

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2019

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

Decision (including any steps ordered)

1. The complainant made two requests for information which the Commissioner considers would be his own personal data.
2. The Commissioner's decision is that Potto Parish Council ("the Parish Council") was entitled to refuse both requests, but that it failed to issue a refusal notice to either request within 20 working days and therefore breached section 17 of the FOIA. She also notes that it should have relied on section 40(5A) (personal data of the requester) to neither confirm nor deny holding information within the scope of either request.
3. The Commissioner does not require any further steps to be taken.

Request and response

Request 1

4. On 8 August 2018, the complainant wrote to the Parish Council and, referring to the Parish Council's most recent audit report which referred to a "detailed written response" to a complaint which had been raised, requested information in the following terms:

"Please provide me with a copy of this 'detailed written response'."
5. The Parish Council did not appear to have issued a response to this request at the point at which the complainant contacted the Commissioner.

Request 2

6. On 20 August 2018, the complainant contacted the Parish Council and, referring to objections he had attempted to lodge to the Parish Council's accounts, made a further request for information:
 - *"Please provide the date that you received my objection – this should be 1 August 2018*
 - *Please provide the total number of emails received – this should be nine*
 - *Please confirm that each of the attachments, as noted in the Objection letter, were safely received."*
7. The Parish Council responded on 31 August 2018, it stated that it had already acknowledged the emails and held no further information within the scope of the request. The complainant argued that it had not complied with its duties under section 1(1) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 24 September 2018 to complain about the failure, by the Parish Council, to discharge its section 1(1) duties adequately in respect of the second request and issue any response to the first request.
9. At the outset of her investigation, the Commissioner contacted the Parish Council to highlight the possibility that some, if not all, of the information that might come within the scope of either request would be the complainant's personal data. She therefore asked the Parish Council to reconsider its response and, if it considered that the information would (if were held) be the complainant's own personal data, issue a refusal notice relying on either section 40(1) or section 40(5A) of the FOIA as appropriate.
10. The Parish Council issued a fresh refusal notice on 22 March 2019. It relied on section 40(1) to refuse the request.
11. The scope of this notice and the following analysis is to consider whether the information within the scope of the request would be the complainant's own personal data and, if so, whether the request was refused correctly.

Reasons for decision

12. 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.*

13. Section 40(1) of the FOIA states that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

14. Section 40(5A) of the FOIA states that:

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)."

15. The wording of Request 2 is such that the only information that the Parish Council could possibly hold would be on emails that the complainant had composed and sent to the Parish Council. This information would clearly relate to the complainant and would, in the context of the request, identify the complainant. Therefore any information that the Parish Council held would be the complainant's personal data.
16. In relation to Request 1, the Parish Council stated that the complaint to which the request referred had in fact been lodged by the complainant himself.
17. The Commissioner considers that any "detailed written response" that the Parish Council held must have been one prepared with a view to having been sent to the complainant and would have needed to address the grounds of complaint which the complainant had submitted. She is therefore satisfied that any information which the Parish Council did hold would be the complainant's own personal data.
18. She therefore concludes that any information which the Parish Council held within the scope of either request would be exempt under section 40(1) of the FOIA.

19. In its refusal notice, the Parish Council did not provide an explicit confirmation or denial that information was held. The Commissioner considers that the Parish Council was entitled to rely on Section 40(5A) to not issue a confirmation or denial, but it should have cited this exemption in its refusal notice and made clear that it was neither confirming nor denying holding information.

Procedural matters

20. Section 17 of the FOIA states that, where a public authority wishes to refuse a request, either in whole or in part, it should issue a refusal notice within 20 working days.
21. In this case, although the Parish Council was entitled to issue a refusal notice, it did not do so within 20 working days. The Commissioner therefore finds that the Parish Council breached section 17(1) in responding to this request.

Other matters

22. If a public authority receives a request, ostensibly submitted under the FOIA, from a requestor seeking their own personal information, it is advisable to consider whether a response under data protection legislation would be more appropriate (and helpful to the requestor) in the circumstances.

Right of appeal

23. 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

24. 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.
25. 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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