

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 June 2015

**Public Authority:** Sunderland City Council  
**Address:** PO Box 100  
Civic Centre  
Sunderland  
SR2 7DN

#### Decision (including any steps ordered)

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1. The complainant submitted a request to Sunderland City Council (the Council) about the campaign to relocate the sailing vessel 'City of Adelaide' to Sunderland. The Council determined that the request was vexatious and refused it on the basis of section 14(1) of FOIA. The Commissioner is satisfied that the Council is entitled to refuse the request on this basis.

#### Request and response

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2. The complainant submitted the following request to the Council on 9 April 2014 via the What Do They Know (WDTK) website:

*'Dear Sunderland City Council,*

*Sunderland Council are claiming Cllr Paul Watson and Mr. Ian Fitzakerly have met on only one occasion. Please provide all correspondence / minutes of meeting / documents relating to Sunderland's Councils involvement in the campaign to relocated Sailing Vessel City of Adelaide to the Sunderland. Chief Executive Mr. David Smith and Council Leader Mr. Paul Watson along with Mr. Ian Fitzakerly and son Mr. Craig Fitzakerly were consultees for the DTZ City of Adelaide final report 2.9.10 I have provided a link to the report below.*

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*Appendix A – List of Consultees Sunderland*

*Ian Fitz [Fitzakerly], Fitz Architects, engineer and architect  
Craig Fitz [Fitzakerly], Fitz Architetcs, architect  
Councillor Paul Watson, Leader, Sunderland City Council David  
Smith, Chief Executive, Sunderland City Council*

<http://www.historic-scotland.gov.uk/city...>

3. The Council responded on 9 May 2014 and explained that it would not process this request until the complainant confirmed his name and postal address. The Council explained that this was because it had received a large number of requests, including his that appeared to be linked and to form part of a campaign. These include requests made using apparent pseudonyms.
4. The complainant initially refused to provide such details and contacted the Commissioner. The Commissioner informed the complainant on 5 September 2014 that in his view the Council was entitled to ask for this information before it processed his request.
5. Consequently, on 12 September 2014 the complainant confirmed his name and postal address to the Council and asked it to process his request, albeit in doing so the complainant noted that he disagreed with the Commissioner's rationale as to why he had to provide such information.
6. The Council responded to the request on 5 November 2014. Its response explained that:

*'We can now supply a series of notes (attached) which were prepared in relation to various meetings about proposals for the Adelaide. None of these notes relates to the meeting referred to in your request. This was an informal meeting that took place as long ago as 2010 where the gentleman referred to attended as one of three representatives of a group campaigning for the return of the clipper ship City of Adelaide to the River Wear . Minutes are not prepared for this kind of informal meeting.*

*As the people attending these meetings (both members of the public and junior staff) would not have a reasonable expectation that their names would be released, these details have been redacted from the documents. The description of a specialist construction material has also been redacted to protect a business's intellectual property rights.'*

7. The complainant contacted the Council on 18 November 2014 in order to ask for an internal review of this response. He argued that the Council

would be likely to hold further information falling within the scope of his request and this had not been provided to him.

8. The Council informed him of the outcome of the internal review on 9 December 2014. The review explained that although he had been provided with some information in response to his request this was simply in an attempt to provide some assistance to him; this information was clearly not the information he had actually requested. The internal review explained that its response of 5 November 2014 was actually intended as a refusal of his request albeit that the grounds of this refusal were not clear. The Council confirmed that it considered the request to be vexatious and therefore it was being refused on the basis of section 14(1) of FOIA. Nevertheless, the Council suggested that its relevant file about the Adelaide did not contain any documentation which referred to the meeting between the Council Leader Paul Watson and Mr Ian Fitzakerly which appeared to be the information the complainant was most concerned with accessing.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 22 December 2014 in order to complain about the Council's decision to refuse his request on the grounds that it was vexatious.

### **Reasons for decision**

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#### **Section 14 - vexatious**

10. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
11. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

## The Council's position

### *Background*

13. The Council explained that there was a significant amount of background to this case. It argued that the request had to be seen in the context of a continuing campaign regarding the development of land at Marine Walk, Sunderland. The development was under the direction of a firm of architects, Fitz Architects.
14. The Council explained that this campaign was being conducted not only through requests for information submitted through the WDTK website but also through a body of correspondence with the Council's development control, planning implementation and planning enforcement teams as well as its building controls section, complaints team, a number of councillors and Chief Executive.
15. The Council explained that the focus of those involved in this campaign had shifted over time, which it argued suggests that once an issue is addressed as fully as the Council can, further correspondence is opened on a new topic. The Council argued that it also perceived a pattern to responses to information provided by it in that subsequent correspondence does not acknowledge or take account of explanations the Council has provided, and points are reiterated even after a full explanation has been provided.
16. In particular, the Council noted that during the course of this campaign allegations had been made that there is a close relationship between the father of a director of Fitz Architects (Mr Ian Fitzakerly) and the Council Leader, Paul Watson. It has been implied that this has influenced the approach the Council has taken on planning issues regarding the Marine Walk site and the Pier Point development at that location. The Council emphasised that such allegations are unfounded and considered to be potentially defamatory.
17. The Council explained that it had proactively supplied information regarding erroneous information that is circulating online and this can be viewed on the Council website.<sup>1</sup> The Council emphasised that its website explained that any interested party wishing to view the valuation report regarding the Council's sale of land at Marine Walk, or to discuss the

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<sup>1</sup> <http://www.sunderland.gov.uk/index.aspx?articleid=9894>

sale or valuation of the land at Marine Walk, was welcome to do so with representatives from the Council. However, it explained that no request for an appointment had been received to date, albeit adverse comments had continued to be posted online regarding the Council's sale and valuation of this land.

18. The Council explained that requests on this topic, submitted by different individuals, had already been the subject of two decisions by the Commissioner.<sup>2</sup> The Council noted in its submissions to the Commissioner on these two earlier complaints that it was evident from entries on the WDTK website that these requesters were known to each other, whether in person or as a 'virtual' group, and are acting in concert through the medium of the WDTK website. In these previous submissions the Council argued that the various annotations to entries indicated that the same set of individuals review and comment on requests submitted by others and subsequently adopt the same line of questioning.

*Acting in concert*

19. The Council argued that it was justified in considering this latest request to be part of this same group of individuals who were acting in concert in submitting FOI requests to the Council on this topic. In order to support this position the Council noted that:
- The request is directed at the alleged relationship between the father of one of the architects who is also a director of the company developing the Marine Walk site and the Council Leader. The request therefore builds upon previous requests for information and allegations of a close personal relationship between the two made in FOI requests about Marine Walk.
  - The request, the Council argued, was a further example of an individual uniting with other individuals around a common interest, namely denigrating the development and the Council's actions in relation to the development. On this point the Council noted that on 9 July 2014 the complainant expressly referred to *'more and more people of Sunderland are asking questions about the council's refusal to supply any information with regards to the council leader and the sale of the land on marine walk. You have asked for my address and I'm sure you know why I'm refusing'*.

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<sup>2</sup> FS50513687 on 5 March 2014 and FS50521622 on 9 July 2014.

- Furthermore, the Council explained that when the complainant provided his name and address to it in order for his request to be processed he stated that *'I disagree with your reasons but you have forced me to supply my home address. The council leader Paul Watson has connections to thugs and has used them before...I do not want council officials at my door.'* The Council explained that it viewed the reference *'connection to thugs'* as confirmation that the complainant is familiar with the material published online and on the mobile advertisement by the lead campaigner, whereby he repeatedly refers to an incident involving the Council Leader dating back many years.
- The Council noted that another individual from whom it had received FOI requests on this subject had annotated this request on the WDTK site and that the individual whom the Council considered to be the lead campaigner on this issue had referred to this request on his Twitter account. In the Council's view whether the individuals are personally known to each other or not, it was clear that they are now joined in campaigning on a series of linked issues, as evidenced by the duplication of subject matter in the requests and the annotations made against each other's entries on the WDTK website.

