

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 July 2020

**Public Authority:** Fleggburgh Parish Council  
**Address:** 71 The Common  
Freethorpe  
Norwich  
NR13 3LX

#### Decision (including any steps ordered)

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1. The complainant requested copies of correspondence sent between the Chair and the clerk. Fleggburgh Parish Council ("the Parish Council") initially issued a fees notice before refusing the request as vexatious.
2. The Commissioner's decision is that the request was vexatious and the Parish Council was entitled to rely on section 14(1) of the FOIA to refuse it. As the Parish Council failed to issue its refusal notice within 20 working days, it breached section 17 of the FOIA.
3. The Commissioner does not require further steps.

#### Request and response

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4. On 21 November 2019, the complainant contacted the Parish Council and requested information in the following terms:  

*"I'm requesting to see all emails from PC chair Julie Pratt and [the clerk] between 1<sup>st</sup> October 2019 and today."*
5. The Parish Council responded on the same day. It stated that it had adopted a policy of charging £20 to fulfil a request made under the FOIA and would not therefore process the complainant's request further until that fee had been paid.

6. Following advice from the Commissioner, the complainant sought an internal review on 11 December 2019. The Parish Council refused to review the way it had dealt with the request because it did not consider that the complainant had followed the appropriate standing order – although it stated that the policy itself could be reviewed in six months' time.

### **Scope of the case**

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7. The complainant first contacted the Commissioner on 21 November 2020 to complain about the way his request for information had been handled. At this point he had yet to seek an internal review and the Commissioner advised him to seek one. When the Parish Council failed to carry out a review within 40 working days, the Commissioner intervened to move matters forward.
8. The complainant contacted the Commissioner again on 25 February 2020 to note that the Parish Council had refused to complete an internal review despite having been given the opportunity to do so. The Commissioner therefore accepted the complaint for investigation.
9. At the outset of her investigation, the Commissioner wrote to the Parish Council to draw attention to her published guidance on fees. She noted that, on the basis of the evidence she had seen, the fee was unlikely to be reasonable as it did not appear to relate to the permitted costs that the Parish Council was allowed to charge for. She has commented further on this matter in the "Other Matters" section of this decision notice.
10. Following the Commissioner's further intervention, the Parish Council changed its position and now refused the request as vexatious.
11. Given the time that had elapsed since the request was first made and the fact that the Parish Council had had several opportunities to reconsider its approach, the Commissioner considered that expecting the complainant to seek a further internal review would serve no useful purpose. She therefore shifted the focus of her investigation towards the new exemption that the Parish Council was relying on.
12. The Commissioner considers that the scope of her investigation is to consider whether or not the request was vexatious.

## Reasons for decision

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### Section 14 - Vexatious

13. 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.*

14. Section 14 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.*

15. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

16. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

17. *Dransfield* also considered 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 or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained 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).

18. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.

19. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "*The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies*".<sup>1</sup>
20. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
21. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."

#### *The complainant's position*

22. It is the responsibility of the Parish Council to demonstrate that the request was vexatious. The complainant is under no obligation demonstrate that it is not. Nevertheless, the Commissioner offered the complainant an opportunity to provide his own submission as to why the request was not vexatious.
23. The complainant in this particular case is a member of the Parish Council, but it is agreed by all parties that his relationship with the Parish Council has broken down.
24. The complainant did not provide a formal submission, but he noted in an email that:

*"to say my relationship with the PC is poor is an understatement, I was democratically elected in 2018 to Fleggburgh Parish Council (FPC) and remain the only member to join in this way, the co-opted controlling leadership bullied out the only fully competent clerk FPC have ever employed, 2 clerks have since resigned, the clerk we currently have is far from the 'independent and impartial' parishioners employee that he should be, [the clerk] is biased, rude, evasive and has threatened me and another member, along with the current leadership he has done much to allow FPC to operate in a surreptitious manner, with resolutions for charging for*

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

*FOI, allowing the chair to alter minutes post submission and a banning of emails between Councillors. Many of my questions put to our clerk remain unanswered, some very simple such as the detail of his contact with a parishioner (whom I represent) to the gist of contact from the professional society of which the clerk is required to be a member, of which FPC parishioners pay his membership fee. I make my FOI requests to discover what is really going on, not frivolously, on behalf of the electorate that supported me."*

*The Parish Council's position*

25. The Parish Council agreed that its relationship with the complainant was dysfunctional – but argued that this stemmed from the complainant's unreasonable behaviour.
26. In order to try to prevent the complainant from bombarding the clerk with requests, the Parish Council had adopted a policy of levying a charge for any FOI that was submitted.
27. On behalf of the Parish Council, the clerk responded to say that:

