

2 November 2017

Case Reference Number FS50686810

Dear Mrs Mitson-Woods

Freedom of Information Act 2000 (FOIA)/Environmental Information Regulations 2004 (EIR)

Complainant: XXXXXXXXXX

We wrote to Walberswick Parish Council previously to let you know that we have accepted this case for investigation. I have now been asked to investigate it.

You should now reconsider the way Walberswick Parish Council has handled this request and respond as detailed below:

ICO's approach

On receipt of a complaint under the FOIA or EIR we will give a public authority one opportunity to justify its position before issuing a decision notice. Please consider the guide for public authorities on our website for more information about how we handle complaints:

http://www.ico.org.uk/for_organisations/freedom_of_information/guide.aspx

XXXXXXX's request

On 7 February 2017, XXXXXXX wrote to the Council and asked to be provided with the following recorded information:

"I request the following information / documentation under the FOI Act and the Environmental Information Regulations:-

- a. A copy of the 2009 lease / agreement between WPC and WCLT, including a clear demarcation of the area covered.
- b. Information / documentation that defines WPC responsibility for gorse clearance, particularly outside the perimeter fence.
- c. Information / documentation that defines WPC responsibility to deal with fences, bearing in mind that WCLT seems to be barred from erecting permanent fences.
- d. A copy of WCLT response to WPC following the meeting that considered the resolution made at the WPC meeting 23 November 2016.
- e. If a WPC S106 application has been made by Mrs Forster, or anyone else connected with WPC, please provide a copy of it, together with SCDC's response. You will be aware that there is no authority for a WPC application for S106 money to be submitted to SCDC.
- f. If an unauthorised WPC application for S106 money has been submitted and then been supported by third parties, please provide copies of the documentation.

The Council responded to XXXXXXX's request on 19 May 2017 by sending him a copy of a lease agreement which the Council said, "contains a clear map with an outline of the extent of the area I hope helps to answer some of your questions".

On 23 May, XXXXXXX wrote to the Council to complain about its response to his request and to ask it to conduct an internal review. XXXXXXX pointed out that the Council had not provided any

information in respect of his request, other than to send him information it considered is relevant to item 'a'. XXXXXXXX said that the document sent to him, "...is clearly not a lease agreement" and "I find it difficult to believe that such a document would be produced by a professional firm even as an early draft". XXXXXXXX also disputed the Council's claim that the document contains a clear map. Additionally, XXXXXXXX asked the Council to provide him with a copy of the WPC resolution backing the 2009 'Agreement' between WPC and WCLC.

XXXXXXX then asked the Council, "Was the document you are purporting to be a lease / agreement generated by WPC or WCLT and who acted for the other party? Can I please have information you have that might put flesh on this early draft?"

The Council also wrote to XXXXXXXX on 24 May 2017 and responded to each item of his request as follows:

- a. You have already received this.
- b. Included in item a).
- c. Included in item a).
- d. Attached
- e. You are wrong about the authority – the application was made by post however I have included over and above your request and sent the supporting document and the grant acceptance form and email.
- f. This was not an unauthorised application.

On 5 June 2017, the Council wrote to XXXXXXXX having completed its internal review. The Council's review was limited to its failure to respond to XXXXXXXX's request within the 20 working day compliance period.

XXXXXXX's complaint to the Commissioner

XXXXXXX's complaint to the Commissioner is in three parts:

- a. The Council failed to respond to his request within the statutory timescale.
- b. The Council failed to provide him with recorded information which it holds and which is relevant to his request.
- c. The Council failed to undertake a proper internal review.

What you need to do now

Where possible we prefer complaints to be resolved by informal means, and we ask both parties to be open to compromise. It is also your responsibility to satisfy us that you have complied with the law. Our website has guidance which you should refer to in order to check whether your original response to the information request was appropriate.

This is your opportunity to finalise your position. With this in mind, you should revisit the request. After looking at our guidance, and in light of the passage of time, you may decide to reverse or amend your position. If you do, please notify the complainant and me within the timeframe specified at the end of this letter. This may enable us to close this case informally without the need for a decision notice.

In any event, we need the following information from you to reach a decision:

- The Council should provide full and detailed answers to the numbered questions below and provide the Commissioner with any further information which it consider supports the Council's position.

- You should provide the name and address of the Council's Chairman / Chairwoman / Chairperson. This information is required for the purpose of serving the Commissioner's Decision Notice should this be required.

Actions for the Council

In the first instance the Council should revisit XXXXXXX's requests. These are contained in XXXXXXX's correspondence of 7 February and 23 May 2017 and I have italicised them for the Council's convenience.

The Council should then determine whether it holds recorded information which is relevant to those requests.

If the Council does hold relevant recorded information it should confirm to the Council that it has already sent it to XXXXXXX in its responses to his correspondence. Alternatively, if the Council finds it holds more recorded information relevant to XXXXXXX's requests, it should send it to XXXXXXX or issue a refusal notice to him under section 17 of the FOIA, stating one or more of the exemptions to disclosure which the Act provides.

The Council should send the Commissioner a copy of any correspondence it might now send to XXXXXXX.

Questions for the Council

1. Please confirm that the copy of the lease agreement sent to XXXXXXX on 19 May 2017 is the relevant information held by the Council in respect of item 'a' of his request and that no other lease agreement is held. Please send the Commissioner a copy of the lease agreement which the Council sent to XXXXXXX on 19 May.

2. Please confirm that the Council holds no further recorded information relevant to items 'b' and 'c' of XXXXXXX's request.

3. Please provide the Commissioner with a copy of the information the Council provided to XXXXXXX in response to item 'd' of his request and confirm that this represents all of the recorded information held by the Council which is relevant to item 'd'.

4. Please explain the Council's answers given to items 'e' and 'f' of XXXXXXX's request and confirm whether the Council holds any recorded information relevant to parts 'e' and 'f' which it could have sent to XXXXXXX rather than providing him with the answers given by the Council.

5. Does the Council hold any recorded information concerning XXXXXXX's requests for "a copy of the WPC resolution backing the 2009 'Agreement' between WPC and WCLC" and any information the Council might have which might "put flesh on this early draft"? If the Council does hold such

information, can this be disclosed to XXXXXXXX or should it be withheld in reliance on any of the exemptions provided by the FOIA.

6. Does the Council hold any recorded information which could properly answer XXXXXXXX's question concerning: "Was the document you are purporting to be a lease / agreement generated by WPC or WCLT and who acted for the other party?"

7. Please explain why the Council failed to make a proper response to XXXXXXXX's request within the twenty working day compliance period required by section 10 of the FOIA.

8. Does the Council accept XXXXXXXX's assertion that it failed to undertake a proper internal review of its handling of his requests. Please explain with the Council's internal review was limited to its further consideration of its response time.

Section 1 of the FOIA

In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

In order to assist with this determination please answer the following questions:

9. What searches have been carried out by the Council to check that no information is held within the scope of XXXXXXXX's requests? Why would these searches have been likely to retrieve relevant information?

10. Please describe thoroughly any searches the Council may have made of its relevant paper and electronic records, and include details of any consultations between its staff/councillors.

11. If searches included electronic data, which search terms were used? Please explain whether the Council's searches included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

12. If the Council made no searches, or its searches were inadequate at the time, please rectify this now and let me know what you have done.

13. If the information were held would it be held as manual or electronic records?

14. Was any recorded information ever held relevant to the scope of the complainant's request which have since been deleted and/or destroyed?

15. If recorded information was held but is no longer held, when did the Council cease to retain this information?

16. Does the Council have a record of destruction of any recorded information relevant to this request?

17. What does the Council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the Council describe the way in which it has handled comparable records of a similar age?

18. If the information is electronic data which has been deleted, might copies have been made and held in other locations?
19. Is there a business purpose for which the requested information should be held? If so what is this purpose?
20. Are there any statutory requirements upon the Council to retain the requested information?

In summary, the Council is required to provide a thorough response to the Commissioner's questions in order to comply with its statutory obligations. The Commissioner will challenge any responses and assertions made by the Council which fail to satisfactorily address her questions and which require a more detailed explanation. The Council should be aware that the First Tier Tribunal has been very critical of public authorities who have failed to adequately respond to the Commissioner's enquiries. The Commissioner therefore expects public authorities to provide full details of its searches to support its conclusions.

We strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate our approach to the exemptions and exceptions of the FOIA. These can be found on our website:

- <http://search.ico.org.uk/ico/search/decisionnotice>
- <https://ico.org.uk/for-organisations/>

Having revisited the request, you may decide to apply a new exemption. We will consider new exemptions and exceptions, but it is your responsibility to tell the complainant why the new exemption applies and to provide us now with your full submissions.

For the avoidance of doubt, you should now do the following:

- Consider whether to change your response to the information request, and let us know the outcome.
- Send us any withheld information.
- Send us your full and final arguments as to why you think the exemptions apply.
- Answer all of the questions in this letter.

Please provide your response within 20 working days of the date of this letter, ensuring that you set out in full detail the Council's final position in relation to this request.

If you have any concerns about this case, please contact me at casework@ico.org.uk (quoting the case reference above in the subject line of your email. Alternatively you can telephone me on 01625 545629 (Mondays and Thursdays).

Yours sincerely

Cliff Brooks
Senior Case Officer
Telephone; 01625 545629