#### *Purpose and value of request*

20. The Council acknowledged that there may be some value in the public understanding the issues regarding the Adelaide and where such details were available, and subject to any confidentiality, the Council would usually make such information available.
21. However, it argued that in this instance it was of the view that the purpose of the request was actually to obtain information to be used to perpetuate a campaign regarding Marine Walk that been ongoing for some time, and indeed still persists, namely a relationship – or lack thereof – between the Council Leader and Mr Ian Fitzakerly. The Council argued that every effort it had made to correct misconceptions had resulted in further challenges and requests for information, based in its view on either an inability or unwillingness to accept the explanation provided. The Council argued that complying with this request would, it assumed, be similarly misused to the detriment of the public authority. In any event, the Council noted that it had confirmed to the complainant that it held no information regarding the single meeting that had taken place between Mr Fitzakerly senior and the Council Leader.
22. Furthermore, the Council explained that a considerable amount of material about the Adelaide is available in the public domain as the move of the ship met with significant press interest. The report of the Scottish Parliament regarding this matter is available and it was clear that the complainant has accessed that document.

*Burden*

23. The Council acknowledged that as a standalone question the request was reasonable and would, in principle, be answered were it not considered as part of the overall chain of correspondence and the use of social media regarding Marine Walk and the Council's role in respect of the Pier Point development. However, in this context the Council argued that it was legitimate to consider the burden which it had already faced in dealing with correspondence on this topic from other individuals.
24. It explained that when it had provided the Commissioner with submissions in relation to case reference FS50513687 on 28 February 2014 it had estimated that the work involved in responding to the request in that case – along with requests on that topic and associated correspondence - had amounted to in excess of 200 hours, at a conservative estimate. This estimate had not included an allowance for the involvement of councillors, and neither had account been taken of those officers who have spent time responding to single pieces of correspondence on single issues related to Marine Walk and connected issues. The Council estimated at that time (ie over 12 months ago) that this represented a loss of value to the citizens of Sunderland in terms of work in excess of £16,000. The Council explained that it had, at that time, also incurred the cost of over 40 hours spent on the administration and coordination of FOI responses on top of those estimates.
25. Furthermore, the Council explained that requests have continued to be received in a pattern that suggests those making the requests continue to participate in a campaign. For example, it explained that between 22 and 30 September 2014 it received nearly 27 near identical requests for information regarding the sale of land, the majority being submitted extremely close together suggesting they were being sent from a single location.
26. The Council explained that in considering the request which is the focus of this complaint, further officer time would be required to consult on, review, and appropriately redact the wider content of the file falling within the scope of the request, and that senior Members and officers would necessarily have to redirect their efforts from other duties to devote further time to this exercise.
27. The Council argued that the series of requests and associated correspondence with those involved in this campaign represents the pursuit of issues beyond the point a fair-minded member of the public would consider reasonable, and reiterating false information even when it has been corrected can readily be characterised as obsessive. The Council suggested that pursuit of the wider correspondence did, when at its height, have the effect of harassing the Council and its staff and

diverting staff attention from their primary duties. Furthermore, the Council argued that if it responded to this request with further information, it would in its view, re-open and extend that course of behaviour.

28. Finally, the Council emphasised that it continued to consider each request on its merits. It explained that it is committed to achieving compliance with access to information requirements and has invested significant resource in developing its arrangements for responding to the volume of requests for information it receives and has, in common with other public authorities, seen an increase in these year on year. The Council noted that it had received and responded to 1317 requests in 2014, 95% to timescale. It explained that its resources continue to be stretched and in parallel with a continual year on year increase in numbers of FOI requests received, has reduced its workforce from in excess of 8,000 in March 2008 to nearer 4,000. The Council noted that it understood that its workforce must halve again in the coming years. In this context the Council argued that it must prioritise its services and deal efficiently with vexatious correspondents, while complying with its legal and moral obligations, including to those who make more reasonable demands on its services.

### *Conclusion*

29. Ultimately the Council argued that any value in making the information it held about the Adelaide available – beyond the information on this topic that was already in the public domain – was significantly outweighed by the detriment to the public and the public purse in preparing the information for publication and the pressure on the Council of responding to further misconceived challenges based on that information.

### The Commissioner's position

30. The Commissioner's guidance on section 14(1) explains that if a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious. The guidance notes that a public authority will have to substantiate any claim of a link between the requests before it can go on to consider whether section 14(1) applies on these grounds. Some examples of the types of evidence an authority might cite in support of its case are:
- The requests are identical or similar.

