

John Fullbrook

Subject: FW: Review Request to FoI Panel. Confidential information contained within this response.

From: John Fullbrook <Sent: 25 November 2022 11:15 AM

To: Paul Campbell <**Subject:** Review Request to FoI Panel. Confidential information contained within this response.

Dear Paul

I understand you have asked for a review – noted below.

On the FOI Panel's behalf I have asked the SPC Solicitors if communications ought not to be sent to you under the 'Litigation Privilege' ruling.

As soon as they provide the answer, we will be able to comply.

For your further information please note below, the wording of the notification the Council was sent and which I read out at Full Council under confidential session.

Sincerely

John

Please note therefore that these paragraphs are confidential information.

[REDACTED]

In the meantime, [REDACTED]

[REDACTED]. *This correspondence lies with our legal advisors who are preparing a response"*

From: Joanna Norcross <Sent: 21 November 2022 17:25

To: John Fullbrook <**Subject:** Fw: Review Request to FoI Panel. Grounds.

Hi John,

This is the FOI I was referring to earlier. Paul has requested a review of the decision, so we need to convene a review Panel. Apologies for taking so long to send this on to you, but as result of my failure to send it on, and Paul not sending it to you also, we need to convene the panel quite quickly.

Kind regards

Joanna

From: Paul Campbell < Sent: 02 November 2022 16:14

To: Tim Lloyd < >; Joanna Norcross >; Chris Young >; Simon Alexander >; Steve Northam <

Subject: RE: Review Request to FoI Panel. Grounds.

Just to be clear....the ICO expects a review to be carried out within 20 working days. My email to the Clerk on 12 October 2022 was a review request and so by my calculations the process should be completed by close of business on 9 November 2022.

From: Paul Campbell **Sent:** 02 November 2022 03:29 PM

To: Tim Lloyd <Joanna Norcross <>; Chris Young <>; Simon Alexander >; Steve Northam <

Subject: Review Request to FoI Panel. Grounds.

To the FoI Review Panel (Cllrs Lloyd, Young, Norcross, S. Alexander and Northam). As every email I send to Cllr Northam is auto-rejected I ask Cllr Norcross to forward a copy to him

Review Request Overview

On 31 August 2022 the ICO ruled in my favour. The decision notice is attached.

Despite this, and two further decision notices in my favour rejecting arguments that requests from me were vexatious, the Clerk is still refusing to provide the information I requested in May 2021.

We have gone full circle with the Clerk relying on s32, which SPC resiled from when I asked for a review last November.

In the circumstances I have lodged a third application with the ICO concerning exactly the same documents which the Clerk has been cynically withholding, with the express encouragement of the Personnel Committee (which includes three of the four members of the Review Panel) for eighteen months and continues to do so. This notwithstanding the Hoey recommendation that *"the approach to councillor access to information needs to be re-thought in such a manner that councillors will have access to everything they are entitled to see and need to know in a timely and appropriate manner rather than having to make FOI requests"*.

This is a formal review request on the basis of the same arguments I put last November and as set out below.

Overview of Grounds

I am seeking a further review as some eighteen months after I first requested the information, and notwithstanding the attached 30 August 2022 Decision Notice, and the Hoey recommendation, SPC continues to refuse to disclose the information I requested.

By that Decision Notice dated 30 August 2022, SPC was required to search again for the documents it had claimed not to have, but clearly did have, and either to produce them or provide an adequate refusal notice.

On 4 October 2022 the Clerk at last acknowledged that it holds the documents but claimed to rely on s32 to refuse them. A position he first took in November 2021 but then the Panel resiled from when I sought a review at that time and gave reasons why s32 appeared inapplicable.

So a year later we are no further forward and the Clerk is relying on a ground SPC previously resiled from and without addressing any of the reasons I previously gave as to why s32 is inapplicable.

On 12 October 2022 I wrote to the Clerk on pointing out that the arguments re s32 needed to be addressed. I have been ignored.

I ask the Panel to look at the attached s32 refusal and my arguments annotated therein as to why I believe s32 does not apply and to reconsider SPC's position.

The Detail

This is all part of a cynical process by the Clerk, publicly encouraged by members of the Personnel Committee who also sit on this Review Panel, at the Committee's November 2021 meeting, to prevent me from seeing information to which I am entitled to as a councillor.

This is notwithstanding the result of the independent governance review paid for by the District Council which has recently stated *"Steyning need to consider their whole freedom of information approach. Whilst the policy they currently have is sound in theory, the way it is implemented and the approach to councillor access to information needs to be re-thought in such a manner that councillors will have access to everything they are entitled to see and need to know in a timely and appropriate manner rather than having to make FOI requests"*.

It is also notwithstanding two recent decision notices (IC-155299-W9B5 and IC-155765-X1F0 both dated 19 October 2022) where the Commissioner has ruled that the Clerk had improperly refused requests from me – all as part of his same strategy publicly encouraged by the Personnel Committee of preventing me having information to which I am entitled and which has now been deprecated by the independent governance review.

On 30 August 2022 the ICO issued the attached decision notice requiring SPC to search again for the information it claimed not to have, though clearly did hold, and which fell within the terms of my request of 2 November 2021 (and of 13 May 2021) and either to provide the documents or provide an adequate refusal notice. The Commissioner gave it 35 days to do so.

