

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 May 2014

**Public Authority:** Bassetlaw District Council  
**Address:** Queens Buildings  
Potter Street  
Worksop  
Nottinghamshire  
S80 2AH

#### **Decision (including any steps ordered)**

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1. The complainant has requested from Bassetlaw District Council "... all emails and other correspondence" generated as a result of his own earlier correspondence to it.
2. The Commissioner's decision is that Bassetlaw District Council correctly relied on section 14 (vexatious request) not to comply with the request.
3. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

#### **Background**

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4. The complainant states that he wrote to Bassetlaw District Council's ("the Council") Interim Chief Executive on 12 November 2012, in correspondence marked 'Strictly Private & Confidential'. This was, the complainant maintains, disclosed to a ... ["third party", name redacted]. He (the complainant) wrote three times to the Council requesting an explanation but it didn't reply. He then lodged a formal complaint under the Council's complaints procedure but believes it was "blocked".

## **Request and response**

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5. On 1 July 2013 the complainant wrote to the Council and requested information in the following terms:

"... all emails and other correspondence relating to this matter to be disclosed to me, together with documentation relating to the outcome of the investigation into the matters raised in my letter. In particular ... I wish to see the covering email or letter that passed my letter to [third party]".

6. The Council responded on 29 July 2013. It stated that whilst it held the requested information it refused to communicate it to him by virtue of section 14 of the Act, as it deemed the request to be vexatious.
7. Following an internal review the Council wrote to the complainant on 28 August 2013. It stated that it upheld its original decision.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 5 September 2013 to complain about the way his request for information had been handled.
9. On 16 December 2013, the Council explained to the Commissioner that the withheld information contained the personal data of the third party. To release it would be unfair and breach the first data protection principle. Therefore this information should be withheld under the personal data exemption at section 40(2) by virtue of section 40(3)(a)(i) as well as the originally relied upon section 14.

## **Reasons for decision**

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10. Section 1 of the FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
- the duty to inform the applicant whether or not requested information is held and, if so,
  - the duty to communicate that information to the applicant.

## **Section 40(5)**

11. Section 40(5)(a) of the FOIA provides that public authorities are not obliged to comply with the duty to confirm or deny in relation to information which is (or if it were held, would be) personal data of the applicant.
12. The DPA defines personal data as:

“...data which relate to a living individual who can be identified

  - a) from those data, or
  - b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.”
13. The Commissioner notes that the complainant had requested information provided in response to a complaint he had made to the Council. The Commissioner is satisfied that the complainant is, or would be, the subject of some of the requested information. This is because that information, if held, would identify the complainant and be linked to him in terms of the nature of the complaint he made.
14. The Commissioner therefore considers that the Council ought to have applied section 40(5) in this case insofar as the request relates to the complainant's personal data. In this regard the Council was not required to comply with the duty to confirm or deny as set out at section 1(1)(a) of the FOIA.

### **Section 14(1)**

15. 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.
16. In its refusal letter to the complainant the Council said generally as follows:
  - The Council considers the request itself to be vexatious as it is likely to cause a disproportionate and unjustified level of disruption, irritation or distress.
  - The Council considers that the information sought concerns the latest in a series of events which relate directly or indirectly to an historic standards committee matter.

- The Council has taken into account the other requests made to the Council by the complainant (whether complied with or refused), the number and subject matter of those requests and the other previous dealings between the Council and him.
  - The complainant has, since 2009, made a substantial number of requests and complaints to the Council in addition to other related and linked correspondence. All of which can, in essence, be traced back directly or indirectly to the historic standards committee complaints concerning Misterton Parish Council.
  - The impact upon the Council's resources of dealing with and responding to such requests, complaints and correspondence is considerable.
  - The Council has also taken into account the complainant's behaviour in respect of the Council's responses to him. Those responses have invariably resulted in further enquiries and follow up requests.
17. In its letter to the Commissioner (dated 13 December 2013) the Council also said, amongst other things, that;
- The amount of information requested is not sizable in itself, nor would it involve a great deal of time in order to comply with the request. However, the content of the information requested and the identity of the requester means that, taking into account the context and history of the request, it is considered to be vexatious.
  - The information sought continues to relate back to issues raised by the complainant about the [third party] arising out of standards committee complaints concerning Misterton Parish Council. The complainant is a former employee of Misterton Parish Council.
  - The complainant initially made a number of Member 'code of conduct' complaints (Standards complaints) arising out of matters at Misterton Parish Council, to which the complainant had an official role.
  - The complaints were made against former or current members of the Parish Council. The complainant made 'code of conduct' complaints on 22/9/08, 20/10/08, 28/11/08 and 2/10/09 (the complainant then made 3 further 'code of conduct' complaints between 2010 and 2012). Those complaints were assessed and (where appropriate) investigated under the auspices of the Council's then Standards Committee.

- The complainant, in late 2009/early 2010, raised complaints both about the conduct of a Standards Committee meeting in late 2009 and regarding the alleged conduct of a former colleague.
- The complainant, along with other members and/or former members of Misterton Parish Council, has continued to complain to the Council in relation to a wider historic Standards Committee complaint dating back to 2009.
- The matter has been addressed by the Council using firstly its internal complaints processes, and concluding matters by ensuring the complainant (and others) were aware of their rights of appeal and complaints to via various bodies, such as;
  - Standards for England
  - The Local Government Ombudsman
  - The Independent Police Complaints Commission
  - The Information Commissioner
  - The Audit Commission; and
  - The Solicitors Regulatory Authority
- All of these have been pursued by the complainant and the other parties. The ongoing cost to the Council over the last four years is calculated to be in excess of £120,000 with all the investigative work, reviews, and external advice, plus the ongoing officer time and commitment.
- In May 2012, the Council was left with no option but to apply its policy for dealing with Vexatious and Persistent Complainants to the complainant. In doing so, the complainant was informed that the Council would not respond further to any additional communication from him with regard to "Matters relating directly or indirectly to the historic Standards Committee complaints concerning Misterton Parish Council.
- Despite this the complainant, together with a number of former members of Misterton Parish Council, continued to pursue those same matters, with letters and e-mails being received by the Council which exceed thirty separate contacts since May 2012. These continue to link back to events of 2009.
- As far as Freedom of Information requests are concerned, the complainant has invariably made a request at the conclusion of

each complaint that he has made. The complainant has usually requested all correspondence, e-mails etc. detailing how his complaints have been dealt with. The complainant has made other FOI requests seeking, for example details of a report arising from an investigation carried out in 2009/10.

- The Council views the last FOI request to be the latest in a number of complaints/requests which relate squarely back to the historic standards complaints concerning Misterton Parish Council.
  - The Council did, again, consider the history and context of the request when assessing whether compliance would have a detrimental impact. Although compliance with this request in isolation may not be viewed as detrimental, dealing with complaints and requests arising out of the same matters is estimated, to date, to have cost the Council more than £120,000. