

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2018

Public Authority: City of York Council

Address: West Offices

Station Rise

York

YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested information held by City of York Council (the council) about a referral it had made to the Local Government Association (the LGA).
2. The Commissioner's decision is that the council has correctly applied section 14(1) of the FOIA (vexatious request).
3. The Commissioner does not require the council to take any steps.

Background

4. The request is for information which relates to a referral made to the LGA following a meeting held by the council's Audit and Governance Committee on 22 February 2017.
5. The council's internal auditors, Veritau, had presented a report (the Veritau Report)¹ for discussion at this meeting. This contained details of an investigation it had carried out following concerns that had been raised about the procurement of certain contracts by the council.

¹ <http://democracy.york.gov.uk/documents/s113220/Annex%20-%20Veritau%20Report%20redacted.pdf>

6. It would appear that Members were initially asked to consider excluding the public and press from that part of the meeting where the findings of the Veritau Report were to be discussed. The reason given for this was that there may be a duty of confidentiality to certain individuals who could be identified from the report. A vote was then taken which went in favour of the public remaining in attendance during the debate.
7. A number of concerns were subsequently raised about how the meeting of 22 February 2017 was conducted. The council referred the matter to the Local Government Association (the LGA) who procured the services of a solicitor to carry out a review of *'the governance and decision making processes together with the overall conduct of the meeting'*. In September 2017 the solicitor set out their findings in a report (the LGA report)² and made recommendations for improvement.

Request and response

8. On 26 March 2017 the complainant wrote to the council and requested information in the following terms:
 - 1) *Please provide information on what the Chief Executive specifically asked the Local Government Association to do, including terms of reference.*
 - 2) *Please provide information including all communications in all formats exchanged with CYC and the LGA on the subject of the A&G meeting.*
 - 3) *Please provide information and all communications in all formats exchanged with and between CYC internally and with external bodies on the approach to the LGA concerning the A&G meeting.*
9. The council responded on 25 April 2017 to advise that the information was exempt under section 14 of the FOIA. It stated that the complainant had already written to the Chief Executive about the conduct of the meeting and had received the following response to his concerns:

²<http://democracy.york.gov.uk/documents/s122557/Appendix%201%20Redacted%20LGA%20Report.pdf>

'Further to the issues you have raised, to confirm I have asked the Local Government Association to review all aspects of the conduct of this meeting and I will report on matters in due course.'

10. The council advised that it considered that the Chief Executive's response outlined above had already covered point 1 of the complainant's request.
11. The council went on to say that it accepted that the Chief Executive's response to the complainant may not have provided the information contained in point 2 and point 3 of his request. However, it states that it is made clear that the Chief Executive would report on matters referred to the LGA in due course. Therefore, information that was found to be in the public interest would subsequently be released.
12. The council confirmed that when making its decision to apply section 14, consideration had also been given to the context of the complainant's request. It advised that it regarded the request to be linked to dissatisfaction with issues associated with the council's procurement procedures and formed part of an ongoing campaign.
13. The council went on to say that it believed this was a matter that had already been comprehensively addressed and had been subject to public scrutiny, with all information in the public interest having already been released.

Scope of the case

14. The complainant contacted the Commissioner on 29 May 2017 to complain about the way his request for information had been handled.
15. The Commissioner considers the scope of this case to be to determine whether the Trust has correctly applied section 14(1) of the FOIA to the request.

Reasons for decision

Section 14-vexatious request

16. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

17. Whilst the term 'vexatious' is not defined in the FOIA, in the case of the Information Commissioner v Devon CC and Dransfield³ the Upper Tribunal commented that the term could be defined as the '*manifestly unjustified, inappropriate or improper use of a formal procedure*'. The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
18. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of, and to, staff.
19. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests. (paragraph 45).
20. The Commissioner's guidance⁴ on dealing with vexatious requests sets out a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious, including the context of the request and the history of the public authority's relationship with the requester, when this is relevant.

