



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2014/0286

BETWEEN

COLIN LOVE

Appellant

and

INFORMATION COMMISSIONER

Respondent

Tribunal

**Brian Kennedy QC
Paul Taylor
David Sivers**

Hearing: 31 March 2015.

Location: Piccadilly Exchange, Mosley Street, Manchester.

Decision: Appeal Refused.

Date of Decision: 8 April 2014

Date of Promulgation: 9 April 2014

Subject Matter: The Freedom of Information Act 2000 (“FOIA”) and reliance by Bottesford Parish Council, (“the Public Authority”) on Section 22(1) to withhold disclosure of the requested information.

Introduction:

1. This decision relates to an appeal brought under section 57 of the FOIA. The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“the DN”) dated 13 October 2014 (reference FS50532378) which is a matter of public record but much of which is repeated herein for the sake of clarity and context.
2. A paper hearing took place on 31 March 2015 when the Tribunal deliberated on the issues in this appeal.

Background:

3. The Appellant wrote to the Public Authority on 9 January 2014. The request for information, was made in the following terms: “ — *the details of the Accounts for payment for the past three months - with clear details of to whom payments have been made and for what specific services/purchases those payments have been made, along with reference to the appropriate minutes resolutions that such payments should be made.*”
4. The public authority responded on the same day and stated: “*In line with the Freedom of Information guidelines the documentation is available as the accounts for payment appended to the minutes. The financial accounts are available each year following the closure and audit of the accounts for that year.*”
5. Further to a complaint to the Commissioner about the Public Authority’s handling of the request for information, the Commissioner wrote to the Public Authority on 6 March 2014 as a result of which the Public Authority responded to the Appellant on 24 March 2014. It stated that some of the requested information was available as an appendix to the relevant minutes accessible through its website and cited section 21 of the FOIA . It also cited section 22 and explained how further details will be available on publication of the audited accounts following the financial year end.
6. Further exchanges revealed the Public Authority did not have an internal review process, that the Appellant had been subject to a communication restriction, recently extended and the Commissioner wrote to the Public Authority by way of investigation into its reliance on its application of the exemptions claimed.

Scope of the Case and the Commissioners’ investigation:

7. The Commissioner first considered the exemption claimed by the Public Authority under section 22(1) of the FOIA. Section 22 of the FOIA states that information is exempt if;

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

8. In order to demonstrate that the exemption under section 22 of the FOIA is engaged, a public authority must have an intention to disclose information at a future point in time and it must be able to demonstrate what information within the scope of the request it intends to publish.
9. The public authority explained to the Commissioner that it had not refused to provide the Appellant with the requested information but that the information is freely available on the Public Authority's website. It added that its audited accounts are made available to the public for a period of time after the closure of the Public Authority's accounts as dictated by the Audit Commissioner's Act 1998. It stated further that the Public Authority had no requirements to create a new report or document reformatting this available information.
10. The public authority had informed the Appellant that in line with the FOIA guidelines that the documentation is available as the "*accounts for payment*" appended to the minutes. The public authority explained how the financial accounts are available each year following the closure and audit of the accounts for that year.
11. The public authority informed the Commissioner that the details of the expenditure were always going to be available for future publication as stipulated by the Audit Commissioner Act. The public authority further explained that its accounts were open for inspection that year for the required 20 days (closing 13 June 2014).
12. During the Commissioner's investigation, the Public Authority provided further evidence demonstrating that the requested information was going to be published at the time the request was received. The public authority explained that there was a monthly statement of bills paid with each monthly meeting and that "*by law we have to publish the audited accounts which are also open to inspection and challenge*". The public authority added that it is self evident that it has a settled intention to publish the requested information "*as that is a statutory duty and the timescale for publication is similarly determined*".
13. The public authority explained that in November and December 2013, the Parish Councillors may not have known the exact date of the inspection period but they would have known the month when this information would become available as part of the Council's audit process.

14. The public authority stated that during the 20 days when the accounts were open, some of the requested information was provided to the Appellant. This included the minutes of a council meeting and contained the *“accounts for payment”*.
15. The public authority explained that due to the fact that information on how the budget is being spent is available each month, it is reasonable to withhold any further detail. The public authority is of the view that this is reasonable until such time as the accounts have been closed down therefore ensuring the accuracy of the information.

Public Interest in favour of disclosure:

16. In short the Appellant’s concerns are that in the interests of transparency and public accountability of public finances, the public authority should provide full details of all payments made during the months in question. He argues that the lack of transparency gives rise to local concern specifically if certain payments have not been declared or indications as to what certain payments refer to.

Public Interest arguments in favour of maintaining the exemption:

17. The public authority argued that the public interest is already being served by the monthly reports and *“ the benefit of publishing every last piece of information held by the Council relating to expenditure is outweighed by the need to ensure the information is accurate in every respect which can only be done on final reconciliation at year end.”*
18. The public authority provided the Commissioner with a copy of its mandatory notice which the Council stated was posted on its noticeboards. The Commissioner noted that this informs the electorate of their right to inspect the accounts over a 20 day period. The Public Authority state the Appellant had exercised this right a number of times during this period.

REASONS

19. This Tribunal adopt and agree with the reasoning given by the Commissioner in his DN for deciding that the balance of public interest lies in favour of maintaining the exemption under section 22(1) of the FOIA. These reasons in short are as follows:
20. The requested information is freely available on the Public Authority’s website and the audited accounts are made available to the public for a reasonable period of time.
21. At the time of the request the Public Authority had an intention to publish the information and it had a statutory timescale for publication.

- 22.** It is accepted that there is good reason in favour of ensuring all parts of the information are accurate and are completed at year end on the final reconciliation.
- 23.** The public authority had held the requested information at the time of the request and the details of how the Public Authority was spending the local precept were going to be available for future publication. This was confirmed to the Commissioner when the Public Authority provided the accounts for the year which demonstrated the available dates for viewing these details.
- 24.** In his grounds of appeal the Appellant disputes the balance of public interest being in favour of maintaining the exemption. These are helpfully summarised in the Commissioner's Response dated 11 December 2014 and in particular at paragraph 27. They are dealt with in detail in the Commissioner's Response at pages 28 to 30 of the Open bundle before us. The Appellant has failed to persuade us that the Commissioner was wrong in concluding that, on the facts of this particular case, the public interest here favours maintaining the exemption.
- 25.** We are of the view that the information was clearly intended for publication at a future date at the time of the request (even though the exact date was unknown). As this is a statutory requirement under the Audit Commissioner's Act 1998, there can be no doubt that this intention was true and we accept it was. We endorse paragraph 36 of the Commissioner's response (page 29) where he sets out that parliament specifically declined to set a time limit by which publication must be intended in order for the exemption to bite. This means that each case has to be considered on its facts, particularly in relation to the public interest.
- 26.** In relation to the Public Interest balance, we accept that publication of the November and December accounts payable serves to satisfy the public interest in disclosure. However, the appellant's argument seems to be that all three requested months had not been published at all. It would have been helpful if the Commissioner had stated that October's accounts were not produced in time for the meeting, during which the Town Clerk then resigned. The November and December schedules were produced, although the latter was put to a meeting on 20 January 2014, after the date of the request.
- 27.** We further regard a key factor in the balance of the public interest is the fact that due to the resignation of the Town Clerk during the October 2013 meeting and the subsequent absence of her replacement, the Parish Councillors had to cover this responsibility. Given their limited availability in this voluntary role, their focus was to ensure that they met the parish council's legal responsibilities whilst at the same time continuing to work on community projects (See Sharon Pyke's letter at page 121 - 2 OB dated 3 September 2014). There is clearly an overriding public interest in ensuring that the parish council's legal obligations are met and in our view, under the circumstances pertaining, this was greater than the public interest in disclosure. Furthermore we are of the view that the fact that the accounts payable were not provided to the appellant would not have prevented him from raising his concerns about financial probity with the relevant authorities. Had the Commissioner included this context in the DN it may have been clearer how he was able to reach the conclusion he had in the DN. Had the public authority given the explanation to the appellant at the time, he may have under-

stood and as we indicate having given the explanation to the Commissioner, it would again have been helpful had it been included in the DN. We are of the view that it gives a rational and reasonable explanation for why the accounts were not published as normal without undermining section 22(1) of the FOIA.

28. We further agree with the Commissioner in his decision for the reasons given in his response to the Grounds of Appeal.

29. For the above reasons we refuse the appeal herein.

Brian Kennedy QC

8th April 2015.