

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 November 2014

**Public Authority:** London Borough of Bexley  
**Address:** Bexley Civic Offices  
2 Watling Street  
Bexleyheath  
Kent  
DA6 7AT

#### Decision (including any steps ordered)

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1. The complainant has requested from London Borough of Bexley (the "Council") copies of correspondence between the Council's legal department and Bexleyheath Police regarding an incident at Bexley civic centre.
2. The Council refused to comply with the request for information as it deemed the request to be vexatious in accordance with section 14 of the FOIA.
3. The Commissioner's decision is that the request is vexatious and that the Council had correctly applied section 14 of the FOIA to refuse the requested information. However, the Council failed to provide a response to the request within the statutory timeframe of 20 working days and breached the requirement of section 10(1) of the FOIA. The Commissioner does not require the Council to take any steps.

#### Request and response

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4. On 25 June 2014, the complainant wrote to the Council and requested information in the following terms:
5. *"Please provide copies of all correspondence between Bexley Council's Legal Department and Bexleyheath Police, relating to an incident that occurred on 19<sup>th</sup> June 2013, at the Bexley Civic Centre, to which Police*

*Constables [named individual] and [named individual] attended, as a result of which Bexley Council's Legal Department contacted the police."*

6. The Council acknowledged the request on 25 June 2014 and responded on 1 September 2014.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 19 September 2014 to complain about the way his request for information had been handled.
8. The scope of this case has been to consider whether the request is vexatious and if the Council is correct to rely on section 14 of the FOIA to refuse the request for information. The Commissioner has also considered whether the Council has complied with section 10 of the FOIA.

### **Reasons for decision**

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#### **Section 14 – vexatious requests**

9. Section 14(1) of the FOIA states that a public authority may refuse a request if it is vexatious. The FOIA does not define the term, but it was discussed before the Upper Tribunal in the case of Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013).
10. In this case the Upper Tribunal defined a vexatious request as one that is *"manifestly unjustified, inappropriate or improper use of a formal procedure."* The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
11. In making his decision the Commissioner has obtained submissions from both the complainant and the Council to understand the circumstances surrounding the request in order to reach a decision on whether the request is vexatious. The Commissioner will consider their arguments where appropriate.
12. The complainant argued that all of his FOI requests and complaints made by him related to the investigation conducted by the Council, as a result of complaints made by four individuals who were denied access to the meeting of 19 June 2013. The complainant explained to the Commissioner how the Council had supported its version of events of

this meeting, even though nobody had given evidence on the Council's behalf.

13. The complainant went on to explain to the Commissioner that his recent request for information is as a result of a communication between the Council's legal department and the two police officers who attended the public meeting (19 June 2013) "*which resulted in the two officers making written statements under the Magistrates Courts Rules.*"
14. The complainant is of the view that the Council holds information that may support his allegations of "*Misconduct in Public Office and Perverting the Course of Justice.*" He believes that the Council decided to treat his request as vexatious under section 14(1) of the FOIA rather than to provide him with the information.
15. Having reviewed the complainant's correspondence, the Commissioner has noted that it is mainly concerned with the investigation carried out by the Council which the complainant considers to be dishonest. The complainant argued to the Commissioner that in a previous FOI response, it contained evidence that the Council is "*biased*" in favour of its staff when investigating complaints made against them.
16. In the Council's response to the complainant, the Commissioner acknowledges that it explained to him that his complaints have been fully investigated and his questions have been responded to. However, the Council highlighted the point that the complainant continued to submit further complaints and information requests that relate to the same public meeting ("the Public Realm meeting"). The Commissioner has noted that the Council provided the complainant with details of the previous 8 requests for information.
17. The Council stated to the complainant that there is no value in the Council spending further time and resources on "*a matter that occurred over a year ago, under the previous Council administration, and which has been dealt with exhaustively.*" The Council argued to the complainant that he continued to repeat his complaints and information requests and therefore the Council made its decision to classify this request as vexatious.
18. It concluded its response to the complainant by emphasising that he persistently pursued his complaint when the Council's complaints and FOI procedures had been implemented and exhausted. Also, that he made excessive contact with the Council, which placed "*unreasonable demands on staff.*" The Council confirmed that as a result of this it decided to classify this as a vexatious request.

19. The Council provided its submissions to the Commissioner and a log of the 64 complaints and FOI requests from the complainant also highlighting the 10 requests/complaints that relate to the same subject. The Commissioner has acknowledged the context and history of the request, in particular, that the Council had regarded the five criteria specified by the ICO's guidance on dealing with vexatious requests.
20. The Council stated to the Commissioner that it was of the view that all five criteria are conclusively met in this case. The Council applied the following factors in order to illustrate its decision that the request should be refused on the basis that it is vexatious.

*Whether compliance with the request would create a significant burden in terms of expense and distraction?*

21. The Council argued that it had spent significant time and resources on dealing with the complainant's information requests and complaints. It clarified that over the past 2.5 years it has received 64 information requests or complaints (this excludes complaints that the complainant made separately under the Members' Code of Conduct). The Council estimated that the 64 requests have taken in total 368 hours to deal with (5 hours and 45 minutes per information request/complaint). It added that this equates to over 10 weeks of staff time in dealing with the complainant's requests and 57.5 hours of staff time would be required for the ten requests on the same matter.

*Whether the request is designed to cause disruption or annoyance?*

22. The Council provided evidence of a pattern which became apparent that indicated an intention by the complainant to cause disruption or annoyance. This showed that the complainant had previously submitted 9 requests/complaints on the same issue (the Council meeting of 19 June 2013). Additionally, the complainant submitted a complaint under the separate Members' Code of Conduct which the Council stated had been dealt with fully. However, the complainant submitted a total of 9 further requests, the tenth request the Council determined to be vexatious.

*Whether the request has the effect of harassing the public authority or its staff?*

23. The Council argued that the frequency of the requests and the accusations of maladministration against individual staff members "have the effect of causing harassment." The Council stated that within the 64 requests there were a number of complaints made against individual members of staff. Of these, the Council explained how the complainant had exercised his right to progress his complaint to the Ombudsman in

only one case and that the Ombudsman decided that it would not investigate that complaint. The Council's view on this is that it is *"evident that the pattern of making complaints about members of staff, but then choosing not to progress those complaints to an external review or adjudication to achieve a final outcome, effectively constitutes harassment."*

*Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable?*

24. The Council informed the Commissioner that the matters relating to the Council meeting (19 June 2013) had been fully considered and responded to following the separate complaint made under the Members' Code of Conduct. The Council added that the previous 9 information requests were also responded to. Following a further review of the complainant's request within the context of the 64 requests/complaints he had made, the Council's view is that the requests had become obsessive and manifestly unreasonable.

*Whether the request has any serious purpose or value?*

25. In its submissions to the Commissioner, the Council argued that it was unable to discern any serious purpose or value in his request. The Council reiterated that the subject of the request made on 25 June 2014 related to a Council meeting of 19 June 2013 and that the request lacked serious purpose or value. The Council summarised the context of the 9 previous requests on the same matter, was *"a wholly disproportionate, excessive and unwarranted approach to an issue that had been fully dealt with a year ago."*

### **The Commissioner's conclusion**

26. The Commissioner has considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request. He considers there is in effect a balancing exercise to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.
27. The Commissioner has considered both the Council's arguments and the complainant's position regarding the information request. The Commissioner has concluded that the request is a continuation of the complainant's previous correspondence, which is seen as being so voluminous it represents a burden to the Council.

28. Taking into account the context and background to the request, the Commissioner considers that the complainant's persistence in terms of communication has reached the stage where it could reasonably be described as obsessive. This in turn has led to the requests posing a significant burden on the Council's limited resources and has diverted it from other business.
29. The Commissioner is satisfied that the request in question is similar to previous requests that the complainant has submitted to the Council.
30. The Commissioner considers the volume and the repeated nature of the requests demonstrate an unwarranted interference with the Council's functions. Therefore, the Commissioner's decision is that the request is vexatious and the Council is correct to rely on section 14 of the FOIA to refuse the request for information.

### **Section 10 – Time limits for compliance**

31. Section 10(1) of the FOIA requires that the public authority comply with section 1 promptly and in any event no later than 20 working days after the date of receipt of the request.
32. The Commissioner has noted that the complainant's request for information was acknowledged by the Council on 25 June 2014, which apologised for the delay in its reply on 1 July 2014. However, the Council did not provide a full response until 1 September 2014 which is 48 working days from the date of the request. The complainant complained that the Council "*have only decided to treat my request for information as vexatious, 54 working days after they received it and 34 working days after they should have responded to it.*"
33. The Commissioner asked the Council to provide its submissions as to why it took 48 working days to respond to the complainant's information request. The Council explained that there were a number of significant issues that contributed to the timescale in this particular case and provided its reasons.
34. The Council clarified that it took longer to respond to the request as the complainant had submitted 10 information requests on the same matter (within a total of 64 requests/complaints over the past 2.5 years) which had to be further reviewed.
35. The Council stated that this request was one of three submitted by the complainant on the same day which created further complexities for the Council. It explained that it needed to consider the overall number of

requests, the matters raised and the corresponding evidence in respect of the requests.

36. The Council was of the view that in the context of these exceptional circumstances, it reiterated that it had to comprehensively review the current request and the previous requests. The Council said that on starting this process it became apparent that the "tipping point" (as defined by the ICO in para 122 of its guide to 'dealing with vexatious requests') had "*clearly and unequivocally been reached.*"
37. In this case the Commissioner has identified that the Council responded outside 20 working days, and therefore breached the requirements of section 10(1) of the FOIA.

## Right of appeal

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38. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**