

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2014

Public Authority: Wigan Council
Address: Town Hall
Library Street
Wigan
Lancashire
WN1 1YN

Decision (including any steps ordered)

1. The complainant made requests for information relating to staff members within the reception area of the Chief Executive; internet usage logs for August of the Chief Executive and cabinet members; and all internet usage from a named Councillor to the Chief Executive in the last 12 months. Wigan Council (the Council) refused the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the Council has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Background

2. The complainant is a Councillor of the Wigan Council.

Request and response

3. On 18 December 2013 the complainant made 3 FOIA requests to the Council:

'Please provide me with all staff members names who was working within the Chief Executive Donna Hall reception area, and Ms Hall office including Ms Hall appointments on 23rd August 2013, also any internet usage logs from Ms Donna Hall from the 22nd August 2013 till 30th

August 2013

Please provide me with all internet usage of all cabinet members from 22nd August 2013 till 30th August 2013

Please provide me all internet usage from Cllr (name redacted) to the Chief Executive in the last 12 months'

4. The Council responded on 17 January 2014, stating that it considered the request to be vexatious and therefore covered by section 14(1) of the FOIA.

Scope of the case

5. The complainant contacted the Commissioner on 24 January 2014 to complain about the way his request for information had been handled. Initially the complainant was advised by the Commissioner to seek an internal review but the public authority advised the Commissioner on 26 March 2014 that there was no internal review as there was nobody who could make an impartial decision.
6. The Commissioner has examined the request and related correspondence from both the complainant and the Council. The Commissioner has considered the scope of the case to be whether the Council is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

7. Section 14(1) 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. There is no public interest test.
8. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently 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

¹ GIA/3037/2011

Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

9. 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 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. 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).

10. 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.
11. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². 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 a case will need to be considered in reaching a judgement as to whether a request is vexatious.
12. The Council identified several indicators as being present within the requests. It considered that the requests were obsessive, harassing, caused distress to staff, imposed a significant burden and were designed to cause disruption or annoyance to the Council.

The requests are obsessive

²

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

13. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
14. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
15. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
16. In this case, the Council stated that the 3 FOIA requests are similar in nature with the *'emphasis of the requests focusing on information pertaining to certain individuals within the Council.'*
17. In October 2013, the Chief Executive wrote to the complainant concerning his many attempts to discuss non work related issues with her: *'You have already been told by Greater Manchester Police's Chief Superintendent Donnellan not to contact me regarding personal issues...in the last week alone you have accused me of gross misconduct...threatened me...'*
18. The Council provided information on the quantity of email from the complainant to Cabinet members from April to October 2013. The complainant sent 73 email to the Chief Executive of the Council, 12 emails to the Assistant Director Legal Services and 11 to the Director Economy and Skills Places Directorate. In comparison, another pro-active Councillor has had no direct communication with the Chief Executive, no direct communication with the Director of Economy and Skills and only 7 emails were sent to the Assistant Director Legal Services.
19. Since October 2013, the Council have managed the communications with the complainant centrally.
20. As part of the refusal notice to the complainant on 17 January 2014, the Council provided a log of the 126 emails sent by the complainant. Of these, 8 relate to FOI requests, 19 to constituency issues and the

majority relate to issues with staff and complaints. This log was not forwarded by the complainant to the Commissioner.

21. Between October and the date of the request in December 2013, the log shows nearly 20 allegations and (unsuccessful) complaints about certain individuals within the Council; and on 15 November 2013, an allegation of misconduct in public office against the entire Senior Management Team.

22. The Council provided the following as an example of the obsessive/abusive language used by the complainant in an email to the Head of Service - Legal and Risk dated 22 April 2013

'...you are speaking to a little boy in a class room? If your information is correct may I ask "why" do you waste £000'0 by going outside when seeking information under the law, which can be found in any law book... may I ask do you know what you are doing'

23. The letter was copied to the Chief Executive of Wigan Council who responded that *'your abusive and disrespectful email will not receive a reply from any officer.'*

24. The Council provided a further example of threatening language in an email to the Assistant Director Legal Services in November 2013:

'...if I don't receive an update I will be contacting the Police'

25. The Commissioner has taken into account the context and background to the request in conjunction with the language used in previous correspondence to the Council and considers that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

The requests are designed to cause disruption

26. The Council stated that it considers the complainant to be submitting requests to cause disruption to the Council, rather than have a *'genuine need for the information to be disclosed in the public domain'*

27. The complainant has stated that the first FOI request *'was to address who was working in the reception on the 23rd August after I was subjected to a CID officer of Wigan Police were serious un-founded allegations was made, the reason for the names is to place a formal complaint against these officer.'*

The second was to see if Cabinet members were following the rules under the constitution of Wigan MBC.

The thirds request was information of a serious allegation made by Cllr (name redacted) against me in a full council meeting'

28. The Commissioner has considered all the correspondence presented to him and found that there is sufficient evidence to suggest that the requests were vexatious in that they were in pursuit of a personal matter and are without merit or value to the public.

The requests have the effect of harassing the public authority and causing distress to staff

29. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which he knows to be futile. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.
30. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
31. In this case, the 3 requests are the pursuit of a personal complaint against the Chief Executive, to see if Cabinet members were *'following the rules under the constitution'* and for information following an allegation by another Councillor against the complainant in a council meeting. The Council state that the Chief Executive has made a complaint to the police in relation to the ongoing harassment.
32. The Commissioner has considered the purpose of the request in the context of the other correspondence and taking into account the obsessive persistence of the complainant, finds that the effect is to harass the public authority and cause distress to members of staff.

The Commissioner's decision

33. Taking into consideration the findings of the Upper Tribunal that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has concluded that the Council was correct to find the requests vexatious. He has balanced the purpose and value of the requests against the detrimental effect on the public authority and is satisfied that the requests are obsessive and had the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

34. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

**Pam Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**