

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2014

Public Authority: Cornwall Council
Address: County Hall
Truro
Cornwall
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested information about the handling of his complaints against specific employees at Cornwall Council (the council). The council has refused to provide the requested information relying on section 14(1) and 14(2) as it considered the request to be vexatious and repeated.
2. The Commissioner's decision is that the council has correctly relied on section 14(1) of the FOIA. As he has found section 14(1) of the FOIA is engaged, the Commissioner has not gone on to consider section 14(2) of the FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 17 February 2013, the complainant wrote to the council and requested information in the following terms:

"I am now making a formal and official request for you to provide me with the information and documents, a copy of the 'Reports' and findings, as to how you are/have 'Dealt with the official complaints' against [name redacted], [name redacted], and yourself, within 20 working days, under the Freedom of Information Act 2000, process/procedure. Today's date being 17th February 2013. Your Decision and Finding, with respect to the complaint against [name redacted], providing false evidence."

5. The council responded on the 5 March 2013. It refused to provide the request, relying on section 14(1) and 14(2) of the FOIA as it considered it to be vexatious and repeated.
6. The council provided an internal review on 15 April 2013. It maintained its decision.

Scope of the case

7. The complainant contacted the Commissioner to complain that the council had refused his request.
8. The Commissioner considers the scope of the case is to determine whether the council were correct to refuse the request. He will firstly consider the council's application of section 14(1) of the FOIA, whether the request is vexatious. He will only go on to consider section 14(2) of the FOIA, whether it is a repeated request, if the Commissioner finds that section 14(1) of the FOIA is not engaged.

Reasons for decision

9. 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.
10. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*.¹ The Tribunal commented that vexatious 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.
11. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his

¹ GIA/3037/2011

published guidance². 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.

13. The council has provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA.
14. It has also supplied the Commissioner with a selection of correspondence to demonstrate the period of time that the council has been receiving and responding to correspondence from the complainant.
15. The council has advised the Commissioner that to understand why it has considered this request as vexatious, it first must add context to the history of its dealings with the complainant. It has explained that it has hundreds of pieces of correspondence and is willing to supply any further information if required.
16. The council has told the Commissioner that it has been receiving correspondence from the complainant since 2009 when the complainant, who was a councillor to a parish council at the time, wrote to say he had been promised training by a former head of legal at the council with regards to problems being experienced at the parish council.
17. The council advised the Commissioner that the person who had promised this training had left the council on 1 April 2009. The issues raised were concerns about the actions of the clerk and chairman of the parish council.
18. The council has told the Commissioner that it was receiving regular correspondence from the complainant and he was declared a consistent complainant at a meeting held by the Standards Committee on 22 March 2010, following a referral from the assessment sub-committee.
19. The council has advised the Commissioner that at all times the complainant has had a single nominated point of contact throughout his declaration as a persistent complainant. That being [name redacted], who the complainant considers gave false evidence, as stated in his request, at a First Tier Tribunal which is discussed below.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

20. The council has told the Commissioner that following an investigation into a complaint against the complainant, in his capacity as a parish councillor, a breach of the Code of Conduct was found against him and he was suspended from being a councillor for 3 months.
21. The council has explained to the Commissioner that it is the principal authority for administering the Code of Conduct complaints process in Cornwall and through the standards committee, the monitoring office and his staff is charged with processing and determining code of conduct complaints.
22. The council has told the Commissioner that the complainant complained to the council about the way it and in particular [name redacted] handled the above complaint against him. This went through the council's 3 stages for complaints, to which his complaint was not upheld.
23. The council has supplied the Commissioner with correspondence dated between December 2010 and April 2011, which deal with the complaint, advised the complainant of his right to complain to the Local Government Ombudsman, and that he is able to address this with the First Tier Tribunal Standards for England (FTTSE).
24. The council has told the Commissioner that the complainant then complained to the LGO about concerns that the council had failed to properly consider the evidence relating to the investigation of his conduct as a councillor, that biased information was included in the report presented at the standards committee, evidence was tampered with, the investigating officer threatened and bullied him, and was concerned that the council did not have an independent complaints procedure.
25. The council consider this to be an example where it has had to spend time defending itself in relation to matters which the LGO could either not investigate or had found no wrongdoing of the council. This adding to the disproportionate amount of time it has had to spend in dealing with the complainant's dissatisfaction with the outcome of the FTTSE.
26. The Commissioner has viewed a copy of the LGO's decision, dated 7 February 2012, and it states that it did not consider that it had any jurisdiction to comment on whether the standards committees' evidence was false or amended, stating:

"...the way to challenge that decision was through an appeal..."
This being, to appeal the standards committees' decision through the FTTSE. *"...While I recognise that this would not have dealt with the actions of the officer preparing the report specifically it would have enabled the complainant to challenge the decision on the grounds that it was reached based on biased and incomplete information."*

27. With regards to the complainants accusation of being bullied by a council employee, the LGO found that:

"I do not consider that it was written in order to bully or intimidate the complainant. Instead, the letter merely explains the process for seeking a review of the decision of the standards committee refers to the findings of that committee and reiterates information previously provided to the complainant about the Council's jurisdiction regarding the parish clerk."

28. Lastly the LGO, on considering the complainant's concern that the council does not have an independent legal officer to consider complaints the LGO stated:

"...there is no requirement for the Council to have an independent legal officer dealing with complaints. Instead, the Council has published complaints procedure which sets out how complaints will be dealt with. I have seen no evidence that the council failed to follow that procedure in this case."

29. This case did then go before the FTTSE to determine if there was a breach of the Code of Conduct by the complainant.

30. Following the FTTSE hearing, on 22 March 2012, it increased the complainant's 3 month ban, disqualified him from holding public office for 2 years. The council has told the Commissioner that the complainant appealed this to the Upper Tier Tribunal but subsequently withdrew his appeal.

31. A copy of the FTTSE decision has been supplied to the Commissioner which confirms the complainant's disqualification. On reading the decision the Commissioner notes some of the findings of the FTTSE:

"The Respondent has given no indication that he will change or moderate his behaviour in the future. Indeed in his responses to the Investigating Officer and the Tribunal the respondent has continued to make unsubstantiated allegations against others; use intemperate language; and, has defended his behaviour and actions."

This is not the first time that the Respondent has faced an allegation that his behaviour and actions have fallen short of the requirements of the Code of Conduct.

The Tribunal considers that a period of suspension (which at its maximum would be for a period of twelve months) would not be sufficient to mark the seriousness of the Respondent's behaviour, behaviour which had an extreme impact on [name redacted] and which ultimately led to the resignation of three parish councillors

and undermined the democratic will of the electorate and placed the whole Council in bad light."

32. The council has advised the Commissioner that the complainant is accusing [name redacted] as giving false evidence which was from a misunderstanding to a piece of correspondence that was attributed to the complainant but was ultimately accepted as actually being from another councillor. The complainant objected to this evidence being in the draft report, so it was removed for the final report. The complainant alleges that false evidence was used in the investigation and that evidence has been tampered with.
33. The council has told the Commissioner that the complainant is now focussing complaints against [name redacted], [name redacted] and [name redacted], who all work for the council and who handled his complaints about the alleged use of false information. The council state that the complaints are alleging impropriety on their part and a failure in the council for permitting unprofessional conduct by the 3 named council employees.
34. The complainant has advised that he has complained to the Institute of Legal Executives (ILEX) about [name redacted]. This is at present being investigated however there is no outcome as of yet. As there is no decision on this, it is difficult for the Commissioner to comment further on this particular investigation. Although it does allow the complainant an opportunity to have his concerns investigated by an independent body. This may be a more suitable direction for the complainant to address this personal case and to consider whether false information was used or not.
35. The council has advised the Commissioner that no distress is being caused as there is no substance behind the allegations being made and related requests. However, in considering the ongoing, extensive and frequent correspondence in which the complainant is making unfounded allegations against the council and specific employees does demonstrate that there is an unreasonable fixation on [name redacted], [name redacted] and [name redacted] and it considers the complainant is unjustly harassing the council.
36. The council has told the Commissioner that it appears as though the complainant, having been disqualified as a councillor, is making these allegations to try and demonstrate that he has been poorly treated and improperly disqualified. The council state it has hundreds of pages of correspondence from the complainant making allegations and has spent hundreds of hours in having to deal with them.
37. The Commissioner does consider that a considerable amount of time and resources would have been used by the council in having to initially

investigate the complaint against the complainant, then respond to his complaint about the council through the 3 stages of its complaint's procedure, deal with the complaint lodged with the LGO and then create its case for the FTTSE. Although these are not information requests, when viewed in context with the history of the case, the volume of work required over a 3 year period would have taken up considerable resources and this would place a burden on it.

