

# POTTO PARISH COUNCIL

District  
Hambleton

County  
North Yorkshire

28<sup>th</sup> August 2014

Ref: Potto Parish Council v Information Commissioner EA/2014/0177

Dear Ms Lowe,

Further to your email dated 28<sup>th</sup> August we would like to include the following supporting information in our appeal.

This information is provided to support the appeal by Potto Parish Council under section 57 of the Freedom of Information Act 2000 ("FOIA") against a Decision Notice FS50542759 issued by the Information Commissioner on 15 July 2014

Having reviewed the requirements of the Freedom of Information Act Potto Parish Council would like to clarify the following points in support of our appeal;

## 1. Information

It is clear that the information requested by [REDACTED] is not held by Potto Parish Council. There was no meeting held in December 2013, therefore no apologies were offered, and no minutes were recorded, therefore the requested information is not available to be provided.

[REDACTED] was fully aware of this situation as [REDACTED]  
[REDACTED]  
[REDACTED] the meeting was not going to be held in December.

Therefore we would question whether a breach of the FOIA is applicable when there is no information recorded or held by the Parish Council in respect to this complaint?

The Information Commissioner notes in their response to the appeal Paragraph 24;

"If it is the case that that Councillor Griffin or [REDACTED] did not offer apologies for the December meeting then, in order to comply with section 1(1) FOIA, the Council should simply have informed [REDACTED] of this fact. If the Council so wished, it could add – as appears to be its position - that it saw no reason for such apologies to have been given"

We can only reiterate that there was no meeting, therefore there were no apologies and therefore there is no information to provide.

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Potto Parish Council is fully supportive of the principals of the Freedom of Information Act, however in this case, where as noted there is no information to provide and the complainant is fully aware of this fact, the Parish Council have responded in a timely manner and maintained a fully open access to any available information.

## 2. Exemptions

From our review of the FOIA it is clear that there are a number of statutory exemptions to the act including;

- Absolute Exemptions
- Partly Absolute Exemptions
- Qualified Exemptions

The FOIA clearly states;

“Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that where —

The provision confers absolute exemption”

A number of absolute exemptions exist; however pertinent to this case is Section 21 of the FOIA;

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Potto Parish Council would contend that the information or non information as noted in 1. Above was reasonably accessible to [REDACTED] a number of sources therefore should be classed as an “Absolute Exemption”, these sources are noted below;

1. The notice that no meeting was to be held in December was emailed to [REDACTED] [REDACTED] to the meeting being cancelled in December 2013.
2. A notice was placed in the Potto village notice board announcing the cancellation of the December 2013 meeting.
3. A notice was placed in the village hall announcing the cancellation of the December 2013 meeting.
4. The cancelled meeting was noted in the January 2014 Parish Council minutes, which were sent to [REDACTED] [REDACTED] the village notice board and posted on the village web site.
5. As [REDACTED] requested to attend Parish Council meetings in January, February, March, April, May and

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June 2014 where the issue was discussed in a public forum, [REDACTED]  
[REDACTED] to attend.

6. As a [REDACTED]  
[REDACTED] for each of the Parish Council meetings held in January, February, March, April, May and June 2014. Additionally these were also publically displayed on the village notice board and posted on the Potto village web site for anyone to access.
7. The minutes of meeting of Potto Parish Council represent the public records of the council and it is clear from the above that all of the information held by the council is fully available to any member of the Parish Council [REDACTED]  
[REDACTED] or any member of the public.

It is very clear that Potto Parish Council has never made any attempt to restrict the flow of information in any form. All of the proceedings of the Parish Council are recorded in the minutes agreed by the full council and made available in many forms delivered directly to Councillors and published in various locations for members of the public.

### 3. Decision Notice

Potto Parish Council remains extremely concerned over the handling of this case by the Information Commissioner. We find it inconceivable that a government organisation can make any sort of balanced judgement and issue a decision notice without contacting the party concerned, this is surely in breach of their procedures, due process as well as legal and statutory requirements.

1. The Information Commissioner stated that they contacted Potto Parish Council on the 17th of June 2014, however Potto Parish Council can confirm that it never received the letter (Ref 18 in the Information Commissioners supporting bundle) from the Commissioner. Potto Parish Council was therefore unable to respond to the Commissioner as it never received the letter (Ref 18).
2. As noted in 1 above the Parish Council was completely unaware of this situation as it had not been contacted by the Commissioner to see if the complaint could be resolved informally, as it had not received the letter (Ref18) and no other form of contact was initiated by the Information Commission.
3. Reviewing the documentation provided in Bundle-EA20140177.pdf it is clear that the letter referred to as (Ref 18) was not printed until the 27/07/2014 which would throw some doubt as to whether this letter was in fact sent out, as it was never received by the Parish Council while all other documents related to this case either by Mail or Email have been received ?

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## 4. Email from ICO Solicitor

Subsequent to the above, an Email was sent from Mr Mark Thorogood, Solicitor - Group Manager Information Commissioner's Office, on the 21<sup>st</sup> August regarding a clarification on the information bundle submitted by the ICO, and in response to our queries regarding correspondences from the ICO.

In the email Mr Thorogood starts with a quotation purportedly from Potto Parish Council, this quotation is wholly inaccurate and not a statement made by Potto Parish Council.

Mr Thorogood then goes on to state;

"It is assumed this is an incorrect reference to the date that appears at the bottom of page 18 which states "23/07/2014". However, this was simply the date on which the email was printed from the ICO's case management system or inclusion in the bundle of documents sent with the Commissioner's response. The email itself was sent on the date that appears at the top of the email, 17 June 2014. I attach a screen print from the ICO case management system which shows the date that the email was sent."

Potto Parish Council is somewhat concerned with the content of the correspondence and the inaccuracies contained therein, for a number of reasons;

1. The ICO clearly state that they sent the email to the Parish Council on the 17<sup>th</sup> June and have included a screen shot from their system to support this.
2. This statement contradicts previous correspondences from the ICO for example; within the Information Commissioners Response to the appeal the ICO clearly state that they sent this information as a letter not an email see quote from ICO below?;

"The Commissioner wrote to the Council on 17 June 2014."

3. It is clear that the ICO are somewhat confused whether they sent a letter, or an email or nothing at all?
4. The Parish Council can clearly state that they never received the email that the ICO state that they sent on the 17<sup>th</sup> June.
5. The Parish Council can clearly state that they never received a letter that the ICO state that they sent on the 17<sup>th</sup> June.
6. Therefore we can only assume that the ICO did not send any correspondence and are trying to cover up this error.
7. The screen shot from the ICO case management system used by the ICO to support their statement is a complete Red Herring as it is clear from the

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details on the screen shot that there are drop down boxes on the screen where dates can be manually entered against these actions, therefore rendering this screen useless as a supporting document for when any correspondence is sent.

8. Potto Parish Council is extremely concerned that the information provided for this case by the ICO is at the best inaccurate, misleading and conflicting, and at the worst calls into question the very integrity of the ICO as an organization.
9. We would fully refute the ICO's claim that these issues have no bearing on this appeal as this correspondence is the initial step in the ICO's procedure when addressing the Parish Council for this case; they clearly did not follow procedure and are misrepresenting the facts to cover up their gross negligence.

## Summary

Potto Parish Council firmly believes that it has not transgressed any of the requirements of the FOIA, and remains fully compliant with the principles of the FOIA.

The fundamental issue is that the information request at the root of this issue was made by a person who was fully aware there was no information available to provide, had access to information from multiple sources, yet has endeavored to prove some sort of point around the issue. The complainant was [REDACTED]

[REDACTED]  
fully aware of the situation and the fact that there was no recorded information to provide.

Further Potto Parish Council is extremely concerned that the Information Commissioner has mishandled this complaint on a number of counts;

1. Made a judgment based only on information from one party
2. Did not contact the Parish Council as claimed in their response to the appeal
3. Did not allow the Parish Council to settle this matter informally
4. Did not follow due process
5. Has misled the tribunal in its claims and submissions
6. Has misrepresented the facts of how it supposedly issued correspondence
7. Has deliberately misquoted the Parish Council in their submission
8. Has behaved in an inappropriate and unprofessional manner

Therefore; Potto Parish Council would like to see this Decision Notice revoked and a full apology issued by the Information Commissioner.

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We look forwards to hearing from you in due course.

Yours Faithfully

Joanne Wilde

Clerk to the Council

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