

FOI Request received 04.03.15

Many thanks for this prompt and helpful reply, Rebecca.

I am disappointed that my recent offer regarding the questions which need to be asked regarding the Council's VG protocol legal advice has been rejected by the councillors concerned. This genuine attempt to try to work cooperatively with the Council would have avoided the following request.

We believe it is inappropriate that the Council is continuing with a policy that legal advice as to what the public can and cannot do on the MPF public village green should be kept from the public who actually paid for the advice. Particularly as the conclusions the Council draws from this advice are being used to regulate the conduct of the public it serves in a way which many believe to be mistaken. In particular, as confirmed at the 20 January 2015 Playing Fields Committee debate about a bouncy castle, the Council has told the Cricket, Tennis, Bowls and Football Clubs they are limited to their particular sport rather than to the general recreational activities which village green law protects and so, for example, the bouncy castle could not be used if it was linked to a function organised by the Cricket Club. As I indicated previously, we believe that either this advice is wrong or it is being misinterpreted/misrepresented and there does not seem to us to be any good reason why the advice itself should not be made public so that we can all work together to try to achieve what is best for the community so that the Clubs' activities and the public are not fettered unnecessarily.

As far as we understand it, the legal advice as to what can legitimately be carried out on the MPF village green and which is intended to underpin a published "protocol" for the public's use of the public's village green (which has apparently been pending for about two years), and which was the basis of the Committee's stated concerns about the bouncy castle, is completely separate from the legal advice SPC obtained recently relating to VG rectification/ VG exchange land. The latter matters related to potential litigation and might arguably have carried litigation privilege when litigation was pending, however the "protocol advice" appears to have no relevance to potential litigation and so does not carry litigation privilege, though it probably at the time it was obtained carried advice privilege.

We attach the ICO guidance document regarding the legal professional privilege (LPP) qualified exemption. Please could we ask you to note para 36 which we copy below for ease of reference. The substance of parts of the "protocol legal advice", which probably had the benefit of advice privilege and so was covered by s42, has subsequently been revealed by the Council both to Club members at meetings between some councillors and Club representatives and separately to the general public at Parish Council meetings and is being used to regulate the public's conduct - including being used to require the member of the public requesting the bouncy castle to say whether it is linked to a private function at the Cricket Club. The councillors stated this linkage would be unacceptable. What appear to be the substance of parts of this protocol advice have even appeared on the Skatepark Supporters' Facebook postings before it was more generally disclosed at meetings. Thus, as para 36 of the Guide confirms, the

advice is no longer confidential and the s42 qualified LPP exemption does not apply.

36. The fact that an authority or one of its staff did not intend to relinquish its right to claim LPP is irrelevant. For example, an employee of the public authority relies on legal advice the authority has received, and reveals the substance of the advice, when speaking in public. As a result, the information can no longer be regarded as confidential, and the public authority would not be able to claim LPP. This would be the case, even if the officer did not realise the effect that his actions would have.

Even if the qualified exemption under S42 did still apply, the public interest test would need to be applied by SPC when making its decision regarding disclosure and in this case, where the conduct of the Clubs and the public generally on this public space is being controversially regulated by the Council's apparent misinterpretation/misrepresentation of the advice which it refuses to publish then the public interest in disclosure is very strong. Please see the list of factors in favour of disclosure taken from para 47 on page 14 of the Guide.

Factor in favour of disclosure

The assumption in favour of disclosure and the rationale behind the assumption (ie accountability, transparency, furthering public debate etc).

Additional weight may be added to the above factor if the following issues are relevant in the particular case:

- large amount of money involved;
- large number of people affected;
- lack of transparency in the public authority's actions;
- misrepresentation of advice that was given;
- selective disclosure of only part of advice that was given.

All of these factors apply in our opinion. Viz:-

The refusal to publish is stifling accountability and is the opposite of transparency and is preventing proper public debate. As I said in my message of 20th January *“There is complete unity of interest throughout the community in making sure that perfectly lawful activities are not wrongly stifled by incorrect or misinterpreted legal advice and by concern about a non-existent threat. The recent debate made plain that even if the clubs obtained their own contrary advice, the Council would regard itself bound by its existing advice. Accordingly the important thing for the community is to be able to assist SPC in fully*

analysing its existing advice and ensuring that it is not having an inappropriate dampening effect on lawful activities."

A large amount of money is involved in proportion to the Council's overall budget and in terms of the effect on the Clubs' activities which enable them to be financially viable.

A large number of people are affected – most of the six thousand or so residents of Steyning use the MPF VG from time to time as does the wider public including visiting cricket, football, bowls and tennis teams.

There has been long-standing lack of transparency in this Council's actions – only recently have we begun to see some relaxation of this under your welcome new stewardship and because of the new Openness of Local Government Bodies Regulations 2014, the latest iteration of the ICO's Publication Scheme for Parish Councils, and through use of requests like the current one. To stifle activities on the MPF on the basis of what appears to be misinterpreted/misrepresented advice and to refuse the opportunity for those affected and who paid for it and are affected by it to critique the advice is an unnecessary lack of transparency.

We believe that the advice has almost certainly been misrepresented – certainly it has been used by senior councillors to vilify the FoMPF with false claims that our registration of the Village Green 93 threatens the existence of the Clubs by inhibiting their activities. We believe that the incorrect claim that the Clubs are limited to their respective sporting activities and cannot hold recreational functions such as parties was part of these councillors misinformation campaign to try to turn the community against the FoMPF. Disclosure of the advice itself would reveal the scope for misinterpretation as opposed to misrepresentation.

There has been selective disclosure of only part of the advice given – the part which the Council claims inhibits the Clubs' activities and which is laid at the feet of the FoMPF for having discovered that VG65 already existed and for registering VG93

In the circumstances of the loss of confidentiality as explained in para 36 and the very strong public interest in disclosure as explained in para 47, please could you take this as a request on behalf of the [REDACTED] under the FoI Act for sight of the legal advice obtained by the Parish Council regarding the implications of the VG status of the Memorial Playing Field - but excluding anything to do with rectification or land swap which, if necessary, can be redacted. This includes the preliminary VG advice referred to in the minutes of the meeting of 5 March 2013 (referred to below) and the further advice regarding the draft VG protocol referred to in the minutes of 13 May 2013 (again referred to below), and the yet further advice the Committee resolved to obtain at the 20 January 2015 Playing Fields Committee meeting. Thank you very much.