

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 January 2019

**Public Authority:** Gateshead Metropolitan Borough Council  
**Address:** Civic Centre  
Regent Street  
Gateshead  
Tyne and Wear  
NE8 1HH

#### **Decision (including any steps ordered)**

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1. The complainant requested copies of information that he believes the Council has relied upon in the course of dealing with his ongoing grievance.
2. The Commissioner's decision is that the request was vexatious and therefore Gateshead Metropolitan Borough Council ("the Council") was entitled to rely on Section 14(1) of the FOIA to refuse to respond. However it failed to issue its refusal notice, applying Section 14, within 20 working days and thus breached Section 17(5) of the FOIA.
3. The Commissioner does not require any further steps to be taken in respect of this complaint.

#### **Background**

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4. The underlying issue that the request relates to began more than twenty years ago when the complainant's neighbour ("the neighbour") began some construction work which overlapped onto land owned by the complainant – without the complainant's permission.
5. In 1996, planning consent was sought, by the neighbour, from Gateshead Council as the Local Planning Authority for the area. As part of that planning process, the person making the application is required to consult certain properties affected by any development, making them

aware that an application has been submitted – and make a statement to the Planning Authority confirming that they have done so.

6. The complainant states that the neighbour did not inform him that an application was submitted – although he subsequently found out that one had and had the opportunity to make appropriate representations when the application was considered. The application was subsequently approved.
7. The complainant subsequently made a formal complaint in which he argued that the Council should not have granted permission because of the false statement made by the neighbour. The Council responded to say that, as the complainant had the opportunity to make representations whilst the application was being considered, even if a false statement had been made, the complainant could not have suffered a resulting injustice. It noted in a letter dated 6 January 2006 that the responsibility for making such statements lay with the neighbour and not the Council and that it would only seek to take action in respect of a false statement in “very exceptional circumstances.”
8. The complainant subsequently referred his complaint to the LGO, arguing that the Council should have taken action against his neighbour. The LGO’s conclusion was along the same lines: that the complainant had suffered no personal injustice as a result of the Council’s actions in relation to the way it handled the application.

## **Request and response**

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9. On 25 April 2018, the complainant wrote to the Council and requested information in the following terms:

*[1] Clarification on what was meant as set out in relation to your Part 8 Claim Form dated 22/12/2015 and the letter to the court manager dated 24 March 2016.*

*[2] Why Gateshead Council did not inform the Ombudsman that [Council Officer 1] Head of Planning Should not have said “only in very exceptional circumstances”*

*[3] The name and position held of the Gateshead Council Employee(s) who further confirmed to the Ombudsman that [Council Officer 1], Head of Planning was correct*

- [4] *A full disclosure of what would constitute "Very exceptional circumstances"*
- [5] *An explanation as to why Gateshead Council did not confirm that [Council Officer 1] Head of Planning should not have said "only likely to occur in very exceptional circumstances".*
- [6] *[Council Officer 2] should have asked any advisors or employees supplying him with the information to be included in a verified document to confirm in writing that the information was correct before he signed his statement of truth to the County Court, I request a copy of that document.*
- [7] *A copy of the letter from [the neighbour] to my solicitor dated July 8th 1996 (Ex215(1)(2)) which states: "I am in the process of obtaining a letter from the Building Surveyor confirming that the roof structure is not in any way being supported by the boundary wall."*
10. The Council responded on 17 May 2018. It stated that it did not hold any information within the scope of the request.
11. On 12 June 2018 the complainant responded to the Council. He expressed his concern that the Council appeared not to have any recorded information to back up statements that he had made which, he argued, raised "very serious questions."
12. On 19 June 2018, the Council responded to the complainant. It is not clear whether the Council was attempting to respond to his 12 June correspondence or to his original request, but it informed him that:
- "We are treating this request as vexatious."*
13. The complainant requested an internal review on 23 July 2018. Following an internal review, the Council wrote to the complainant on 5 September 2018. It repeated its correspondence of 19 June 2018.

## **Scope of the case**

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14. The complainant first contacted the Commissioner on 18 August 2018 to complain about the way his request for information had been handled. At that point, the Council had not completed its internal review, however before the Commissioner was able to begin work on the case, the Council provided its internal review and the complainant passed a copy to the Commissioner. .

15. The Commissioner considers that the scope of her investigation is to consider whether the request was vexatious.
16. For clarity, the Commissioner is making no finding of fact, in this Decision Notice, as to whether the Council does or does not hold the requested information.

## Reasons for decision

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### Was the request vexatious?

17. Section 14 of FOIA states that:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."*

18. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the *"manifestly unjustified, inappropriate or improper use of a formal procedure"*. The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
19. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

*Dransfield* also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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 has published guidance on dealing with vexatious requests<sup>1</sup>, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
21. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: *"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies"*.
22. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
23. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: *"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."*

#### *The complainant's position*

24. Whilst there is no requirement upon the complainant to "prove" that their request was not vexatious, many choose to make representations to the Commissioner disputing the public authority's reliance on Section 14 and the Commissioner will give those representations appropriate consideration – especially inasmuch as those representations illustrate the purpose and value of the original request.
25. In this particular case, the complainant informed the Commissioner's Office that he did not wish to make any submissions and that he was happy for the Commissioner to make a decision based on the evidence already supplied.
26. Whilst the complainant has not set out a formal position, from reading the correspondence that he has had with the Council, the Commissioner understands that the complainant feels that statements that have been

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

made to him in the course of pursuing this complaint have not been based upon solid evidence.

