

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2020

Public Authority: Tintagel Parish Council

Address: A2 Victoria Advent
Station Approach
Roche
Cornwall
PL26 8LG

Complainant: Cllr Barry Jordan

Address: barry.jordan@cornwallcouncillors.org.uk

Decision (including any steps ordered)

1. The complainant requested a variety of information relating to annual accounts. Tintagel Parish Council ("the Parish Council") provided some information but also refused the request as vexatious.
2. The Commissioner's decision is that the Parish Council has not demonstrated that the request was vexatious and is thus not entitled to rely on section 14(1) of the FOIA to refuse the request. She also considers that the Parish Council's refusal notice did not comply with section 17 of the FOIA.
3. The Commissioner requires the Parish Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, under the FOIA, to the request that does not rely on section 14(1).
4. The Parish Council 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 may be dealt with as a contempt of court.

Request and response

5. On 16 March 2020, the complainant compiled a letter to the Parish Council requesting information in the following terms:

"This is a n FOI from members of the parish of Tintagel who have been trying to get the information listed below for some time, could you please supply in full to following:-

The last 2 years accounts in full (2017/18 & 2018/19)

The Last 2 years internal audit reports (2017/18 & 2018/19)

The Last 2 clerks time sheets

The last 3 expense sheets for the clerk

The last 6 months Bank Reconciliation forms

How many staff are fully employed by the Parish Council? Not self employed

Who is G H Auditing and where are they based?

Why do the agendas not have the details of income and expenditure included?

Why have the minutes not been kept up to date with income and expenditure?

Why have members of the public been refused access to the end of year accounts, See AGAR 2017 /2018 and 2018/2019 as reported in the annual return from PKF Littlejohn

Why do the December 2019 minutes show a 43.8% of the precept as costs of the toilets?

What were the capital Costs?

What were the running Costs?

Why was a business case for the toilets not approved by the council?

Who collected the cash from all the machines at the toilets?

Who Checked that the cash received matched the machines counters?

Has the VAT issue with the TVC been resolved and if so how much did the council have to pay?" [sic]

6. The exact sequence of events that occurred next is subject to some dispute and is discussed further below. What is not in dispute is that the complainant addressed an envelope care of the Tintagel Visitor Centre. Royal Mail confirmed to the complainant that the envelope was delivered to the visitor centre on 18 March 2020 and that a signature, confirming delivery, was collected.
7. The Parish Council noted that the centre was, at that time, closed in line with national Covid-19 restrictions. It argued that the envelope had been discovered, on 20 March 2020, by a volunteer who had opened it, separated the letter from the envelope, resealed the envelope and passed the envelope (although apparently not the letter it contained) to the Parish Clerk. A search of the Visitor Centre was unable to retrieve the original letter.
8. On 30 March 2020, the complainant wrote to the Chair of the Parish Council, copying in the other councillors, noting that he had submitted a FOIA request.
9. The Commissioner has not been able to establish, from the supporting evidence, exactly what happened next, but it would appear that the request was finally passed to the Parish Council clerk on 11 May 2020, she acknowledged the request on the same day.
10. The Parish Council responded to the request on 12 May 2020. It provided some information but ended its response with:

"It is the contention of the Parish Council that these requests are vexatious....no further correspondence will be entered into."
11. The Parish Council subsequently confirmed to the Commissioner that it considered the request to be vexatious.

Scope of the case

12. The complainant contacted the Commissioner on 1 July 2020 to complain about the way his request for information had been handled.
13. The complainant noted the language at the end of the Parish Council's response and that the Parish Council had since required him to submit any correspondence via an external solicitor. He therefore argued that requesting an internal review would serve no useful purpose.

14. The Commissioner agreed that requiring an internal review in the circumstances would be unlikely to change the outcome and might risk undermining the exemption. She therefore exercised her discretion and accepted the case for further investigation without requiring the Parish Council to carry out an internal review.
15. The Commissioner considers that the scope of this decision notice is to determine whether the request was vexatious.

Reasons for decision

Section 14 - Vexatious

16. 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.*

17. 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.

18. 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.
19. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
20. *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).

21. The Commissioner has published guidance on dealing with vexatious requests¹, 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.
22. 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*".
23. 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.
24. 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 Parish Council's view

25. The Parish Council explained that the request related to an underlying matter regarding the maintenance of a set of public toilets in the village of Trebarwith. These toilets were originally owned by Cornwall Council, but the Council had decided they did not offer value for money. The Parish Council had decided to take on ownership but now appears to have reached the same conclusion about viability. A community interest company (CIC) had been proposed to take on responsibility for the toilets.
26. The Parish Council went on to explain that it had refused to provide further financial support, either to the upkeep of the toilets or to the CIC itself.

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

27. Trouble began, the Parish Council argued, when it denied the complainant funding for what it referred to as "his pet project" and, as a result, he had

"commenced a vitriolic campaign of slander and harassment against Tintagel Parish Council's Clerk."

28. The complainant had, the Parish Council argued, "slandered" and "publicly threatened" the clerk in interviews on local radio and via a local website. It believed that the figures he had quoted in those interviews were an inaccurate reflection of the true running costs of the toilets. It further argued that the complainant had a personal grudge against the clerk that he was using the FOIA to pursue.

29. The Parish Council also stated that the complainant had:

- *"made false reports to the police about the Clerk (which have been dismissed),*
- *falsely claimed to have had the Clerk's Police Service Record searched, by a Police Officer friend of his –the false nature of his claim was uncovered as a result of a police investigation into the alleged police mis-conduct;*
- *falsely claimed to have had the Clerk's legal qualifications investigated, then cited that the degrees 'were fake'. The person alleged to have undertaken the 'investigation' was contacted and expressed extreme anger at having been used by [the complainant]. No investigation had been agreed to, or carried out by this person;*
- *Made false reports to PKF Littlejohn (External Auditor) and threatened to incur great cost for the Parish Council. These matters have been dismissed.*
- *Made false and slanderous comments on the Society of Local Council Clerk's website, about the Council and the Clerk – these were removed following an investigation and an apology issued to the Clerk, by the Chairman of the Society;*
- *Made false claims about the Clerk to Cornwall Council Standards Officer; these were disproved;*
- *Acted in a threatening matter towards our 92-year-old Chairman – proven by many witnesses present at the time;*
- *Falsely accused the Clerk of mishandling and 'losing' £85k of public funds – disproven by auditors (3 audits undertaken)"*

30. In addition to his behaviour prior to submitting the request, the Parish Council also argued that the manner in which the complainant submitted his request was also vexatious because it had been designed to cause problems for the Parish Council to process.

31. The Parish Council noted that, at the time the request was submitted, the visitor centre had been closed to the public for some time. The complainant was, the Parish Council argued, well aware that the clerk never worked out of the visitor centre and was unlikely to collect any post herself for quite some time. Despite usually submitting correspondence via email, the Parish Council noted that this particular request had been submitted by post to a non-official Parish Council address. The complainant had not contacted the clerk to query why he had not received an acknowledgement or to chase his correspondence. The Parish Council argued that such actions:

"clearly highlight the vexatious nature of his actions and his clear desire to create difficulties."

32. The Parish Council further noted that the complainant had not sought an internal review of the way his request was handled.
33. Finally, the Parish Council noted that much of the information that the complainant was seeking was already available on its website. Most of what was not already in the public domain, the Parish Council argued, either did not exist or would have been exempt from disclosure anyway because it constituted personal data.

The complainant's view

34. The complainant, who is an elected member of Cornwall Council, noted that he had made keeping open the particular toilets in question an election pledge when standing for election in 2016. He noted that he had, for a short time, personally funded the toilets prior to the Parish Council agreeing to take them on. When it became apparent that the Parish Council no longer wished to continue the upkeep of the toilets, the complainant argued that he had worked with local community groups to explore possible alternatives. This had led him to lend his support to the proposed creation of a CIC to take on the toilets on a more permanent basis.
35. The complainant was unhappy that the Parish Council had refused to provide funding for proposed CIC. He argued that, when asked about the matter on local radio, he had pointed to figures from the Parish Council website suggesting that it had, at that point around £170,000 in cash reserves. He felt that, if the Council had such a substantial amount in reserves, it should be able to fund a contribution. As a result of giving this interview, the complainant argued, the Parish Council had (in his view illegally) convened a meeting to pass a vote of no confidence in him. He said that:

"some councillors did not agree [with the motion] and resigned."²

36. Having been censured by the Parish Council, the complainant (who has himself previously acted as a clerk to several parish councils) told the Commissioner that he had decided to look further into the Parish Council's accounts. Having done so, he considered that there was a considerable some of money "missing" from those accounts. He had reported these concerns both to the police, to Cornwall Council and to the external auditor. The Police had advised him that he would need to seek additional information to support his allegation and suggested that he attempt to access this via the FOIA.
37. The complainant argued that the Parish Council was required, by law, to make its accounts available for public inspection but had not properly complied with the law for either the 2017/18 or 2018/19 financial years. This was borne out by the external auditor's reports for those years – copies of which were provided to the Commissioner.
38. The complainant noted that the clerk had received a substantial increase in pay over a short period of time and that it should therefore be expected that the Parish Council should have important financial information readily available.
39. In summary, the complainant felt that the Parish Council was not subject to what he considered to be appropriate financial controls and that the councillors themselves lacked either the experience or the expertise (or, in some cases, both) to challenge the way money was being spent. He felt that the Parish Council was bullying him via the Standards complaints process and trying to prevent him from accessing information which should be public.
40. Finally, the complainant noted that he had posted his letter to the address advertised on the Parish Council website. He did not accept the Parish Council's version of the events that had occurred between his

