

BOROUGH GREEN PARISH COUNCIL

Chairman: Mike Taylor
Clerk & RFO:
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PO Box635
Sevenoaks
TN15 8HB

ESTABLISHED 1934

Mrs **Jayne Peirce**,

Wednesday 26th October 2022

23 Annetts Hall

Borough Green

Sevenoaks

Kent

TN15 8DZ

Dear Mrs **Peirce**,

Reference: Freedom of Information Act 2000 (FOIA), Case Reference Number ICO: IC-196184-SON9,

Complaint from: **Jayne Peirce**

This letter summaries the findings of the Internal Review of your two Freedom of Information requests to Borough Green Parish Council (BGPC) and outlines the decisions and rationale of the Review Panel.

Review of decisions made by the clerk on behalf of BGPC

On the 7th October 2022 at 14.00 you submitted a FOi request to BGPC, as follows:

From: [REDACTED] >
Sent: 07 October 2022 14:00
To: Bernie Galopin <clerk@boroughgreen.gov.uk>
Subject: Freedom of Information Request

Dear Bernie,

I am writing to you under the Freedom of Information Act 2000 to request the following information from Borough Green Parish Council.

Please provide me with:

- All e-mails, letters, reports, faxes, file notes, notes of phone calls, videos, audio and digital recordings relating to the legal action that was taken in respect of the removal of the hedge on the A25.
- Details of the full costs involved, including but not limited to legal costs, compensation and the costs of replacing the hedge.
- An explanation as to why the outcome of the legal action has not been shared.

- Details of the measures that have been put in place to reduce the risk of further litigation being taken against the Parish Council.

Please provide the information in the form of an email to be sent to [REDACTED]

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16 obligations of the Act, as to how I can refine my request.

If you have any queries, please don't hesitate to contact me via email and I **will** be very happy to clarify what I am asking for and discuss the request, my details are outlined below.

Thank you for your time and I look forward to your response.

Best wishes,

[REDACTED]

Address: [REDACTED]

Mobile: [REDACTED]

Your FOi request was reviewed by our clerk on Friday 7th October 2022, who declined your request. The Clerk's response is outlined below.

From: Clerk@boroughgreen.gov.uk <clerk@boroughgreen.gov.uk>

Sent: 07 October 2022 14:09

To: [REDACTED] >

Cc: 'mike taylor' <mike.taylor@boroughgreen.gov.uk>

Subject: RE: Freedom of Information Request

Hi [REDACTED],

Your request for information under the Freedom of Information Act 2000 is denied. Our reasons are as follows:

1. It would cost too much or take too much staff time to deal with the request.
2. Due to your previous interactions with Borough Green Parish Council your request is believed to be vexatious.

Regards

Bernie

On the 7th October 2022 at 16.35 you re-submitted the FOi request to BGPC, stating the following:

From: [REDACTED] >

Sent: 07 October 2022 16:35

To: clerk@boroughgreen.gov.uk "

Cc: mike taylor <mike.taylor@boroughgreen.gov.uk>; Tom Tugendhat MP <tom.tugendhat.mp@parliament.uk>; casework@ico.org.uk

Subject: Re: Freedom of Information Request

Dear Bernie,

Thank you for your prompt response,

I have reworded and simplified my request:

I am writing to you under the Freedom of Information Act 2000 to request the following information from Borough Green Parish Council.

Please provide me with:

- The outcome of the legal action that was taken in respect of the removal of the hedge on the A25, which was concluded over a year ago.
- The summary of the costs incurred and paid from the public purse, including but not limited to legal costs, compensation and the cost of replacing the hedge.
- An explanation as to why the outcome of the legal action has not been shared.

I find your accusation that my request is vexatious to be defamatory and upsetting. The FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable.

As such it is an important constitutional right. Engaging section 14 (1) to refuse my request is inappropriate in this case. "The purpose of Section 14...must be to protect the resources (in the broadest sense of the word) of the public authority from being squandered on disproportionate use of FOIA..." (paragraph 10)

My request is a perfectly legitimate one that seeks transparency on matters which are in the public interest - including where public funds have been spent in this context. You will be aware that you can only apply section 14 (1) to the request itself and not to the individual who submits it.

I have made no repeated FOi requests for this information. I have reduced the scope of the request.

The tone of my requests is polite and respectful. It cannot therefore meet the criteria to be considered vexatious. I am not asking for information that would be classed as exempt.

I have copied this into Tom and to the ICO, which has provided advice and guidance on this. If my request is not met I shall have no alternative but to make a formal complaint via the ICO.

Please provide the information in the form of an email to be sent to [REDACTED]

If you have any queries, please do not hesitate to contact me via email and I will be happy to clarify what I am asking for and discuss my request, my details are outlined below.

Thank you for your time and I look forward to your response.

Best Wishes

[REDACTED]

[REDACTED]

[REDACTED]

Your second FOi request was reviewed by our clerk on 17'11 October 2022 who declined your request on the following grounds.

