

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 April 2023

**Public Authority:** Dodderhill Parish Council

#### **Decision (including any steps ordered)**

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1. The complainant requested copies of correspondence sent by Dodderhill Parish Council ("the Parish Council"). The Parish Council refused the request under section 12(1) of FOIA on the grounds that to comply with the request would exceed the cost limit.
2. The Commissioner's decision is that the Parish Council has failed to demonstrate that the exemption is engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request that does not rely on section 12(1) of FOIA.
4. 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 10 October 2022, the complainant wrote to the Parish Council and requested information in the following terms:

“all correspondence between the clerk and [name of Parish Council administrator] for July August September 2022”

6. The Parish Council responded on 31 October 2022 and refused to provide the requested information under section 12 of FOIA on the grounds that to comply with the request would exceed the cost limit.
7. Following an internal review the Parish Council wrote to the complainant on 4 February 2023. It upheld its position.

## Reasons for decision

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8. This reasoning covers whether the Parish Council is entitled to rely on section 12(1) of FOIA to refuse to provide the requested information.
9. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit. The appropriate limit for the public authorities such as the Parish Council is £450. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 18 hours for the Parish Council.
10. A public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
- determining whether the information is held
  - locating the information, or a document containing it
  - retrieving the information, or a document containing it
  - and extracting the information from a document containing it.

11. However, as stated in the Commissioner's guidance<sup>1</sup>, a public authority cannot include the staff time taken, or likely to be taken, in considering whether any exemptions apply in the costs estimate as this activity does not fall within the list of permitted activities. Also, the staff time taken, or likely to be taken, in removing any exempt information in order to leave the information that is to be disclosed, often referred to as 'redaction', cannot be included as part of the costs of extracting the requested information.
12. A public authority does not have to make a precise calculation of the costs of complying with a request, and only an estimate is required. However, that estimate must be a reasonable one. In *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency (EA/2006/0004)*, the Information Tribunal stated that a reasonable estimate is one that is 'sensible, realistic and supported by cogent evidence'.
13. In its submissions to the Commissioner, the Parish Council explained that 34 email accounts would need to be searched (each email address relating to a different part of the Parish Council's work).
14. The Parish Council estimated that it would take, "between 30 minutes and 1 hour per email address [...] to print off documents (PDF versions) - approx 20 -24 hours of work". It did not provide any details of how it had arrived at the estimate of 30 minutes to 1 hour per email address. It did not for example give an indication of the number of emails sent/received from any of these addresses in the relevant period. Nor did the Council provide any further details regarding how it had come to the estimate of 20-24 hours in total. The Commissioner notes that the estimate of 30 minutes to an hour per email address for 34 accounts gives a range between 17 hours (which is under the cost limit) and 34 hours.
15. Regarding extracting the information the Parish Council stated, "all the information would have to be manually processed to confirm it was GDR compliant, not commercial in confidence or legal in confidence" and, "the information would all need to be printed off and then redacted, scanned back in ready for any response". As noted above, a public authority cannot include the staff time likely to be taken in considering whether any exemptions apply or redacting withheld information in the

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

costs estimate as these activities do not fall within the list of permitted activities.

16. The Commissioner asked the Parish Council to confirm whether it had carried out a sampling exercise in order to determine its estimate. The Parish Council stated, "we did not need to do a sampling exercise as we have already done it for real when provided the complainant with an SAR request for copies of all emails she has been sent or sent which took 16 hours to put together, (completed)". In the Commissioner's view this statement is of limited use in providing evidence that the Parish Council's estimate of 20-24 hours to comply with this request was reasonable.
17. For the reasons outlined above the Commissioner is not satisfied that the Council has provided a reasonable estimate of the time it would take to comply the request supported by cogent evidence.
18. The Commissioner's decision is therefore that the Parish Council has failed to demonstrate that section 12 is engaged as a basis for refusing the request.

## Right of appeal

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19. 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)

20. 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.
21. 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 .....**

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**