³<http://administrativeappeals.decisions.tribunals.gov.uk/judgmentfiles/j3680/%5B2015%5D%20AACR%2034ws.rtf>

⁴ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The council's representations

21. The council has advised that it believes that it is appropriate to consider the complainant's requests in the context of other repeated requests, comments on social media and correspondence relating to certain council officers, whom it describes as having been subject to a prolonged and unjustified campaign which has been ongoing for a number of years. The council goes on to make it clear that it accepts that the complainant is not the main instigator of such a campaign, but it is satisfied that his request can be related to it.
22. The council has argued that continuing to provide responses to each of the requests it has received, some for slightly different information, will not prevent further comments, requests and correspondence being made. It also believes that it would have a significantly detrimental impact on the ability of officers to carry out their day to day duties and would result in an unjustified level of damage and distress. The council states that it has a duty of care to its officers who should be protected from having to continue to respond to requests in such circumstances.
23. The council has confirmed that it has considered the purpose and value to the wider public interest of releasing the information requested. It states that it fully understands that there is a genuine public interest in making information available which allows people to understand how it conducts its business and that appropriate procedures are followed, particularly where this relates to the conduct of senior officers and Councillors.
24. However, the council goes on to say that it is of the view that all relevant information in the public interest had already been made available and no amount of further information, explanations or assurances would satisfy the purpose of the request.
25. The council has argued that, prior to making the request, the complainant had already received information from the Chief Executive which confirmed that she had asked the LGA to consider all aspects of the conduct from the meeting.
26. The council also states that whilst it accepts that the complainant did not have the contact details for the investigator at the time of his request to the council, it believes that he was in possession of this information at the time he made his complaint to the ICO. It goes on to say that he would therefore have had the opportunity to contact the investigator directly with details of any concerns that he may have had about the meeting, or how the council had handled matters. In addition, the council states that the complainant was aware that other individuals

whom he was *'working with'* were meeting with the investigator and were providing detailed information about their concerns.

The complainant's representations

27. The complainant has argued that he believes that the information that he has requested is a matter of considerable public interest. He states it was confirmed that a number of complaints had been received about the conduct of participants at the meeting and that as the Chief Executive was *'writing on our behalf'*, the public should be allowed to see what the terms of reference of the referral were.
28. The complainant states that he is concerned that if the terms of reference are not known, it cannot be established whether the Chief Executive properly considered the concerns that had been raised and included them in the referral.
29. In addition, the complainant has argued that if the Chief Executive has set out the concerns that have been raised by the public in their referral, then there is no reason for this information to *'remain secret'*.

The Commissioner's view

30. The Commissioner has considered the council's argument that the complainant's requests can be linked to an ongoing campaign.
31. The Commissioner regards the details contained within Decision Notice FS50682076, which is set out in Annex 1, to be pertinent to this case. The council has provided the same evidence in both cases to support its view that the complainant's requests could be linked to an ongoing campaign against officers.
32. The evidence provided by the council in support of its argument that there is an ongoing campaign is persuasive. The Commissioner also accepts that the complainant has had some contact with at least one individual who has been vocal about their opinion on matters relating to council business.
33. However, as was the case in respect of Decision Notice FS506820786, it is the Commissioner's view that the evidence provided to show a link between the complainant and the other individuals who may form part of a campaign is limited. In addition, she has also been unable to find any evidence that the complainant had engaged in any of the discussions that have taken place on social media, or other public forums, about matters relating to the council.
34. The Commissioner also does not consider it to have been unreasonable for a number of individuals to have independently asked for information

about the conduct of this particular council meeting. This is particularly the case given what occurred and the fact that it was attended by members of the public, and was also available to view on a webcast.

35. The Commissioner fully appreciates the concerns raised by the council about the level of scrutiny and comments made by some individuals, and why it may have viewed this to be inappropriate and unacceptable. However, she is currently of the view that this concern cannot be extended to the complainant, or his requests.
36. Given the above, the Commissioner is not satisfied that the information that has been made available to her is sufficient to conclude that the complainant, or his requests, can be regarded to form part of the ongoing campaign described by the council. She has therefore gone on to consider whether the request under consideration could still be deemed to be vexatious in isolation.

Purpose and value

37. The Commissioner's guidance confirms that serious purpose and value will often be the strongest argument in favour of the requester when a public authority is deliberating whether to refuse a request under section 14(1). It goes on to say that the key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request.
38. In this instance, the council had received a number of complaints about the conduct of the meeting held on 22 February 2017. It would seem that the Chief Executive viewed the matter to be sufficiently serious to ask that the LGA carry out an investigation into '*all aspects*' of the meeting.
39. The Commissioner has already stated that she considers Decision Notice FS50682076 to be pertinent, at least in part, to this case. However, it is important to note at this point that she regards the circumstances to be, in many ways, significantly different and has considered this case on its own merit.
40. In both this case, and Decision Notice FS50682076, reference is made to the Veritau Report and its findings. However, in contrast to the previous Decision Notice, information relating to the Veritau Report and associated investigations do not form part of the complainant's request. They are only relevant to this case to the extent that it was consideration of this information that caused the disagreement between certain officers about whether the public should be excluded from part of the meeting held on 22 February 2017.

