

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2014

Public Authority: Brecon Beacons National Park Authority

Address: Plas y Ffynnon
Cambrian Way
Brecon
Powys
LD3 7HP

Decision (including any steps ordered)

1. The complainant has requested various items of information regarding two named employees of the Brecon Beacons National Park Authority and a failed planning application. Brecon Beacons National Park Authority refused the request on the grounds that it was vexatious and cited section 14(1) of the FOIA. The Commissioner's decision is that Brecon Beacons National Park Authority has correctly applied section 14(1) to this request for information. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 6 May 2014, the complainant wrote to the Brecon Beacons National Park Authority ('The Authority') and requested the following information:

"1. Please provide me with a time line of the employment of [named employee A]:-

When he started in BBNP-

What role was he first given

When he moved into the planning dept

What position he held

When he received promotions within the planning dept

Who sanctioned the promotions

Who interviewed for the promotions

Was there open competition for the Head of Planning role?

*Was there open competition for the Director of Planning role?
Who over-saw the qualifications required / obtained
What is the pay difference between these roles (being public money
I'm entitled to know).*

I require a full time line of the above events, as previous FOI replies do not fully explain how his employment changed over the years.

2 Please supply me with a clear definition of what:-

*The role is of Business Strategy Manager
The role of Head of Planning
The role of Director of Planning.*

3 In a previous FOI reply re [name employee B], (dated 4 March 2014) you gave me the answer re the above as "the authority entered into a service level agreement with Carmarthenshire Council to provide the Solicitor to the Authority, [named employee B] continues to be employed on a part time basis as the Authority's Monitoring Officer."

Yet, in your letter of 25 April you say "[named employee B] is currently working for the Authority on a contractual basis for the duration of a current enforcement litigation matter."

So, when was this contract started,

*Was it open to competition
What insurance has [named employee B] got
Is she acting as self employed in relation to this enforcement matter
Why were you untruthful in your March letter?*

4 What date did Marsh Insurers cease to act for BBNP.

5 When did Markel UK TLD begin insuring BBNP.

6 Why was the July 2008 application not P[sic]rogressed?

7 On 28 April you write to say [name redacted] is satisfied [named employee A] is qualified- What qualifications has [name redacted] got, and how can he be qualified to sanction [named employee A]?"

3. The Park Authority responded on 6 June 2014. It refused the request by virtue of section 14(1) of the FOIA on the basis that it was vexatious.

4. Following an internal review the Park Authority wrote to the complainant on 10 July 2014. It upheld its original decision to refuse the request on the basis of section 14(1) of the FOIA.

Scope of the case

5. The complainant contacted the Commissioner 16 July 2014 to complain about the way her request for information had been handled. She also alleged that employee A is not qualified to fulfil their role yet made decisions which halted the process of a planning application.
6. The Commissioner's investigation will focus solely on whether the Park Authority were correct to rely on section 14(1) of the FOIA in response to this request for information. It is beyond his remit to investigate or even comment on whether an individual employee is qualified for their role.

Reasons for decision

Section 14(1) - Vexatious requests

7. 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. There is no public interest test.
8. The term 'vexatious' is not defined in the FOIA, however, the Upper Tribunal in the Information Commissioner vs Devon CC and Dransfield [2012] UKUT 440(AAC), (28 January 2013) took the view that the ordinary dictionary definition of the word 'vexatious' is only of limited use, because the question of whether a request is vexatious ultimately depends on the circumstances surrounding that request.
9. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the "*...manifestly unjustified, inappropriate or improper use of a formal procedure.*" (paragraph 27)
10. Consistent with the Upper Tribunal's decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance for section 14 confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. Where this not clear, the public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will

inevitably need to take into account the wider factors such the background and history of the request.

12. The Commissioner notes that the Park Authority sent a detailed refusal notice to the complainant explaining why it considered section 14(1) was engaged in respect of this request for information based on the background and history to this request, with evidence to support its decision.
13. In its consideration of the request, the Park Authority used the Commissioner's guidance to help it determine whether it could rely on section 14(1) of the FOIA. In particular, it looked at the indicators identified in the guidance which support the view that the request is vexatious. It concluded that the following indicators were applicable in this instance: '*burden on the authority*', *personal grudges*, '*unreasonable persistence*', *unfounded accusations*, '*intransigence*' and '*frequent or overlapping requests*'. The Commissioner has therefore considered each of these.

Unreasonable persistence / personal grudges

14. In its refusal notice, the Park Authority referred to a total of 36 requests submitted by the complainant since 2011, either for information under the FOIA or the Environmental Information Regulations 2004, ('the EIR') and directly or indirectly in relation to planning matters at Gilestone Farm.
15. The Park Authority further stated in its refusal notice, that although planning permission was initially granted at Gilestone Farm, a judicial review subsequently quashed the permission. It further confirmed that it considered that the planning issues have been comprehensively addressed both internally by the Park Authority itself, and externally by an independent court of law.
16. Of the 36 requests referred to in paragraph 14 of this notice, the Park Authority pointed out that they continue to focus on the unsuccessful planning application of 2008 and in particular, on two named employees of the Park Authority.
17. The refusal notice referred to four previous requests for information regarding the employment history of employee A and stated that the current request included details of information already given to the requester on 21 January and 5 February 2014. In respect of employee B, the Park Authority referred to three previous requests directly relating to details of their employment.
18. The Commissioner would wish to highlight that the complainant submitted two further requests for information directly regarding

employee A, and three in relation to employee B, regarding matters other than their employment history at the Park Authority.

19. In terms of this request, the Commissioner notes that items one and seven are directly related to employee A, whilst item B is indirectly related as the specified roles are ones that s/he is either currently, or has previously undertaken at the Park Authority. Item three is directly related to the employment of employee B.
20. The complainant on the other hand considers that key information was not disclosed during the course of the judicial review and has been attempting to obtain this information via the FOIA and EIR. Additionally, the complainant has stated that she does not hold a personal grudge against employee A but believes they were responsible for making the decisions which ultimately led to the unsuccessful planning application at Gilestone Farm in 2008. She is concerned that the employee does not hold the appropriate qualifications for their role within the Park Authority and therefore considers it reasonable that their true qualifications should be 'exposed'.
21. The Commissioner's role is solely to focus on the Park Authority's handling of this request for information and to consider whether it correctly relied on section 14(1) of the FOIA to refuse this request. Whilst he acknowledges that the complainant is likely to use all means available to her to obtain answers to her questions regarding what has evidently been a very distressing situation for her, he considers that the background to this request outlined in paragraphs 14 to 19 of this notice is indicative of an unreasonable persistence.
22. The Commissioner would also point out that a requester does not need to know a particular employee personally for a public authority to conclude that they hold a personal grudge against that employee. Where an applicant is targeting correspondence against a particular employee it is sufficient to indicate a personal grudge, and in this particular case, the Commissioner notes that not only has the complainant submitted six direct requests in relation to both employee A and employee B, there have also been a number of indirect requests in relation to employee A. Indeed, the fact that the complainant considers that employee A was responsible for the failure of her planning application in 2008 reinforces the Park Authority's view that the complainant has an issue with employee A.

Unfounded accusations

23. The Park Authority has also highlighted that within the complainant's request are accusations of lying in previous responses to requests for information. The Commissioner notes that in this particular case it is in

relation to employee B and has reproduced the relevant part from the letter, which states:

"You lied re [named employee B] by saying [s/he] was monitoring officer yet [s/he] is still giving legal advice – why?"

24. Although the Park Authority did not include further evidence of unfounded allegations in its refusal notice, the Commissioner would highlight that he has previously investigated the Park Authority's handling of a number of the complainant's requests for information referred to in paragraph 14 of this notice, and that during the course of his investigations of these complaints, she has also made an unfounded allegation in respect of employee B and claimed that a report commissioned by the Park Authority contained lies.

Frequent or overlapping requests

25. The Park Authority also considered that the request could be considered vexatious on the basis that the complainant has submitted frequent and often overlapping requests in relation to the Gilestone Farm planning application, and the employment of employee A and employee B. As part of its refusal notice to the complainant, it included a table with details of 41 requests submitted to the Park Authority between 16 August 2011 and 7 April 2014. Of these 41, the Park Authority provided evidence of 36 in relation to Gilestone Farm, Employee A and Employee B.
26. The complainant did not dispute either the numbers or nature of her requests for information in her request for an internal review and the Commissioner having previously investigated the Park Authority's handling of eleven other of these requests, accepts that the Park Authority's reliance on this indicator is reasonable.

Burden on the Authority

27. As part of its decision to rely on section 14(1) of the FOIA, the Park Authority also argued that the requests for information referred to in paragraph 14 of this notice had placed a considerable burden on it in terms of staff time and resources, and consequently had had the effect of diverting its staff away from conducting their normal duties.
28. The Commissioner however, would argue that reliance on this indicator should relate more to the particular request in question and consideration should be given to whether the effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that it cannot reasonably be expected to comply, no matter how legitimate the subject matter or how valid the intentions of the

requester. The Commissioner does not therefore consider reliance on this particular indicator as appropriate.

Intransigence

29. In its refusal notice to the complaint, the Park Authority also considered that the complainant's background and history was indicative of intransigence. It argued that she had unreasonably refused to accept the findings of the judicial review regarding Gilestone Farm and the roles of individual officers within the Park Authority relating to this matter.
30. The complainant on the other hand, is convinced that key information was withheld from the judicial review, which if it had been disclosed at the time, may have resulted in a different outcome. She also considers that the Park Authority has employed individuals without the required qualifications.
31. These allegations and concerns are beyond the scope of the Commissioner's investigation and he has therefore refrained from making a judgement on this particular indicator.

Conclusion

32. The Commissioner does not consider it necessary for the Park Authority to be able to demonstrate that all the indicators referred to in his guidance regarding section 14(1) need to be present. Indeed, a public authority is not obliged to rely on any of them and may present its own arguments in support of its decision to refuse a request on the basis of section 14(1) of the FOIA. However, where it has based its decision on his guidance, the important consideration is the weight of evidence in relation to one or more of these indicators.
33. In this particular case, the Commissioner considers that the Park Authority has sufficiently demonstrated that the request is indicative of an unreasonable persistence on the matter of the failed planning application at Gilestone Farm, of personal grudges against employee A and employee B, of unfounded allegations, and is part of a series of frequent and/or overlapping requests. He has therefore concluded that the Park Authority was correct to rely on section 14(1) of the FOIA in respect of this particular request for information.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Anne Jones
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