

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2017

Public Authority: Monks Eleigh Parish Council

Address: Stable Flat
Lavenham
Suffolk
CO10 9PY

Decision (including any steps ordered)

1. The complainant's representatives have requested recorded information from Monks Eleigh Parish Council. The information the complainant seeks relates to plans for a new village hall. The Council has determined that the complainant's information request is vexatious and therefore it has refused to comply with the request in reliance on section 14(1) of the FOIA.
2. The Commissioner's decision is that Monks Eleigh Parish Council has incorrectly applied section 14(1) and therefore the Commissioner requires the Council to make a fresh response to the complainant's request.
3. The public authority must take these steps within 35 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 this failure may be dealt with as a contempt of court.

Request and response

4. On 14 September, the complainant's solicitor wrote to Monks Eleigh Parish Council and requested information in the following terms:
 - 1) "The terms of reference of the two sub-committees that were disbanded at the meeting of the Monks Eleigh Parish Council in May;
 - 2) The records of membership of those two sub-committees;

- 3) All documents including minutes and correspondence relating to the process of co-opting non-members of the Parish Council to those two sub-committees;
 - 4) Agendas and minutes of the meetings held by those two sub-committees; and
 - 5) All documents held by the Parish Council relating to the ownership of Church Walk.”
5. The Council responded to the information request on 11 October 2016, informing the complainant’s solicitor – hereafter referred to as the complainant, that it does not hold the terms of reference of the two sub-committees which were disbanded during the first meeting of the 2015 term. The Council also informed the complainant that “... the Parish Council will be relying on section 14(1) of the Act when responding to your client’s request for information”.
 6. The Council provided the complainant with an account of why the request is considered vexatious. It pointed out that the requested information in relation to the terms of reference of the two sub-committees was published and is freely available to the world: It provided the complainant with a copy of the Minutes of 25 November 2013 and 2 December 2013 and advised the complainant that its client was aware the enclosed minutes could be obtained from the Parish Council Minutes section of its website.
 7. On 20 October 2016, the complainant wrote to the Council to request an internal review and to set out grounds in rebuttal of the Council’s application of section 14(1).
 8. The Council wrote to the complainant on 16 November to inform to advise him that it was unable to conduct an internal review. This is because the Council’s initial application of section 14(1) had been determined by its most senior officials – the Clerk and the Chairman. The Council therefore advised the complainant that he has the ability to make a formal complaint to the Information Commissioner.

Scope of the case

9. The complainant contacted the Commissioner 5 December 2016 to complain about the way his request for information had been handled.
10. The Commissioner has investigated whether Monks Eleigh Parish Council is entitled to rely on section 14(1) of the FOIA in respect of the

information request submitted by the complainant on 14 September 2016.

Background information

11. The Council has provided the Commissioner with information which it considers is relevant to the complainant's request and which provides context to its application of section 14(1). The Commissioner recognises that the following account represents the issues associated with the complainant's request solely from the Councils point of view. The Commissioner has attempted to include only the background information which places the complainant's request into context and to this end she has removed references to persons or groups of persons where this has been possible.
12. Between 2011 and 2015, the Council investigated whether it could obtain planning permission to build a new hall on a Parish-owned recreation ground. The Council's intention was to enable the Coronation Hall Trust (Village Hall Trust – "the VHT") to replace its old and decrepit building without needing to buy a new site. This in turn would allow the VHT to sell its existing site and to use the proceeds of the sale to build the new hall.
13. The Council's preferred option (above) is contrary to attempts made by Monks Eleigh School and Community Hall Limited ("MESCH") – a registered charity, to build a school and community hall on village land.
14. MESCH had previously spent several years in raising funds for its project and it had entered into negotiations with Suffolk County Council who owned the land. Despite its efforts, MESCH had not secured a lease for the land or an agreement for its development.
15. By June 2012 a plan had developed which would allow the VHT to sell its land and hand the proceeds over to MESCH. MESCH would then build the school and community hall with donations and raised funds, together with a grant from Suffolk County Council.
16. Subsequently, having been appointed as the Council's representative on the Village Hall Management Committee, the Council's chairman became concerned about the detail of the arrangements and the deal made between the County Council and MESCH: She became concerned about the independence of the VHT in determining the terms on which it would hand over monies to MESCH and also its lack of understanding of the need to meet some of the requirements of the Charities Act.

17. The Chairman's concerns led to the Council recommending that the VHT should seek independent legal advice.
18. This began a process within the village of trying to convince people of the separate legal personalities of the two charities – VHT and MESCH, the need for them to act separately and the need to keep communications and decision making separate.
19. Eventually it was suggested that Suffolk County Council would make a loan to MESCH to enable it to start building the proposed school and community hall and that this would be done before the village hall site had been sold. The intention was that the loan would be secured on the VHT title to the current village hall and the loan was to be interest free for a period of time but not forever.
20. Having been appointed to the Village Hall Management Committee, the Council's Chairman felt obliged to point out that the VHT could not comply with the suggested course of action without first complying with the requirements of the Charities Act. The Chairman advised the VHT that it had to act in the best interests of the VHT and not the best interests of MESCH or Suffolk County Council.
21. The Chairman provided the VHT with the Charity Commissioner's guidance on conflicts of interests. The Chairman's action angered several of the joint trustees of the VHT and MESCH and ultimately resulted in the complainant's request for information.
22. The Council's wish to apply for planning permission [at paragraph 13 above] was meant to offer the VHT an alternative to its decision to hand over to MESCH the proceeds of the sale of the VHT site. The Council proposed that the VHT should make this decision on the grounds that the VHT's constitution allowed this to happen with the involvement of parishioners.
23. In order to determine whether the Council should apply for planning permission itself, the Council decided to use a sub-committee procedure to gather information and to suggest a way forward. This sub-committee was set up in accordance with the Council's standing orders and the provisions of the Local Government Act.
24. The sub-committee was made up of councillors and non-councillors and any recommendations made by the sub-committee would be brought to the full Council by the councillor members.
25. The identities of the councillor members of the sub-committee would be made public but the identities of the non-councillors would not. The Council decided on this approach because parishioners had become

reluctant to get involved due to the "nature and fervour of certain members of MESCH".

26. The Council's intention to investigate and subsequently to apply for planning permission was met with opposition and anger on the part of the MESCH Board and certain of its members.
27. The MESCH Board attended a meeting of the Council and, according to the Council's Chairman, demanded that the Council reverse its decision to pursue planning permission unless this was first agreed by MESCH.
28. In October 2013, the village school, where the MESCH school and community hall was to be built, received an adverse OFSTED report following an earlier inspection and was put into 'Special Measures'. The £185,000 grant pledged by Suffolk County Council for the MESCH project was put on hold until the future of the school had been decided.
29. The County Council's grant was ultimately withdrawn and the school was closed in the Spring 2014.
30. In the intervening period, there were calls for MESCH to recognise that its project had failed and to wind itself up. The intention being to hand the balance of its funds to the VHT so that progress could be made in replacing the village hall.
31. It was not until Spring 2014 that MESCH decided to recommend that the charity was wound up under Creditor's Voluntary Liquidation, despite still being solvent.
32. It is understood that MESCH did not gain its member's backing for its preferred approach and eventually an informal winding up procedure was adopted and a resolution was passed for its funds to be passed to the VHT.
33. The MESCH funds were eventually passed to the VHT in 2016.
34. In addition to the difficulties experienced by the Council in respect of the VHT and MESCH, the Council has also encountered difficulties in respect of its associated proposal to use Church Walk, which is intended to be the means of accessing the new village hall on the village recreation ground. These plans have been met with objections which have further generated ill-will and bad feelings within the village.

Reasons for decision

35. Under section 14(1) of FOIA, a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
36. The term 'vexatious' is not defined in the legislation, however in *Information Commissioner v Devon County Council & Dransfield*¹ the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request.
37. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
38. In the Dransfield case, the Upper Tribunal also found it instructive to assess whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff.
39. However, the Upper Tribunal also cautioned that these considerations were not meant to be exhaustive. Rather, it 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).
40. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request. In effect, the Commissioner is required to undertake a balancing exercise to weigh the evidence of the request's impact on the authority against its purpose and value.
41. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request

¹ UKUT 440 (AAC) (28 January 2013)

² http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/

contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

42. The Council has supplied the Commissioner with a bundle of information which it considers supports its application of section 14(1). This bundle illustrates the long-standing problems experienced by the Council in respect of the village hall proposals and matters associated with the complainant's request.
43. Having examined the Council's bundle, it is clear to the Commissioner that the new village hall has caused feelings to run high within Monks Eleigh, where persons and groups have adopted particularly partisan positions.
44. The strength of feeling has been expressed at Council meetings by angry and vociferous parishioners. The Council has informed the Commissioner that individual councillors have been confronted in the village shop whilst going about their normal daily business.
45. The Council has advised the Commissioner that its former Clerk resigned through a combination of having to deal with the complainant's "challenging correspondence" and his (and others) behaviour at Council meetings.
46. Before the new Parish Clerk had attended her first Council meeting, she received an email from the complainant which suggested that the Council's Chairman had unilaterally altered standing orders. In refuting this allegation, the Council asserts that the complainant failed to ascertain from the Council why it had changed its standing orders, preferring instead to take his enquiry outside of the Council and ultimately reached the wrong conclusion.
47. The Council points out that its 2011 sub-committees were set up in accordance with its own standing orders and with the Local Government Act 1972 and therefore the Council has acted quite properly. The purpose of the subcommittees was to assist the village in the replacement of the village hall and therefore the Council asserts that it has acted honourably to ensure that the VHT charitable funds are used properly for the protection of a village asset.