41. The requests which were considered in Decision Notice FS50682076 also related directly to information held about the various investigations into the procurement of contracts and payments made for work carried out. Therefore, they concerned matters that related to the expenditure of public money.
42. Given the seriousness of the issues to which the requests had related, and the way in which various matters had been handled by the council, it was the Commissioner's view in Decision Notice FS50682076 that the information requested did have serious purpose and value. She went on to conclude that the argument in support of greater transparency and openness had held more weight than may have been the case, had the relevant circumstances and history, been different.
43. The complainant's current request does not relate to the expenditure of public money, or potential fraud or criminality, but rather is about the professional conduct of particular council officers at a meeting. Whilst accepting that this is not a trivial matter, the Commissioner believes that this has some relevance when considering whether disclosure of the specific information which had been requested would benefit the public at large.
44. The Commissioner notes that the complainant has argued that the information should be disclosed because the council had referred matters to the LGA on behalf of those individuals who had raised concerns about the meeting.
45. However, whilst the council may have referred matters to the LGA as a consequence of the complaints it received, the Commissioner does not accept that this means that it has taken such action on behalf of the public, or that this necessarily will provide an individual with a greater right of access to all the information held about the matter.
46. It is for the council to decide how to deal with any complaints that it receives from members of the public. If any individual is dissatisfied with how the council then deals with their complaint, there are various mechanisms in place which will allow them to pursue the matter further.
47. The council has advised that if there were any concerns about the process of investigation there was an appropriate route for this, which included independent consideration by the Local Government and Social Care Ombudsman (LGSCO), which its states would have satisfied any public interest concerns about whether allegations had been properly represented and investigated.
48. With regards to the council's comments that the complainant chose to contact to the ICO at a time when he was aware of the identity of the

LGA investigator and could have raised any concerns directly with her, the Commissioner is mindful that there may be some misunderstanding about when the complainant first raised his concern with her office.

49. The Commissioner received the complaint on 29 May 2017. It would appear that the complainant may only have become aware of the identity of the investigator on 30 June 2017 when he was sent an email by another interested party who confirmed he could make representations directly to them.
50. However, whilst details of the investigator may not have been in the complainant's possession at the time he initially contacted the ICO, the Commissioner does accept that this adds some weight to the council's point that there were more appropriate channels available to pursue any concerns about how matters were being handled.
51. When considering point 2 and 3 of the request, the Commissioner considers it to be an important factor that the matter had already been referred to an independent investigator, that being the LGA, for consideration.
52. The Commissioner would refer to the case of Salford City Council v ICO and Tiekey Accounts Ltd (EA2012/0047) where the Tribunal, when ruling that the request was vexatious, made the following comment:

"...There was likely to be very little new information of any value coming into the public domain as a result of the disclosure of the material sought."
53. The Commissioner accepts that there would be some public interest in releasing details of the LGA's findings, once they were known. However, the Commissioner has had some difficulty in identifying what value there would be in the provision of the information requested in point 2 and 3 of the request, particularly when the independent investigation by the LGA was ongoing.
54. As was the case with Decision Notice FS50682076, the Commissioner regards the timing of the request to be a significant factor in her consideration of whether this particular request was vexatious. However, in contrast to the former case, the Commissioner is of the view that, in this instance, such timing weakens the argument that the disclosure of this information would have some value to the public. She does not accept that it would allow for greater accountability and any argument that it would aid further openness and transparency would hold little weight as a result.
55. It is the Commissioner's view in this instance that the complainant was submitting a request for information about a matter that was still in the

process of being considered and for information that would not provide any insight into how the LGA would independently decide to investigate matters, or make a decision.

56. The Commissioner is satisfied that the information contained within the Chief Executive's letter to the complainant was sufficient to meet the public interest with regard to the council's referral to the LGA at that particular point in time.
57. It is the Commissioner's understanding that some details about the investigator's report are now in the public domain. However, if it is case that the complainant is not satisfied with the outcome and, or, requires further information relating to the findings and the subsequent steps taken by the council, this is a separate matter. There are not issues that are relevant to this request and will not be taken into account by the Commissioner.
69. Taking all the above into account, the Commissioner is not satisfied that the purpose and value of the request provides sufficient grounds to justify the impact on the council in dealing with the request. She therefore considers that the request meets the Tribunal's definition of a *'manifestly unjustified, inappropriate or improper use of a formal procedure'* and that it is vexatious within the meaning of section 14(1).

Right of appeal

58. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

59. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
60. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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