² The Commissioner has been unable to verify (or refute) the accuracy of this statement. Neither the minutes of the meeting in question nor the subsequent meeting refer to any councillor resigning – although the minutes of the subsequent meeting do record that four councillors had not attended the meeting in question. The minutes of the meeting after that do record a councillor as having resigned since the previous meeting – although the Commissioner has found no public reason for this resignation. The Commissioner has included this statement because it was what was reported to her by the complainant as part of his submission as to why his request was not vexatious.

request being posted and being finally responded to and believed the clerk had intentionally destroyed the request.

The Commissioner's view

41. Section 14(1) of the FOIA relieves a public authority of its duty to respond to a request. The public authority does not have to communicate any information, nor even establish what relevant information it holds. It therefore follows that the Commissioner expects any public authority applying section 14(1) to meet a high bar in demonstrating that a request is vexatious.
42. Having considered the available evidence, the Commissioner is not persuaded that the Parish Council has demonstrated that the threshold for section 14(1) has been met in this case.
43. That having been said, as an independent person viewing the evidence objectively, the Commissioner wishes to note that the correspondence and events which have been reported to her do not reflect well on either party. The fact that this matter traces its roots back to the maintenance of a single set of public toilets should give both parties cause to reflect on their behaviour. It is unlikely that the public of Tintagel would be particularly impressed by either the behaviour of their elected County Councillor or their elected Parish Council.
44. Ultimately the burden of proof lies with the public authority in demonstrating that a request is vexatious, not on the requestor to prove that it is not. However, the fact that the Commissioner has upheld this particular complaint should not be taken as an endorsement of the way that the complainant has pursued this matter.
45. In the Commissioner's view, the Parish Council's submission was undermined by a lack of supporting evidence documenting the complainant's alleged behaviour during the weeks and months leading up to the date that the request was responded to and, particularly in the period before it was posted.
46. Where evidence was provided, it appeared to relate to events which occurred after the letter had first been sent and, in some cases, after the request was responded to.
47. The description of events demonstrates that the relations between the complainant and the Parish Council had begun to deteriorate prior to the request being made. However, the evidence before the Commissioner indicates that matters did not begin to descend into viciousness until much later. She therefore considers that, in this particular case, considering matters which have not been shown to have occurred at least prior to the request being responded to would be likely to present

a misleading picture of the circumstances which prevailed when the request was submitted and responded to.

48. The Commissioner turns next to the Parish Council's arguments about the manner in which the request was submitted.
49. The complainant has, correctly, noted that the address of the visitor centre is listed on the Parish Council's own website. The Commissioner also notes that the complainant was entitled to submit his request in anyway he chose.
50. The fact that the complainant chose to send his request, by post, to a particular building he knew to be closed, when he had previously corresponded by email does strike the Commissioner as odd. The fact that the complainant, by his own admission, apparently drove to the visitor centre with the express purpose of watching the request be delivered again strikes the Commissioner as questionable behaviour – but she does not consider such behaviour alone to be sufficient to qualify as vexatious. The request was ultimately one which was submitted by valid means.
51. The Commissioner also does not accept that the manner in which the complainant pursued his request is sufficient to render it vexatious. Given that, as she will explain in more detail below, the failure to respond within the statutory timeframe was as a result of the Parish Council's poor handling of the request, she does not accept that the request was vexatious simply because the complainant did not chase a response. He should not have had to chase a response because the Parish Council should have dealt with his request appropriately.
52. The Commissioner is particularly unimpressed that the Parish Council cited the complainant's failure to seek an internal review of its response as evidence that the request was vexatious. Not only did the Parish Council's inadequate refusal notice fail to inform the complainant of the correct procedure for seeking an internal review, but the final sentence of the response explicitly stated:

"No further correspondence will be entered into."
53. The Parish Council did provide the Commissioner with a copy of a report from the Monitoring Officer at Cornwall Council arising from a complaint, submitted by the Parish Council, about the complainant's conduct. Whilst the report itself appears to have been written after the request was responded to, it describes events which took place prior to the request being responded to and is therefore relevant.
54. The report did find that the complainant had breached the Code of Conduct by conducting himself inappropriately at a meeting of the Parish

Council. However it did not find breaches of the Code in respect of the more serious accusations of harassment or of seeking undue influence of the Parish Council's decisions.