From: Clerk@boroughgreen.gov.uk <clerk@boroughgreen.gov.uk>

Sent: 07 October 2022 17:39

To: [REDACTED] >
Cc: 'mike taylor' <mike.taylor@boroughgreen.gov.uk>; 'Tom Tugendhat MP' <tom.tugendhat.mp@parliament.uk>; 'casework@ico.org.uk' <casework@ico.org.uk>
Subject: RE: Freedom of Information Request

[REDACTED]
You're welcome.

Your request is denied on the same grounds as before. Should you wish to appeal please follow the legislative provisions in place.

Regards

Bernie

On 17th October 2022 at 20:45 you wrote to BGPC via email and requested an Internal Review, stating your reason as follows:

From: [REDACTED] >
Sent: 17 October 2022 20:45
To: clerk@boroughgreen.gov.uk
Subject: Re: Freedom of Information Request

Dear Bernie,

I am writing to ask you to reconsider your refusal to my request.

I am requesting that you conduct an Internal Review for my email dated 7th October, sent at 14.00 (see below)

The reason I am unhappy with your response is as follows;

1. You responded and refused my request within 8 minutes of my email, cutting and pasting directly from the ICO website. You could not have in that time assessed the time required to gather the information requested.
2. You did not offer me a complaint or appeals process.
3. The Chairman wrote in the May edition of the Voice "*Another black note during this time was legal action against the Parish Council, which is still hidden under enforced confidentiality rules. This irks me because I have always believed in total transparency, but you have my personal guarantee that once the gag is lifted there will be a full disclosure of this sorry saga*". This was 6 months ago.
4. I am to believe the legal action was completed in the summer of 2021 and there is no NDA.
5. In the interests of transparency and hope that as much as has been spent I see no reason why this information should be withheld any longer.
6. With regards to my previous interactions I have been in direct contact with the Parish Council since September 2021. I am offered a place should suggest that any member of the public who has ideas and views that are shared by the Parish Council to join working groups to support the Parish Council and make presentations at Parish Council Meetings could be considered vexatious. I have been offered acted in the interests of the community and the subjects I have been involved in do not benefit me personally.

I look forward to your response.

Best Regards

[REDACTED]

[REDACTED]

[REDACTED]

On 18th October 2022 the clerk agreed to your request for an Internal Review in respect to the above two FOi submissions, as stated below:

From: Clerk@boroughgreen.gov.uk <clerk@boroughgreen.gov.uk>

Sent: 18 October 2022 11:52

To: [REDACTED] >

Cc: 'mike taylor' <mike.taylor@boroughgreen.gov.uk>

Subject: RE: Freedom of Information Request

Hi [REDACTED]

Thank you for your email. I will conduct an Internal Review in accordance with the prescribed timescales. I'll message you if I require any other information from you or when the review has been completed.

Regards

Bernie

The clerk established an independent process to conduct the Internal Review. This was conducted on Wednesday 26th October 2022 at 7pm at the Parish Council office by three Councillors: Councillor Sue Butterfill, Councillor (BGPC Deputy Chairman) Tim Shaw and Councillor Mark Ramsden - The Review Panel. The clerk was present to provide information to the Councillors but was not involved in the decision-making process.

During the Internal Review, it was agreed by the Review Panel to provide more information in order to explain and justify our decisions. This report will consider each of the exemptions and reasons for failing to provide the information requested by reference to each point made by the clerk.

1. It would cost too much or take too much time to deal with the request. The Internal Review agreed with the clerk's assessment and decision for the following reasons:
 - The first FOi request would have taken a minimum of two weeks work - at least 70 hours. This work would involve reviewing and redacting many documents due to legal privilege, constraints placed by the Data Protection Act 1998 and obligations under the General Data Protection Regulation 2018. There are ongoing matters involving a legal dispute that may have a further bearing on costs and all costs have not yet been identified and calculated. We have only one clerk and this would be a far too onerous task for them to complete this task in addition to their normal daily duties of a functioning Clerk/Responsible Financial Officer for a very busy parish council.
 - The second FOi request, although reduced in terms of volume, would still take a considerable amount of time as many documents would still need to be reviewed and analysis undertaken - at least 50 hours. There are ongoing matters involving a legal dispute that may have a further bearing on costs and all costs have not yet been identified and calculated. We have

only one clerk and this would be a far too onerous task for them to complete in addition to their day job.

- In terms of costs, BGPC would need to engage the services of a solicitor to assist in reviewing material for disclosure and in analysis. The amount of their time is unknown but is likely to be at least 10 hours. At a guess, this is likely to be about £2000. As stated, BGPC only has one clerk. If the clerk was removed from their duties to carry out the work requested in your FOi requests then BGPC would need to hire the services of a locum clerk for at least three weeks. The cost is likely to be around £2625 as this will involve handing over duties, training and then the duties themselves. The clerk's salary costs during this period is likely to be around £2000. There are likely to be additional costs incurred to the disruption of business whilst this abstraction takes place. Therefore, the costs associated with meeting your FOi requests are likely to be about £5625. BGPC do not have the financial reserves to cover these costs.