- They have received email correspondence in which other requesters have been copied in or mentioned.
  - There is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time.
  - A group's website makes an explicit reference to a campaign against the authority.
31. However, the Commissioner's guidance cautions that it is also important for public authorities to bear in mind that sometimes a large number of individuals will independently ask for information on the same subject because an issue is of media or local interest. Public authorities should therefore ensure that they have ruled this explanation out before arriving at the conclusion that the requesters are acting in concert or as part of a campaign.
32. In the circumstances of this present case the Commissioner has some reservations about accepting the Council's line of argument that this request, or more accurately this complainant, can be said to be acting in concert in submitting FOI requests to the Council on this topic.
33. Primarily this is because the Commissioner is uncomfortable with the Council's emphasis on the annotations made to this request on the WDTK website by one individual and the reference to this request on another individual's Twitter feed. In the Commissioner's view simply because these individuals have commented on, or referred to the complainant's request, this cannot be taken as direct evidence of the *complainant* himself acting in concert with the individuals in question. The complainant has no control – having submitted his request via WDTK – on what other individuals may do or say in respect of his request. It is also the Commissioner's understanding that the complainant himself has not commented, on or made reference via social media, to the requests made by other individuals.
34. Moreover, the information sought by this request focuses not on the land at Marine Walk – which is the issue at the heart of the campaign identified by the Council – but on the potential relocation of the Adelaide to Sunderland. The topic of the requested information therefore differs from the other requests and correspondence identified by the Council.
35. Nevertheless, the Commissioner accepts that it would be naïve, given that the wording of the request emphasises the alleged relationship between the Council Leader and Mr Ian Fitzakerly – to ignore the common theme between this request and the previous requests and communications the Council has received in relation to the issues associated with Marine Walk. As is apparent from such correspondence,

allegations of such a relationship, and the implications that it has had an inappropriate influence on Council's decisions regarding this site, have previously been made on numerous previous occasions. Furthermore, the Commissioner notes that the complainant himself - in his email to the Council of 9 July 2014 - referenced the previous requests concerning Marine Walk. Finally, neither the Commissioner nor the Council can say for certain what the complainant's intention was behind the phrase *'The council leader Paul Watson has connections to thugs and has used them before...I do not want council officials at my door'*. However, the Commissioner accepts that such an allegation and the manner in which it is phrased, does echo the comments made in material produced by the lead campaigner. The Commissioner is therefore prepared to accept that there is a commonality between this request and the previous requests that the Council has received regarding Marine Walk.

36. Consequently, whilst the Commissioner would be reluctant to accept that this request demonstrates the complainant acting in an organized campaign along with other individuals against the Council, given the broader context of this request he accepts that there are clearly some links between it and the previous requests and correspondence the Council has received on this matter. In the Commissioner's view such links are just - and he emphasises *just* - sufficient to persuade him that the Council can legitimately conclude that this request is evidence of an organic campaign the apparent intention of which is discredit the Council's, and certain individuals, credibility in respect of the Marine Walk development and/or to re-open associated issues that have been dealt with by the Council previously. Therefore, in considering whether this particular request is vexatious the Commissioner accepts that the Council can take into account the disproportionate or unjustified level of disruption, irritation or distress answering the request in the broader context of the previous requests the Council has received on this subject.
37. When doing so, the Commissioner is persuaded that this request is vexatious. His basis for reaching this decision echoes, in part, the reasoning set out in the decision notice FS50521622 in which he found that section 14(1) was engaged, in particular paragraphs 31 to 35 of that notice.
38. In summary, that notice concluded that the volume and pattern of the requests made by individuals acting in concert had placed such a significant burden on the Council and that it was clear that they would not let matters lie to the point that they were pursuing the Council on this topic to an unreasonable level.
39. In the circumstances of this particular case the Commissioner does acknowledge that disclosure of information about the Adelaide - as

opposed to disclosure of information about Marine Walk – ostensibly gives the request a more legitimate purpose and value. However, for the reasons discussed above, the Commissioner is persuaded that the request is also (or indeed arguably primarily) intended to re-open or re-examine the alleged links between the Council Leader and Mr Fitzakerly. In the context of the previous requests, and the steps the Council has taken to provide information on this topic, the Commissioner is persuaded that such a request is vexatious. This is not only for its continued pursuance of this particular subject matter but also because of the further similar requests that the Council is likely to receive if such a request was complied with in full, and the burden placed on the Council in dealing with such correspondence.

## Right of appeal

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40. 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 123 4504

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)

41. 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.
42. 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 .....**

**Alexander Ganotis**  
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