*"I started as a parish clerk at Fleggburgh Parish Council in February 2019. I am contracted to work five hours per week. This was my first role as a parish clerk. Previous to my appointment, two clerks had left the Council within the previous year and my understanding is that this was due to [the complainant]'s behaviour. Also, some councillors appear to have left due to [the complainant]'s behaviour.*

*"To begin with, he was reasonably pleasant towards me. However, when he realised that I wasn't going to jump every time he asked me to do something, he turned against me. He was particularly upset when he asked me to investigate [redacted] (a charity in the Parish and his pet hate) and I refused. I argued that I neither had the sufficient authority nor the sufficient tools to do so. I argued that it should be the Charities Commission that should investigate a charity, not the Parish Council. However, [the complainant] was having none of this. He accused me of failing the poor of Fleggburgh and, since then, has campaigned to get rid of me.*

28. The Parish Council noted that the complainant had, by his own admission, submitted a total of 47 complaints to the local Monitoring Officer. Of these, only a handful had resulted in any further action – which had mainly consisted of the Monitoring Officer writing to the Parish Council to remind it of its responsibilities.
29. [redacted]

30. The Parish Council considered that the complainant had published offensive and potentially defamatory comments on his Facebook page. It also noted that the complainant had, latterly, been encouraging others to "bombard" the clerk with FOI requests.
31. Finally, the Parish Council noted that the request appeared to be a "fishing" expedition. It explained that the complainant has accused the Chair of making inappropriate amendments to the minutes of meetings prior to them being signed off. The Parish Council argued that the complainant had submitted a broad request in the hope that he could find some small discrepancy that he could then use to support his claim. The Parish Council accepted that the Chair will often suggest amendments, but that these were not inappropriate and mainly related to minor typographical errors that required correction.

*The Commissioner's view*

32. The Commissioner agrees that the request was vexatious.
33. It is agreed by both parties that the Parish Council is not operating as efficiently as it should. The complainant argues that this is because of some sort of corruption. The Parish Council on the other hand points the finger at the complainant and his unreasonable behaviour.
34. In the Commissioner's view, she has been provided with sufficient evidence to demonstrate that the complainant is behaving in a way designed to disrupt the work of the Parish Council. This disruption appears to have little more justification than that the Parish Council is not operating in a manner acceptable to the complainant.
35. The Parish Council provided a copy of an email it had received from the Monitoring Officer which records the outcome of a complaint that the complainant had raised. It noted that the complainant's grounds of complaint were based on an interpretation of the Parish Council's standing orders that was "over-zealous" and commented further that:  
  
*"the complaint is not considered sufficiently serious to warrant investigation; it does not impact to any serious degree on the business of the Parish Council. I would tend to regard it as pedantic, trivial and verging on the vexatious."*
36. The Commissioner is firmly of the view that this request forms part of that campaign of disruption and therefore, whilst the request may appear benign on its face, when set in context becomes vexatious.
37. That is not to say that the complainant has never been able to identify errors that the Parish Council has made – only that the matters which

the complainant raises and the frequency with which he raises them are wholly disproportionate to the output of the Parish Council's work.

38. Vexatious requests made to parish councils are all too common. Those requests are, in the Commissioner's experience, usually characterised by an obsession with minutiae of the processes which the public authority has followed – an obsession which, to any reasonable person, is completely out of proportion to the outcomes which might be expected to result. The fact that such campaigners may, as one of dozens of complaints, occasionally highlight a set of minutes published a week late or an agenda item taken out of turn, does not justify the amount of work that a public authority must take to ensure that each complaint has been investigated. This case has those same hallmarks.
39. The complainant has raised concerns that a charity is operating illegally and that parish councillors are using their position on the Parish Council to exert undue influence on the Parish Council's responses to planning applications.
40. Even if those allegations were entirely true (and the Commissioner notes that, despite the gravity of those allegations, no evidence has been supplied by the complainant in support of them), this would still not justify the complainant's actions or his request.
41. If the complainant has concerns about the way a charity is operating, he should report his concerns to the Charity Commission – which has broad powers to investigate the activities of charities. It is difficult to see what meaningful action the Parish Council could take to investigate or act on such concerns – even if it were minded to do so.
42. Equally, parish councils do not take planning decisions – these are made by local planning authorities which, depending on the area, may be a district, town or borough council. Whilst parish councils will be a statutory consultee on any applications in their area, the fact that a particular argument has been made by a parish council carries no more (and no less) weight than if the same argument had been made by a member of the public.
43. Therefore even if parish councillors were exercising undue influence within the Parish Council, it is the local planning authority (in this case, Great Yarmouth Borough Council) that actually makes the planning *decision* – and there are ample opportunities to make representations or complain about decisions *via that authority*.
44. Furthermore the Commissioner agrees that the request has been submitted on the basis that "something must be there" rather than because the complainant is seeking particular information. The Parish

Council has argued that the complainant will misuse any information he receives to further his campaign and the Commissioner agrees.

45. The Commissioner is also concerned about attempts the complainant appears to be making to co-ordinate others to make FOI requests to the Parish Council. Whilst the evidence supplied by the Parish Council post-dates the request, the Commissioner considers that this is contrary to both the spirit and the letter of the FOIA.
46. The Parish Council provided a lot of evidence that post-dated the request. Whilst the Commissioner must focus on the circumstances which prevailed at the time of the request, such evidence can be useful in demonstrating that patterns of behaviour have continued. The Commissioner considers that this is the case here.
47. In conclusion, the Commissioner is satisfied that the evidence demonstrates that the complainant is involved in his own personal campaign against the Parish Council and that his request forms part of that ongoing campaign. Whilst this would be inappropriate from an ordinary member of the public, it is reprehensible when conducted by a sitting parish councillor.
48. The Commissioner considers that, whilst the request itself may not be particularly burdensome, responding to it would be unlikely to draw a line under what has previously happened and would only be likely to result in further requests and complaints.
49. Therefore the Commissioner is satisfied that the request was vexatious and that the Parish Council was entitled to rely on section 14(1) of the FOIA to refuse it.

#### Procedural matters

50. Section 17(5) of the FOIA requires a public authority, which wishes to refuse a request as vexatious, to inform the complainant accordingly within 20 working days. As the Parish Council failed to do this, it breached this section of the legislation.



## Other matters

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### *Fees*

51. In line with her section 47 duty to promote good practice in handling FOIA requests, the Commissioner considers that she should offer the following additional advice to the Parish Council in respect of charging fees for FOIA requests.
52. A public authority is not permitted to impose a flat charge for fulfilling a request made under the FOIA. However there are certain costs which can reasonably be passed on to a requestor.
53. The Commissioner has issued detailed guidance on fees which sets out what a public authority may and may not charge for.<sup>2</sup> These will include the costs of printing, photocopying, postage and any physical costs that a public authority might incur in applying redactions (such as indelible ink or purchasing specialist software).
54. However, regulation 6(4) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 sets out that, when determining what fees to charge for a request:  
  
*"a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons undertaking activities...on behalf of the authority are expected to spend on those activities."*
55. Whilst the Parish Council subsequently dropped its fees notice, the Commissioner considers that it is unlikely that it would have been unable to justify a £20 charge – based purely on the activities for which it is permitted to charge.
56. The Commissioner is concerned that the Parish Council appears to have adopted a policy of charging for FOIA requests for the express purpose of suppressing the amount of requests it receives. This is contrary to the spirit of the legislation – even if, in practice, the policy may only be applied on a discretionary basis.
57. The Parish Council explained that its policy had been a reaction to the complainant's behaviour and in a bid to exert some sort of control over

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1168/fees\\_cost\\_of\\_compliance\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1168/fees_cost_of_compliance_appropriate_limit.pdf)

the amount of time the clerk was required to spend dealing with the complainant.

58. The Commissioner strongly disapproves of using fees for this purpose. As she has demonstrated above, where a public authority believes it is spending a disproportionate amount of time dealing with one particular requestor, it should consider relying on section 12 or section 14 of the FOIA to refuse requests.
59. Whilst the Commissioner has no powers to amend the standing orders of a parish council, she considers it reasonable to note that, had the Parish Council not withdrawn its fees notice, it is highly likely that her decision notice would have found that the Parish Council was unable to charge a £20 fee. Given that her power to issue decision notices has been conferred by an Act of Parliament, they are likely to carry greater weight than a standing order. The Parish Council is therefore strongly advised to revisit its policy at the earliest opportunity to prevent an adverse future decision.

*Environmental Information.*

60. The Commissioner has not seen the information within the scope of the request and it would defeat the purpose of the exemption if she were to require the Parish Council to carry out a detailed analysis. Nevertheless, given the responsibilities the Parish Council has in respect of planning applications and maintenance of open spaces, she considers that there is a possibility that some of the information could be environmental and would therefore fall under the EIR.
61. For completeness and the avoidance of doubt, had the Commissioner been required to consider this complaint under the EIR, she would have found that the request was manifestly unreasonable. As she is aware of no compelling public interest justification for disclosure (compared to the strong public interest in protecting public authorities from requests which are manifestly unreasonable), the Commissioner considers that it is highly likely that, to the extent that the requested information was for environmental information, the Parish Council would have been entitled to rely on regulation 12(4)(b) of the EIR to refuse the request.

## Right of appeal

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62. 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@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)

63. 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.
64. 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** .....

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Wilmslow**  
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**SK9 5AF**