

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 2014

Public Authority: London Borough of Hackney

Address: Hackney Town Hall

Mare Street

London

E8 1EA

Decision (including any steps ordered)

1. The complainant has made a number of requests to the London Borough of Hackney ("the Council") for information relating to a specific care home and the care of her mother. The Council claimed that her request was vexatious and subsequently did not respond to any further requests submitted on the same issue. The complainant has consequently complained to the Commissioner about these matters. The relevant issues have been handled under two case reference numbers, although the findings in each case are set out in this decision notice.
2. In relation to FS50547326 and the question of whether the request is vexatious, the Commissioner has found that the request is vexatious and the Council was correct to apply section 14 of FOIA. With respect to FS50554620 and the Council's non response to the request, the Commissioner has also found that this request is vexatious and the Council was correct to not respond under section 17(6). The Commissioner requires the public authority to take no steps.

Request and response

3. This decision notice refers to the requests made to the Council on two separate dates; 10 June 2013 and 3 February 2014. The Council's response to each of the two sets of requests has been considered by the Commissioner under two case reference numbers: FS50547326 and FS50554620. The wording of each request is set out in Annex A attached to this decision notice. A summary of the Council's position to

each request at the time a complaint was made to the Commissioner is set out below.

FS50547326

4. The Council refused to comply with this request citing section 14 of FOIA. It explained that any future requests for information would not be responded to.

FS50554620

5. The Council did not respond to this request.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way her requests for information had been handled.
7. In relation to FS50547326, the Commissioner confirmed with the complainant that his investigation would focus on whether the Council was correct to apply section 14 of FOIA to her request dated 10 June 2013.
8. With regards to FS50554620, the Commissioner explained to the complainant that he would write to the Council and ask it to respond to her request of 3 February 2014. The Council returned to the Commissioner and explained it had previously told the complainant that any information requests submitted after 10 June 2013 would not be responded to. It subsequently explained that it considered the request dated 3 February 2014 to be vexatious and consequently it was correct to not respond. The Commissioner has had to consider whether the request is vexatious and therefore whether the Council was correct to not respond in accordance with section 17(6).

Reasons for decision

Section 14 – vexatious requests

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 *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 *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) the 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 request." (paragraph 45).
12. 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.
13. 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 requests.² 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.

¹ UKUT 440 (AAC) (28 January 2013)

²

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

The Council's arguments

14. With reference to both requests the Council considers that the FOIA has been used as a means to *"obtain information pertaining to an investigation regarding actions taken by or on behalf of the Council and by other third parties which concluded in 2013"*.
15. The Council also considers it is not the purpose of FOIA to assist requesters in placing undue pressure on a public authority as part of a campaign to expose concern about an investigation.
16. The heading below represent the arguments that the Council presented to the Commissioner to support its application of section 14.

Would the requests constitute a significant burden in terms of expense and distraction?

17. The Council explained that in every case where it responds to the complainant's information requests, it receives follow up correspondence in a short period of time. It explained that the follow up correspondence can contain additional queries, a mix of FOI requests, various complaints and accusations and also subject access requests. It further explained that the queries are often ones that have previously been considered as unanswerable, as well as those that have previously elicited a response and/or explained that the information is exempt from disclosure.
18. The Council also explained:

"Many of the points raised in the correspondence are highly specific to the function of the Local Government Ombudsman route and the Councils internal complaints process. This situation is complicated by the fact that correspondence frequently raises challenges to actions taken by or on behalf of the authority in which part 26 of the Local Government Act 1974 Applies [matters subject to investigation]".
19. It further explained:

"The Council considers that providing further responses to these requests particularly when the Council's complaints procedure has been followed and the Local Government Ombudsman has been contacted by the complainant and has provided guidance on the manner in which the investigation should be conducted would represent a significant distraction particularly as there is already an appropriate and longstanding complaints mechanism that be used by anyone who claims to "sustained injustice in consequence of perceived maladministration in connection with action taken by or on behalf of an authority" [part 26, Local Government Act 1974]".

20. The Council made reference to the case of *Welsh v ICO*³ where the Tribunal considered whether a request constituted a burden on the public authority. The Tribunal said *"it is not just a question of financial resources but also issues of diversion and distraction from other work..."*.
21. The Council explained that the appropriate forum to challenge the actions of the Council in relation to this case is the Council's own complaints procedure or the Local Government Ombudsman. The Council stated that the complainant already has a complaint with the Local Ombudsman and if she is not satisfied with the actions taken by the Council in relation to the current independent investigation, she can return to the Local Government Ombudsman for a remedy. The Council asserted that the requests are a distraction from the work being undertaken on the independent investigation.
22. The Council explained:
- "The requests have placed an unnecessary pressure on the Council in order to force it to provide further information when the Council has already provided complete response(s), yet despite this, all responses provided always elicit further questions. The Council having taken into account the context and background to the request considered that the complainant's persistence had reached a stage where it could reasonable be described as a burden on the Council..."*
23. The Council has argued that the requester is likely to be abusing the section 1 rights of FOIA if she uses information requests as a means to vent anger at a particular decision. It explained that the complainant's correspondence has repeatedly included accusations about the Council and its officers withholding information and complaints about officers in the Council's handling of the investigation and information requests. It further explained:
- "The FOIA is general considered applicant blind, but this does not mean that a public authority may not take into account wider context in which the request is made and any evidence imparted about the purpose behind the request. The Council considers the complainant to be submitted requests to vent anger at the Council, attempt to reopen the safeguarding investigation and cause disruption, rather than there being a need for the information to be disclosed in the public domain"*.

³ [EA/2007/0088]

Unreasonable persistence

24. The Council considers that the circumstances surrounding the information requests indicate an unreasonable persistence on the part of the complainant. The Council explained that it had carried out a joint safeguarding investigation in 2013 and it is now carrying out an independent investigation. It confirmed that the independent investigation will not be a re-examination of the previous safeguarding investigation. The Council explained that the complainant has refused to accept the conclusion of the previous investigation. The Council has argued:

"It is unreasonable for the Council to have to respond to repeated persistent questions put by the way of information requests when the Council is undertaking an independent investigation which is being overseen by the Safeguarding Board".

25. The Council further considers the requests to be manifestly unreasonable in terms of the ongoing additional requests with every response it sends to the complainant. It considers that the additional requests are sent with clear intention to reopen issues that have already been examined in the safeguarding investigation.

26. The Council put forward its view that the purpose behind the requests did not justify the level of disruption, time and resources required to provide the information sought. It stated that the requests cause a *"disproportionate level of disruption to the Council"*.

Purpose and value of the request

27. The Council has argued that the requests centre on re-opening issues that have already been investigated and responded to as part of the previous safeguarding investigation. It further stated:

"FOIA is not designed to be a mechanism through which substantial pressure can be placed on an authority in order to force liability".

28. The Council explained that alternative routes are available to the complainant by which she can raise her concerns and she has had access to these.

The balance between the impact of the request on the public authority and the purpose of the request

29. The Council told the Commissioner that it had considered the impact on the Council in responding to the requests against the purpose and value of the requests. The Council accepted that the complainant's requests do have purpose and value. It explained that it continues to correspond

with the complainant in relation to the independent investigation. However the Council expressed its view that it is mindful that the complainant's concerns have already been comprehensively investigated by the Council. It reiterated its view that the requests were an attempt to reopen an investigation that had been considered and closed. In light of the independent investigation which is ongoing, the Council considers the continuous correspondence and requests to be an unreasonable persistence.

Detrimental impact: workload, irritation and distress

30. The Council acknowledged that although the requests were not onerous in themselves, the requests are one of several received by the Council. It considers there to be a clear pattern of each response generating an unreasonable response from the complainant which would include additional questions being asked on every response. The Council considers this to be a clear attempt to reopen issues which have been dealt with in depth during a previous investigation.
31. The Council recognised that the complainant has a legitimate interest in pursuing a complaints process in respect of her concerns and that as a public authority the Council is accountable for its actions. However it considers that the requests constitute an inappropriate use of FOIA. It subsequently invited the Commissioner to uphold its position.

The Commissioner's view

32. It is clear that the background to the requests is a personal one. The complainant's view is that it is entirely justifiable in this situation for her to be provided with information relating to the care of her mother and the safeguarding procedures/issues that were in place at the care home her mother was staying at.
33. The Commissioner does appreciate why the complainant wants the information she has requested. He also recognises that to the complainant, there is a strong purpose and value to the information she seeks. However, the Commissioner is aware that the complainant has been in contact with the Council on the same issue over a long period of time. During that period an investigation has been carried out and concluded and an independent investigation is underway. It would therefore seem reasonable for the complainant to follow the appropriate complaints procedure, rather than submit information requests that covers grounds that have been investigated or are going to be investigated.
34. After reviewing some of the correspondence between the Council and the complainant, the Commissioner considers that if the Council did

respond to the requests, it is highly likely to lead to further follow up correspondence seeking additional information. It is also the Commissioner's view that any response provided by the Council is unlikely to be satisfactory to the complainant.

35. With respect to FS50547326 the Commissioner does acknowledge that some of the information requested would be of public interest, such as the date Monarch Court was put on high alert. However he considers that the Council has provided the complainant with sufficient information in response to previous requests and this goes a long way to satisfy the public interest in this information.
36. The Commissioner considers that the exemption set out at section 14 prevents an individual from placing a drain on a public authority's resources. On consideration of the Council's arguments the Commissioner is satisfied that the requests submitted by the complainant are vexatious and the Council was therefore correct to rely upon section 14 of FOIA.
37. As the Commissioner has determined that both requests are vexatious, he will now consider whether the Council was correct to not respond to the request of 3 February 2014 which was dealt with under case reference FS50554620.

Section 17(6)

38. Section 17(6) of the FOIA states that a public authority is not required to provide a refusal notice where:

"(a) the public authority is relying on a claim that section 14 applies, (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

39. The Commissioner will usually only accept that it would be unreasonable to issue a further refusal notice if the authority has already warned the complainant that further requests on the same or similar topics will not receive any response.
40. The Council's internal review of the request dated 10 June 2013 (FS50547326) explained that any future information requests would not be responded to. The Commissioner is also aware that the Council sent the complainant two emails in January 2014 reminding her that any information requests submitted after 10 June 2013 would not be answered.

41. The Commissioner does recognise that the Council did state to the complainant that any future information requests would not be answered. However the Council failed to cite section 17(6).
42. The Commissioner has decided that it was reasonable for the Council to not respond to the information request dated 3 February 2014. The Commissioner accepts that the Council gave the complainant sufficient warning that future requests for information would not be responded to. The Council was therefore correct to rely upon section 17(6).

Right of appeal

43. 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
44. 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.
45. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF

Annex A – information requests

FS50547326 – Request dated 10 June 2013

What date was Monarch Court first placed on High Alert?

What is the grading within the High Alert Chart?

What grades of high alert was Monarch Court on including dates?

Re No 6 – Hackney FOI has still not answered this point, for the third request please advise what action plans and monitoring the ECG placed on Monarch Court during the period since opening and closing of Monarch Court? And what actions did the ECG direct to MC when MC breached original action plan/s?

Why was there no ECG meeting regarding Monarch Court during the following periods:

- 4th March 2009 to 23rd July 2009*
- 15th December 2009 to 23rd March 2010*
- 25th March 2010 to 19th May 2010*
- 21st May 2010 to 11th October 2010*
- 13th October to 13th December 2010*
- 15th December 2010 to 9th February 2011*
- 18th August 2011 to 6th February 2012*
- 6th March 2012 to 12th June 2012*
- 14th June 2012 to Monarch Court Closure December 2012*

Why was there no ECG monitoring unannounced visits to MC during the following periods:

- 23rd July 2009 to 19th July 2010*
- 20th July 2010 to 23rd December 2010*
- 24th December 2010 to 28th February 2011*
- 1st March 2011 to 16th May 2011*
- 16th May 2011 to 13th June 2011*
- 20th July 2011 to 11th August 2011*
- 12th August 2011 to 21st December 2011*
- 11th February 2012 to 24th May 2-12*
- 25th May 2012 to 17th August 2012*
- 18th August 2012 to MC closure in December 2012*

Hackney FOI still haven't answered this questions: can you advise why the monthly meeting were discontinued for infrequent ones?

Why wasn't there addition ECG meetings when safeguarding referrals increased especially as they were rated high severity?

What type of Neglect and Physical safeguarding alert referrals are these?

No 8 – Hackney FOI still haven't answered this, repeated request the report/s on the ECG monitoring team's 'monthly' findings from August 2009 to 28th February 2012 and 29th February 2013 to Monarch closure in December 2012 and ECG procedure/s when MC didn't comply with actions directed by ECG and monitoring team.

FS50554620 – Request dated 3 February 2014

The family believe that we have not received all the data we are entitled to. The family expect to receive any personal data relating to our mother that may be contained within the following:

[1] Family's requests for information and documentation as attached have not been fulfilled- information should be sought in TK case file and with Legal Dept

[1b] This information should be sought with [redacted name] from 06.01.14 to date & with Legal Department & in [redacted name]/Monarch Court case file

[2] These questions have not been answered to date – information should be sought in TK case file & Legal Dept please release.

*[3] Family's points for Joint investigation not included in investigation report/family have no received – Joint Investigation [redacted name]/Hackney [redacted name]/Anchor between May 2012 – 13th December 2012.
Information should be TK case file & TK Joint Investigation File.*

*[4] Subject Access to File – Some documentation was sent/see attachment for missing documents & requests are typed in red for clarity & brevity – various file which are stated in original SAtoF request/
See attached document for missing documents/information typed in red.*

[5] FOI additional request 18/6/13 not received although [redacted name] emails 17.01.14:

"The FOI as per my previous letter has been dealt with by Hackney, I have checked with [redacted name] and was advised that the requests were responded to in a letter dated 9th July 2013 that stated that we would not be considering your requests any further. Therefore any submissions after this date would not have been considered. If you would like further advice about this then please contact the ICO" – The family have checked with the ICO

who advises this information can be released. The information can be found in Monarch Court/ECG & [redacted name] FOI Dept from 18.06.13 to date.

[6] [redacted name] [Procurement Officer] did not attend therefore did not present his finding to Action – Information will be sourced in [redacted name] – TK case files or Monarch Court between 01.11.2011 to 30.03.12