38. The Commissioner also notes the FTTSE had to consider a bundle of documentation *"...which extends to cover over three hundred pages"*. This gives an indication to the amounts of correspondence that is related to the case as a whole.
39. The council consider that to continue to respond to this highly personal issue that has already been through its 3 stages for complaints, has been considered by the LGO who found no wrongdoing, the complainant had the opportunity to appeal if he considered false evidence was used at the FTTSE, and also the time the council has had to spend in preparing its case for the FTTSE, is now taking up a disproportionate amount of council and staff time. To respond to this request would be an unjustified use of its resources and will only serve to fuel further accusations, complaints and further information requests on this issue which would further impact on the burden placed on it.
40. The Commissioner does see how this would add further to the detrimental impact that is being placed on the council if it has to respond to the complainant's further requests and correspondence about his dissatisfaction following an independent tribunal's decision, to which he did not appeal the decision. The Commissioner also accepts that even if the council responded to this request, then it is highly plausible that the complainant will make further requests and complaints on this subject.
41. The council consider that the ongoing correspondence on this topic is serving no useful purpose and it is distracting officers from ensuring that their time is devoted to delivering services or facilitating the delivery of services to the wider community.
42. The council consider that this is a very personal matter that has no or little value to the wider public and is therefore not in the public interest to use its resources and staff time to keep responding to this line of enquiry from the complainant. It considers it to be in the public's interest not to respond further so that the council can focus its attentions to its other obligations as a council.
43. The Commissioner considers that had the complainant appealed to the Upper Tribunal and it found that false evidence had been used by the council, or if the LGO had found wrongdoing within the council, then the

purpose and value of the request may have been greater and increased any public interest that there may be.

44. It is clear to the Commissioner that the complainant is not satisfied with the outcome of the FTTSE decision to bar him from public office, and that he considers the council's evidence was incorrect. However, the complainant did not carry on with his appeal to the Upper Tribunal, and this may have been the best route to take to consider if any false evidence had been used. This was similarly noted in the LGO's findings about appealing to the FTTSE.
45. It is not in the Commissioner's remit to determine whether the council provided false evidence, to a larger extent he can only consider the findings of other bodies.
46. As the complainant did not continue his appeal with the Upper Tribunal the Commissioner has to look at the decisions of the First Tier Tribunal. They found against the complainant, and the complainant has then gone on to continue in his own pursuit of the council's handlings of this investigation when he also had the opportunity to appeal. This has progressed into complaints against the council employees named in his information request.
47. The Commissioner has to balance the impact that the ongoing correspondence, when considered with the previous correspondence and decisions, is having on the council.
48. As the complainant had the opportunity to appeal the First Tier Tribunal's decision if he considered false evidence was supplied in the case, but this avenue was not taken by the complainant and the LGO has not found anything wrong with the way the council has conducted its complaints procedure. In the Commissioners view, this lessens the value of the request to the wider public and further supports the council's arguments that a disproportionate burden that is being placed on the council to continue to respond to this issue.
49. With this being such a personal matter, and the history of it spanning over 3 years, the Commissioner is of the opinion that for the council to continue to respond to these lines of enquiries under the FOIA is going to impact on its other obligations to the wider public, in diverting the attentions and time of its staff to deal and respond to such requests.
50. Therefore the Commissioner, on considering the above, is satisfied that the council has correctly relied on section 14(1) of the FOIA to refuse this request in this case.
51. As the Commissioner finds that section 14(1) of the FOIA is engaged, he has not gone on to consider section 14(2) of the FOIA.

Right of appeal

52. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

53. 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.
54. 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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