to the findings of the Upper Tribunal in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1) of the FOIA. Taking into account all the above factors, she has decided that the Council was correct to find the request vexatious and that section 14(1) was applied correctly in this case. The Council was not, therefore, obliged to comply with the complainants' information request.

### Other matters

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39. The Commissioner would like to address specific issues which were noted in the course of investigation of this complaint.
40. Firstly, the Commissioner notes that when the Council stated to the complainants that it had decided "*...not to reply on this matter under FOI, as a simple request would have sufficed*" it gave the impression that was disregarding its FOIA obligations.
41. The Commissioner reiterates that public authorities do not have the discretion to decide whether to apply FOIA or apply "*normal business practices*" when a request for recorded information is received. The Council should ensure that in future it deals with all requests for recorded information in line with the FOIA.
42. Secondly, the Commissioner also noted that in a piece of correspondence which took place on 8 May 2018, the Council stated that it "*...has also resolved that any future email correspondence from you will be deleted upon receipt unread that that any paper correspondence will also be destroyed unread.*"
43. As stated above, the Council should be aware that written requests for recorded information must be dealt with in line with the FOIA. For guidance on when it may be not necessary to respond to vexatious information requests, the Council should see the Commissioner's published guidance on section 14(1)<sup>2</sup>.

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<sup>2</sup> <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

## Right of appeal

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44. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

45. 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.
46. 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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**