### *The Council's position*

27. The Commissioner gave the Council two opportunities to provide her with submissions as to why the request was vexatious. The Council's submission amounted to a mere six sentences in which it essentially restated its position and noted the extensive history of engagement it had had with the complainant. In a subsequent email it also pointed to a Response to Claim it had prepared for the purpose of defending itself against a legal claim which the complainant had brought in 2015. The Council claimed that this Response to Claim set out the background to the request and explained why the council wished to treat the request as vexatious.

### *The Commissioner's view*

28. The Commissioner considers the Council's submission in respect of this complaint to be inadequately detailed – this is discussed at more length below. However she has also had regard to the supporting evidence that both parties submitted in support of the complaint and the nature of the request itself. Having considered the full picture, her conclusion is that the request was a "*manifestly unjustified, inappropriate or improper use of a formal procedure*" and therefore vexatious.
29. The complainant in this case provided (of his own volition) correspondence which he had received from the LGO and others. Unfortunately for the complainant, this had the effect of undermining his own position as it detailed the protracted nature of the underlying issue and his unreasonable persistence in pursuing it.
30. It is clear that there has been a breakdown of trust between the Council and the complainant and a grievance which stretches back more than 20 years. Both sides have now taken entrenched positions which this decision notice cannot resolve.
31. It is not for the Commissioner to consider whether any party was at fault – although she notes that the LGO found that the complainant had suffered no personal injustice as a result of the Council's actions. The Commissioner also notes that the action which precipitated the Response to Claim was dropped and that several other legal actions which the complainant has brought against the Council have either been dropped or dismissed.
32. The question which the Commissioner must consider is whether answering the request would result in anything of value being disclosed.

33. The Commissioner notes that, whilst the requested information is clearly of considerable importance to the complainant, it would be of negligible interest to the wider public.
34. The substantive matters at the heart of this grievance have been investigated by the Council itself, by the LGO and by the courts: none of which have found that the complainant has suffered an injustice. It is clear from the request that the complainant believes that statements provided by the Council in support of its position over the years have not been adequately supported by the facts. However, he has provided no cogent argument as to why he believes this to be the case.
35. The Commissioner is therefore left to conclude that this request is in fact an attempt to re-litigate or re-open matters which have already been addressed – and is hence a misuse of the FOIA process.
36. On this basis she therefore concludes that the request is vexatious, therefore Section 14(1) is engaged and thus the Council was not obliged to comply with the request.

#### Refusal Notice

37. Section 17(5) of the FOIA states that:

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

38. Whilst the Council initially claimed it did not hold the requested information, it subsequently changed its position to relying on Section 14 to refuse the request. It therefore failed to inform the complainant within 20 working days that it was refusing the request and thus breached Section 17(5) of the FOIA.



## Other matters

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### *The Council's engagement with the Commissioner*

39. The Commissioner is conscious that the Council had been engaged in a protracted correspondence with the complainant prior to the complaint being made and she understands that the Council may well feel it has done all it can to address the underlying grievance.
40. Nevertheless, she cannot ignore the failure of the Council to engage properly with her office in respect of this complaint.
41. The Council claimed that it should not have to deal with the complaint because the Commissioner had dealt with a previous complaint "*about the same matter.*"
42. Whilst the Commissioner has indeed dealt with a previous complaint from the same complainant which related to his underlying grievance, it is not correct to imply that the Commissioner had already examined the issue of vexatiousness. Section 14(1) was not applied by the Council in respect of the request which formed the basis of the previous complaint and therefore the present complaint is the first occasion she has considered section 14(1) in relation to a request made by the complainant.
43. The Commissioner has already set out why she has reached the decision that she has but it is worth reiterating that she has reached her decision in the absence of a detailed submission from the Council. If the Council continues to provide the Commissioner with inadequate submissions it will run the risk of the Commissioner upholding complaints against it.

### *Responding to the Request*

44. Section 17(7) of FOIA states that any refusal notice which a public authority issues must:
  - a) *contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*
  - b) *contain particulars of the right conferred by section 50. [the right to complain to the Information Commissioner]*
45. Under Section 1(1)(a) of the FOIA, a public authority's first duty when it receives a request is to confirm or deny whether it holds information. If



it decides that it does not hold information within the scope of the request, it has not technically refused that request and hence it does not need to comply with the requirements of Section 17.

46. The Commissioner notes that when the Council first responded, it stated that it did not hold the requested information. It did not inform the complainant that he could request an internal review if he was dissatisfied and it did not inform him of his right to complain to the Commissioner.
47. Because it was denying holding the requested information, Section 17 placed no obligation on the Council to inform the complainant of how he could address any dissatisfaction he may have had and therefore no breach of the FOIA occurred in this respect. However the Commissioner considers that it would have been good practice for the Council to have informed the complainant of his rights.

## Right of appeal

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48. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**