48. The Council has identified a number of 'detriments' which it argues would flow from it having to comply with the complainant's request. These 'detriments' include: The suggestion that a decision against the Council's application of section 14(1) would demonstrate that a decision made in line with its standing orders and the Local Government Acts can be overturned by the Information Commissioner's Office; that the credibility of the conduct of Parish Council meetings will be severely damaged; that people who have offered to assist the Council in the knowledge that they would not be bothered by 'domineering members of the village' would be reluctant to do so in the future; that the Council's ability to deal sensitively with issues that affect people relating to their close neighbours will be seriously undermined; that those persons who have been disingenuous in their dealings with the Council can win, despite the common good; that persons delivering nasty letters to councillors can win; etc.
49. The Council believes that the complainant's request is unjustified because the Council has acted properly in working hard to deliver services against a back-drop of challenge and nastiness.
50. Its decision to hold discussions in camera was based on the need to discuss the terms of the proposed transaction and counter proposals in negotiations for contracts/leases in circumstances where the Council believed some members of the public would have tried to influence and upset those negotiations; and, its fear that the "increasingly difficult attitude displayed in correspondence..." appeared to be part of a coordinated series of attacks on the Council which could end in litigation.
51. The Council asserts that the complainant – a former councillor, chose to keep his plans for emails, private conversations and plotting, behind the scenes, rather than have his concerns addressed openly at Council meetings. It argues that the complainant's request is vexatious in the light of the Council's previous dealings with him and that his requests have placed a disproportionate burden on the Council.
52. The Council suggests that the complainant's behaviour towards the Council constitutes an unreasonable campaign which is born out of the failure of the MESCH project, concerns raised about its viability and the need to consider an alternative site arrangement for the village hall.

The Commissioner's conclusions

53. It is clear to the Commissioner that the replacement of the Monks Eleigh village hall is an issue which has generated a great deal of unhappiness and high feeling within this small community. In the Commissioner's opinion it is likely that there are personal elements which are associated with the various plans to build a new village hall and these, to some

extent lie behind the complainant's request. That said however, these factors in themselves do not make the complainant's request vexatious.

54. The Commissioner recognises the significant amount of information the Council has disclosed in order to make its plans for the new village hall open and transparent.
55. Essentially, it is the context of the complainant's request and his past dealings with the Council which are key as to whether the request is vexatious.
56. Having examined the Council's information bundle, the Commissioner has not found anything which conclusively identifies the complainant's request as being vexatious.
57. Whilst it is true that the complainant's past correspondence is tenacious and sometimes strongly worded, this correspondence is not indicative of an unreasonable person and it is clear to the Commissioner that the complainant has neither submitted frequent nor particularly exacting requests in the past.
58. The background information provided by the Council illustrates the different positions held by parishioners in respect of the new village hall. These positions have clearly generated heated and sometimes personal attacks on the Council and its members.
59. The Commissioner does not condone any personal attack being made against members of the Parish Council or against its Clerk. She recognises that these Parish Councillors give their time voluntarily in the service of their community and she would never condone the use of belligerent, unreasonable or intemperate behaviour directed towards them.
60. Here, the events described by the Council (above), demonstrate how the Council's plans for the new village hall quickly became personalised and particularly so when the Council pursued its own option to apply for planning permission.
61. Factions within the village community appears to have adopted seemingly entrenched positions in support of their preferred option for the new village hall. These positions, whether right or wrong, have become such that the various protagonists have appeared unable or unwilling to retreat from them.
62. On the face of the complainant's request, the information which he seeks is of value to the public: It is information which would assist the public in its understanding of the issues surrounding the setting up of the Council's subcommittees, their legitimacy, the matters discussed by

the subcommittees and the decisions/recommendations they made to the full Council. This does not mean that the Commissioner considers that any of the Council's actions are called into question.

63. In the Commissioner's opinion, complying with the complainant's request would not be particularly burdensome to the Council in terms of the time and resources that would be required to do this: The Council's reliance on section 14(1) therefore rests on the effect of the complainant's request on the Council.
64. The Commissioner must consider the alleged stress to the Council's Clerk which the complainant has directly and indirectly caused through his information requests.
65. It is clear to the Commissioner that the complainant has exercised his rights as a councillor to the full and indeed he has engaged in challenging correspondence with the Council after his period in office ended. That said, the Commissioner has seen no evidence which confirms that the complainant, or those associated with his position, has engaged in any behaviour which is wholly unjustified or disproportionate.
66. It is the Commissioner's opinion that the Council has endeavoured to achieve a high level of transparency in respect of the decisions it has made. Regrettably, the level of transparency has not been sufficient to satisfy the complainant and therefore he has found it necessary to make this request for information via his solicitor.
67. Having considered all of the information available to her, the Commissioner has decided that the Council is not entitled to rely on section 14(1) of the FOIA.
68. The Commissioner has considered the 'detriments' identified by the Council at paragraph 49 above. She must make clear to the Council that she rejects the assertions made by the Council of what her decision would imply if it favours the complainant.
69. The Commissioner's decision is in no way a judgement of the Council in terms of its handling of the new village hall or of its relationship with the VHT and MESCH. She feels it is necessary to stress that her decision solely relates to the Council's application of section 14(1) of the FOIA to the complainant's request and to be construed as anything other than this would be wholly wrong.

Right of appeal

70. 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

71. 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.
72. 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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