"The Commissioner requires the Council to issue the complainant with a fresh response to their request following searches aimed at identifying all the information held within the scope of the request. If the Council locates information within the scope of the request, that information should either be disclosed to the complainant or an adequate refusal notice should be provided."

The Clerk waited the full 35 days before providing me with a number of irrelevant documents which he knew I already held because I was party to them. These irrelevant documents concerned a potential claim against the Council from Mr Barnes which the Clerk knows very well I have always known about and had NOT been the subject of my request.

The Clerk's own words in May 2021 made clear he knew exactly what documents I wanted and which he was refusing to provide at that time and is STILL refusing to provide: -

"....A claim may be being made against our Council from a Steyning resident, and the insurers solicitors are acting on our behalf in this matter.

When there is some signs of resolution I will inform the F&GP committee..... ..

The invoice is to cover these fees.

Joanna and Chris as Chair and Vice Chair have been involved in the process from the start and with me are happy that this invoice is paid ..."

We have now been taken full circle re s32 over a one-year period (with the whole delay being eighteen months) because the documents the Clerk knows I have wanted since May 2021 have again been refused, again claiming reliance on s32.

As the chronology shows, after a delay of five months, the Clerk first refused my request on 8 November 2021 purporting to rely on s32.

On 9 November 2021 I submitted a review request setting out why none of the s 32 grounds for refusing seemed to apply. The SPC Review Panel then resiled from s32 and changed the ground of refusal to the one which the Commissioner rejected in the decision notice.

Now, in response to the 30 August 2022 Decision Notice, the Clerk has once again refused to provide the documents, relying once again on s32 but without addressing any of the arguments I advanced on 8 November 2021 as to why s32 is not applicable.

Rather than revert to the Panel or the ICO immediately, I thought it appropriate to inform the Clerk that he had addressed none of the arguments about s32 I had put to him on 8 November 2021 and to give him 14 calendar days to do so before I reapplied to the ICO. I have been completely ignored. In the circumstances I the Panel to refer to the attached document comprising the Clerk's refusal of 4 October 2022 and my response to that which includes annotated comment on his response.

The key extract is copied below showing the Clerks purported reliance on s32 and my argument in response.

A third threat of legal action against SPC was made in April 2020. This threat of a possible claim against the Steyning Parish Council stems from court proceedings which I believe are ongoing and I further understand you are very much apart of and I therefore submit that on the advice of the insurers solicitors that I should continue to not send said correspondence to you at this stage as it might have a bearing on that case. With this in mind, and at the conclusion of the case, I would be happy to send out redacted correspondence as part of your initial Search Access

Request. This third threat of court action I alluded to within the previous and initial response to this FOI request but refused disclosure under Section 32.

This is the only element of your response which is relevant and while at last, after 17 months of prevarication, confirming that the subject matter of my FOI request and my SAR does indeed relate to the civil case concerning Mr [REDACTED] in his personal capacity and Mr [REDACTED] as a member of the public we are no further forward because you have simply restated your reliance on s32 without giving any reasons and without addressing any of the points I made in November 2021 concerning s32.

Before setting them out again for your ease of reference I do need to say categorically for the record that I am not "very much apart (sic) of" this case between [REDACTED] [REDACTED]. While I gave [REDACTED] some initial advice and assistance in drafting and I was his McKenzie friend at some of the interlocutory hearings, I have had ever-decreasing involvement and have had no involvement whatsoever since June 2021.

Here are the points previously made on 9 November 2021 re s32 which you have not addressed before relying on it once again. I am asking that within the next 14 days you specifically address these arguments to include stating which sub paragraph(s) you rely on:

"The only ongoing court case of which I am aware is one brought [REDACTED] [REDACTED]. That case which has been going on for the best part of two years has nothing whatsoever to do with SPC which is not a party.

Any papers in that case which might have found their way to SPC are not covered by s32, the potentially relevant part of which I have set out below for ease of reference. I also attach the ICO Guidance to s32.

To fall within the s32(1)a) exemption the documents would have to be held by SPC only by virtue (and note the use of the word ONLY) of it being information contained in any document filed etc with a court for the purpose of the proceedings.

If I am right in conjecturing [REDACTED] sent SPC any of the pleadings etc filed [REDACTED] then they do not satisfy the "only" requirement. They are in SPC's possession because [REDACTED] has voluntarily lodged them with SPC, not because they have been filed at court. Furthermore, if a potential claim has been intimated against SPC by a third party (which is what you said was the case) then that potential claim document has not been filed with the court at all and so is not covered by the s32(1)a) exemption.

Nor does intimation by a third party of a potential claim fall within the s32(1)b) exemption. Only if SPC was a party to the ongoing proceedings and something within those proceedings – such as contribution proceedings – had been served on SPC would such a

document be covered. If my surmise that the case is [REDACTED] then it is known with certainty that SPC is not a party and has not been served with anything within that action. Accordingly, the exemption does not apply.

The intimation of a potential claim by a third party does not fall within the s32(1)c) exemption either. It was not created by the court nor by a member of its administrative staff which is what the provision requires.

S 32(2) is not relevant. There is no inquiry or arbitration.

In any event, s32 does not apply to my separate Subject Access Request.”

Thank you

ClIr Campbell