2. Due to your previous interactions with Borough Green Parish Council your request is believed to be vexatious.

- The Review Panel re-counted a recent incident which was designed to embarrass the clerk and the Parish Council. On 2nd June 2021 you arranged for your neighbour, [REDACTED] to send the clerk an email on a false premise of making a booking at Potters Mede and then tried to use the information at a public meeting on 3rd June 2021 to embarrass the clerk and undermine the Parish Council over a car parking issue affecting the road in which you reside. Email shown below.

From: [REDACTED]

Sent: 02 June 2021 15:44

To: clerk@boroughgreen.gov.uk

Subject: Potter's mede

Hello,

I'm a childminder and would like to take the children to potters mede for a picnic. We will have a lot of bags and at least 8 children so would prefer to drive. I know the gate is now open at the weekend but is it also open during the half terms? I went past today and it was open so thought I'd check to see if it was open tomorrow as well.

Many thanks

[REDACTED]

- The Panel recalled that you made recent complaints against the Parish Council and the clerk following the public meeting on June 3rd 2021 in which you received no votes over your car parking proposal involving Potters Mede. None of these complaints were corroborated or substantiated, however, they highlight a possibly strained relationship between you and members of the Parish Council and the clerk. The Panel are not aware of any change in this relationship.
- BGPC have received written information from the public in confidence which suggests that your behaviour and motivations towards BGPC are not transparent and that you seek to promote a personal interest in relation to the parking issues on the road in which you reside rather than to pursue the information in the public interest. This independent information, which has been shared in confidence with the ICO, is in direct contradiction to the statement

in your e-mail dated 1yth October 2022 at 20:45 (point 6), which states "I have only ever acted in the interests of the community and the subjects I have been involved in do not benefit me personally."

Clearly, you have endeavoured to undermine the Parish Council previously which has been corroborated in confidence to BGPC. The view of the clerk, and now also the Review Panel, is that your FOi requests are intended to cause unjustifiable distress, disruption and irritation to the clerk and the Parish Council. Therefore, the Review Panel regard both of your FOi requests as vexatious.

Additional Exemptions

The Review Panel wish to bring to your attention the provisions of the Local Government Act 1972, Part 2. There is a legal requirement that matters discussed in Part 2 hearings are done so in confidence. This includes matters relating to litigation. In addition, the Review Panel wish to apply the following restrictions and exemptions as reasons for not disclosing the information under the Freedom of Information Act 2000.

3. Sec 22: BGPC intend to publish matters relating to litigation at the earliest opportunity. The deadlines and timescales are out of the control of the Parish Council, however the Chairman and the clerk have stated that information will be released as soon as possible. As you have stated, the Chairman made a written declaration in May 2022 in the local community magazine which is circulated to the residents of Borough Green, 'The Voice,' and the clerk confirmed this intention to you in an email, dated 29th September 2022. This provides some of the evidence of BGPC's intention in regard to Sec 22.

The emails are highlighted below:

From: Clerk@boroughgreen.gov.uk <clerk@boroughgreen.gov.uk>
Sent: 29 September 2022 21:52
To: [REDACTED]
Cc: 'mike taylor' <mike.taylor@boroughgreen.gov.uk>
Subject: RE: A25 Hedge

Hello [REDACTED],

I'm not at liberty to discuss any legal matters involving the Parish Council at this time. All information involving legal matters that concern the Parish Council will be released to the public at the appropriate time. As legal processes are outside the influence and control of the Parish Council it is difficult to put dates on such releases.

Regards

Bernie

From: [REDACTED]
Sent: 27 September 2022 15:46
To: Bernie Galopin <clerk@boroughgreen.gov.uk>
Subject: A25 Hedge

Dear Bernie,

It was mentioned in the May Voice Magazine that the Parish Council would reveal th_e details behind the legal action taken against them for the removal of the fence on the A25. When will this information be available?

Best Regards



The Chairman's statement in the Voice Magazine (May):

"Another black note during this time was legal action against the Parish Council which is still hidden under enforced confidentiality rules. This irks me because I have always believed in total transparency, but you have my personal guarantee that once the gag is lifted there will be a full disclosure of this sorry saga".

4. Sec 31: The information requested should be regarded as exempt information as its disclosure would likely prejudice ongoing civil proceedings which are brought by or on behalf of a public authority (BGPC) and arise out of an investigation conducted, for any purposes specified in the subsection (2) below:
 - a. The purpose of ascertaining whether any person has failed to comply with the law,
 - b. The purpose of ascertaining whether any person is responsible for any conduct which is improper
 - c. The purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

The concern of BGPC here is that the disclosure of information would interfere with a right to a fair trial or an impartial adjudication. This protection is also afforded by Article 6 HRA- Right to a fair trial.

5. Sec 42: Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information. The information requested relates primarily to information regarded as legal privilege.

Summary

The Review Panel uphold the clerk's decisions in regard to both FOi requests and apply an additional three exemptions (Sections 22, 31 and 42) to justify our honest held belief for not disclosing the information at this time. We emphasise that the information will be made public knowledge at the earliest opportunity. BGPC have taken advice on this matter form the ICO and will assist any investigation that may follow this Internal Review. We hope you are satisfied with our Internal Review.

Signed and dated: