

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2014

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant requested copies of all communications between Carmarthenshire County Council ('the Council') and Towy Community Church relating to a specific project. The Council refused to comply with the request as it considered it vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the Council has correctly applied section 14(1) in this case and is not obliged to comply with the request. The Commissioner does not require any steps to be taken.

Request and response

2. The request in this case was the subject of a previous decision notice under case reference FS50461626¹. The Council originally refused to comply with the request under section 12 as it considered compliance would exceed the appropriate limit. In the decision notice, issued on 27 March 2013, the Commissioner determined that the Council incorrectly relied on section 12(1) as the basis for refusing to provide the requested information. He ordered the Council to issue a fresh response to the request that did not rely on section 12.

¹ http://www.ico.org.uk/~/media/documents/decisionnotices/2013/fs_50461626.ashx

3. On 3 June 2012, the complainant wrote to the Council and requested information in the following terms:

"Given that Carmarthenshire Council has described the Towy Community Church as a partner organisation, please could you provide copies of all correspondence including, but not exclusively, email exchanges, letters and meeting notes between the Council (and its individual officers and Members) and the Towy Community Church, Carmarthen (including officers of the church) since January 2007 until present. This request does not refer exclusively to the Excel Project.

Please also include any correspondence between any representatives of both organisations."

4. On 2 July 2012 the complainant wrote to the Council and refined her request of 3 June 2012. She limited her request to correspondence dealing specifically with the Xcel project.
5. The Council complied with the decision notice on case reference FS50461626 and issued a fresh refusal notice on 3 May 2013 stating that it was refusing the request under section 14(1) of the FOIA as it considered the request to be vexatious.
6. On 7 May 2013 the complainant wrote to the Council and requested an internal review of its handling of the request.
7. The Council provided the outcome of its internal review on 17 May 2013 and upheld its decision to refuse the request under section 14(1) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 2 June 2013 to complain about the way her request for information had been handled.
9. The Commissioner considers that the focus of this complaint is the Council's application of section 14(1) of the FOIA to the request of 2 July 2012. This refers to all communications between the Council (and its individual officers and Members) and the Towy Community Church ('TCC') relating specifically to the Xcel Project from January 2007 to June 2012.

Reasons for decision

Section 14 – vexatious requests

10. 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.
11. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*² the Upper Tribunal 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 upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
12. 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.
13. 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).
14. The Commissioner has therefore 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.
15. 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 requests³. The fact that a request

² UKUT 440 (AAC) (28 January 2013)

³ http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

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.

The Council's position

a) Motive

16. The Council advised the Commissioner that the complainant in this case "is a local politician and blogger who has been in dispute with the Council for many years", who has, via her blog and letters to the press, "engaged in an unlawful campaign of harassment, defamation and intimidation targeted against the Council's Chief Executive...and other officers, particular the Head of Planning Services". The Council assert that the campaign has been ongoing since 2006 and was continuing at the time the request was submitted. The Council advised that the campaign was the subject of legal proceedings brought by the complainant against the Council and its Chief Executive in 2011. The Council provided the Commissioner with a copy of the High Court ruling issued in February 2013. The Council advised that the High Court concluded that the complainant "had not only engaged in the unlawful activities referred to above but also committed the criminal offences of perverting the course of justice and harassment".
17. The Council contends that the complainant is fully aware the Xcel project is also receiving funding from the Welsh Government, the Big Lottery and commercial banks, as evident from information published on her blog. However, as far as the Council is aware, she has raised no similar concerns about the involvement of these organisations nor have any similar information requests been submitted to the Welsh Government.
18. The Council is of the view that the complainant is fully aware that, in light of the scale of the Xcel project, the Council's Chief Executive and its Head of Planning were involved in it. The Council considers the request should therefore be considered in the context of the campaign referred to above against these individuals. It believes that the request was motivated by a desire to harass and intimidate the two individuals and other senior Council officers involved in the project. If the complainant had genuine concerns about the project, the Council considers that those concerns would also extend to the involvement of other organisations in the project.
19. In addition, at the time of the request, the Council advised that the complainant had already made a complaint to the Wales Audit Office (WAO) about the Council's involvement in the project. The WAO concluded that the Council had acted lawfully at all times in its dealings

with TCC. The Council considers this again suggests a lack of genuine motive on the part of the complainant and a desire to harass those who she knew, or believed to be, involved in the project.

b) Purpose and value

20. The Council accepts that a relatively small number of other individuals and organisations (other than the complainant) have taken an interest in the Xcel project and the Council's involvement with TCC. The Council considers that it is inevitably the case that developments such as the Xcel project will provoke expressions of interest and concern as well as support. The Council referred to a number of articles in the local media and press as evidence of support for the project.
21. The Council acknowledges that the majority of reports relating to the Xcel project, which have been considered at Council meetings have been classed as exempt from publication under the provisions of the Local Government Act 1972. However, minutes of meetings at which the project has been discussed are publicly available. In addition, the Council advised that, in light of the misleading information which was being broadcast about the scheme by a number of individuals, it took the decision to discuss the matter in public at its meeting on 7 December 2011, the minutes of which are publicly available. The Pastor of TCC was also invited to attend the meeting to address the allegations.
22. The Council advised the Commissioner that it has received a total of six information requests about the project, two of which were from the complainant. The Council also provided the Commissioner with details of correspondence it had exchanged with an Assembly Member and an MP about the project, together with a complaint from a member of the public. However, in its view, the Council consider it is wrong to equate what in some cases is the politically motivated interest of a fairly small section of the public in this matter, with the wider public interest in disclosure of the information requested. In the Council's view, in light of the information which is already publicly available through reports and minutes of Council meetings, and the nature of the correspondence passing between itself and TCC, the public will not learn very much as a result of disclosure of any of the requested information.
23. The Council state that the Xcel Project is something in which it is legally entitled to engage. Key decisions relating to its involvement were made at a public meeting in November 2012 when "a full and frank debate took place regarding the merits of the Council's involvement". The Council considers that it cannot be said that disclosure is necessary to ensure transparency in its decisions and for the reasons outlined above, it considers the request has no value or serious purpose.

c) Detrimental impact on the public authority

24. The Council referred to the Commissioner's earlier decision notice regarding this request where he concluded that section 12 was not applicable. In reaching the decision, the Commissioner acknowledged that, based on the Council's representations, compliance with the request would take between 15.5 and 16.5 hours, plus additional time to manually check emails identified through electronic searches to determine whether the information fell within the scope of the request.
25. The Council's view is that, although the Commissioner considered that section 12 was not applicable to the request, it is evident that a significant amount of work would be required in order to comply with the request. The Council pointed out that, in accordance with the Commissioner's own guidance on section 14, in considering the burden and the impact of dealing with a request, a public authority is able to make a case that "the amount of time required to review and prepare information for disclosure would impose a grossly oppressive burden on the organisation". These activities are not ones that can be considered in relation to applying section 12 of the FOIA.
26. The Council argued that, in this case, as well as the burden of locating and retrieving information relevant to the request, as acknowledged by the Commissioner, it would need to read through the information in question in order to ascertain whether any of it was exempt from disclosure under any of the exemptions contained within Part II of the FOIA. The Council considers it likely that certain elements of the information held would be exempt under sections 40(2) – third party personal information, section 42 – legal professional privilege and section 43(2) – commercial interests. The Council also stated that, in considering whether any information was exempt, it would need to consult relevant Council officers and other third parties. For example, it would need to consult with TCC in relation to information which may be exempt under section 43 for their views on whether disclosure would have an impact on their commercial interests. The Council also added that, given the volume of correspondence caught by the request, time would be required in order to copy and redact any exempt information prior to disclosure.
27. The Council also provided the Commissioner with a copy of one of seven folders held within its legal services department, in order to demonstrate the nature and amount of information falling within the scope of the request, and how potentially exempt information is scattered throughout the requested information.

d) Causing harassment to staff

28. The Council contends that, in light of its responses to the request and the previous decision notice issued by the Commissioner relating to the request, the complainant is aware that the request will involve a significant amount of staff time, at all levels, given the volume of correspondence involved. The Council also believes the complainant is aware that dealing with the request will involve the most senior Council officers, and that compliance with the request will divert them from performing their normal duties.
29. Given the complainant's knowledge of the impact that compliance with her request will have on individual Council staff, and the fact that she is aware that the Council's involvement in the project has been independently investigated and found to be lawful, the Council believes that the request will not only harass staff "but is purposely designed to do so". It also considers the request to be obsessive in light of the fact that, despite the findings of the WAO investigation, she has persisted in alleging that the Council has acted inappropriately.

The complainant's position – purpose and value of request

30. In her complaint to the Commissioner, the complainant disputed the request was vexatious. She indicated that she wanted to submit representations in support of her claim that the request was not vexatious and subsequently provided a detailed submission to the Commissioner.
31. The complainant advised that she is not a professional journalist, nor an FOIA expert, but a member of the public who has been writing a local blog for the past four years. She confirmed that she had submitted a number of information requests to the Council during the last four years concerning a variety of issues which have arisen in the course of her observations of council business. She advised that she is always conscious of not placing an undue burden on the Council and approached information requests in a reasonable and responsible manner.
32. The complainant referred to a number of points in support of her view that the information she has requested should be disclosed, which are summarised below:
 - Concerns have been raised about the partnership between the Council and TCC by a number of individual members of the public, along with Unison, the media and politicians.

- There has been public criticism about TCC's links to an organisation known as Mercy Ministries⁴, and whether any public money has been used to fund the organisation. Mercy Ministries was closed down in Australia following a scandal over how it treated young women in its care. This included using exorcism to drive out demons they associated with problems such as eating disorders.
 - The lack of information about the partnership and scheme which the Council has disclosed to date. All but one of the meetings held to discuss the project were held in the closed session of Council meetings.
 - The confusing and conflicting information which is available about the scheme. For example, the complainant advised that the Council and TCC originally stated the lease for the property was for 99 years. However, recent media articles following the opening of the bowling alley quoted a 25 year period for the lease.
33. The complainant is of the view that, in light of the concerns she and others have raised, and the amount of public money which the scheme has received, there is a strong public interest in disclosure of the information she has requested. She considers that disclosure would allow the public to see exactly when discussions between the two organisations began, and whether the Council considered any alternative plans or partnerships. The complainant understands that the public funds committed to the project by the Council total around £1.4m, which includes grants, loans and favourable terms for leasing of the site. The Welsh Government and the Big Lottery have also committed significant public funds to the project. She believes the amount of public money involved is a strong argument in favour of disclosure in terms of transparency and accountability in the decision making process.

Conclusion

34. As stated above, the Commissioner's approach is to assess whether the level of disruption, irritation or distress caused to the authority by the request is disproportionate or unjustified, when weighed against the purpose and value of the request. When making the assessment, he has also taken into account the context and history of the request, ie the wider circumstances surrounding the request.

⁴ <http://www.dailypost.co.uk/news/local-news/church-linked-exorcists-given-council-2679320>

35. The Commissioner accepts that the request does have a serious purpose and value in terms of transparency and accountability in the decision making process and the expenditure of public funds. The Commissioner notes that concerns about the subject matter have been raised by a number of individuals, including the complainant. He also accepts that the project has received significant public funding, not only from the Council but from other public bodies.
36. However the Commissioner notes that the complainant's concerns about the scheme were independently investigated by the WAO prior to the request being made. The outcome of this investigation was essentially that the Council had not acted unlawfully in entering the partnership with TCC, in allocating funding to the project, or in relation to the disposal of the land in question. The WAO concluded that no further audit action was appropriate at the time.
37. The Council considers that the request should be considered in the context of a campaign which the complainant is involved in against the Council. The Commissioner accepts the Council's representations, as outlined in paragraph 16 of this notice, in relation to its previous dealings with the complainant, in terms of the history and context of the request. In particular he notes that the campaign was ongoing at the time of the request, that legal proceedings had been brought by the complainant against the Council in 2011, and that the complainant had for several years operated a blog which was targeted at, and critical of, the Council.
38. The Commissioner further notes that the project has received public funding from other bodies, including the Welsh Government and the National Lottery, but he has not been made aware of any similar concerns having been raised by the complainant with these organisations about their involvement in the project.
39. In addition, the Commissioner accepts that compliance with the request will impose a significant burden on the Council. Based on the Council's representations and also on his own findings in the previous case involving the same request, he accepts that there is likely to be a considerable volume of information caught by the request which the Council would need to review in order to determine whether it is suitable for disclosure.
40. The Commissioner has considered both the Council's arguments and the complainant's position regarding the purpose of the request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), whilst he considers this case to be finely balanced, the Commissioner has decided that the Council was correct to find the request vexatious.

Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

41. 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

42. 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.
43. 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
Assistant Commissioner
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