55. The Commissioner is left to conclude that, at the time of the request, there was a certain amount of "he said-she said" going on between the parties. Both have accused the other of acting in an intimidating fashion.
56. Having viewed correspondence from the complainant, the Commissioner does accept that the clerk has become the complainant's focus. In particular, the complainant's letter of 30 March 2020, sent to the Chair of the Parish Council but copied to all members, did appear designed to undermine the clerk.
57. However, despite having been asked to provide all relevant evidence, the Commissioner notes that this is the only piece of correspondence that the Parish Council was able to provide to support its assertion that a "campaign of bullying" was taking place at the time of the request. One letter does not constitute a campaign. The Commissioner also notes that that letter must be considered against the backdrop of the Parish Council's decision to meet in secret and pass a motion of no confidence in the complainant. Whether justified in the circumstances or not, such a move was always likely to cause considerable damage to the professional relationship that the two parties are required to have. The Commissioner therefore accepts that subsequent correspondence was always likely to be expressed in terms which were more robust.
58. Finally, whilst the Parish Council noted in its submission that much of the information it held within the scope of the complainant's request was already published, the submission also gave the impression that publication had taken place after the request was responded to. The Commissioner has been unable to establish exactly what was on the Parish Council's website at the time of the request but she does not consider that, even if all the information were available, it would be sufficient to render the request vexatious.
59. In summary both parties have provided the Commissioner with explanations as to why they are the only party that has acted reasonably. Neither party has provided sufficient evidence to convince the Commissioner of the righteousness of their position at the point the request was made, but the burden proof lies with the public authority to justify the stance it has taken.
60. As the Parish Council has not demonstrated that the request was vexatious, it therefore follows that it is not entitled to rely on section 14 of the FOIA to refuse the request. However, both parties would benefit

from reflecting on their actions and how those actions might be viewed by the people they are supposed to be serving.

Procedural matters

61. Section 17(1) of the FOIA states that when a public authority wishes to withhold information or to neither confirm nor deny holding information it must:

within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

62. The Commissioner considers that the refusal notice the Parish Council issued on 12 May 2020 was inadequate because it did not inform the complainant of any internal review procedure the Parish Council had and

did not inform him of his right, under section 50 of the FOIA, to bring a complaint to the Commissioner. She therefore considers that the Parish Council breached section 17 of the FOIA in responding to the request.

When was the request received?

63. Whilst the Commissioner has already recorded a procedural breach of the FOIA, she considers it would be useful to address the issue of the date of receipt of the request.
64. The day on which a request is received is the day on which the request is communicated to the public authority. It is not the date on which that request is passed to the person or people who normally deal with information requests.
65. The Parish Council argued that the address to which the complainant had posted his response is not the address that is listed on the Parish Council minute and not the address from which the clerk works – and that the complainant knows this.
66. The Commissioner is happy to accept the Parish Council's arguments as being true, but she also notes that the address of the visitor centre is listed on the Parish Council's own website as being the physical address of the Parish Council and, in the absence of contrary evidence she must assume that that was the case at the time the request was made.
67. Furthermore, the Parish Council furnished the Commissioner with evidence to show the arrival of the original envelope, containing the request, being reported to the clerk. In that correspondence the volunteer states that:

"there was a fair bit of post in the centre for you"

In another piece of correspondence, a parish councillor refers to having met the clerk at the visitor centre on 1 April when she was "dealing with a delivery of goods."

68. The Commissioner is therefore satisfied that the visitor centre is known locally as a physical address by which the clerk in particular and the Parish Council in general can be contacted. Whilst submitting a request by post may not have been the ideal method of eliciting a prompt response, the Commissioner considers that the request was delivered to a valid address for the Parish Council.
69. The Commissioner has been unable to establish exactly what happened between the date on which the Royal Mail delivered the envelope and the date on which a copy of the request reached the clerk but, as she

considers the request was validly delivered, the timeliness breach would have occurred either way.

70. Even if the Parish Council's version of events is entirely correct, it suggests that the procedures in place for handling requests are inadequate. It is important that, if the Parish Council is using volunteers to sift its post, those volunteers are able to recognise potential information requests and can transfer those requests promptly to the people in charge of responding.
71. The Commissioner cannot be certain of the date the request was received, but she considers that the request was received at some point between 18 March 2020 and 20 March 2020. Either way, the refusal notice was not issued within 20 working days of the date on which the request was received. However, the Commissioner notes that a response was issued on the day after the request was apparently passed to the clerk.

Right of appeal

72. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

73. 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.
74. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.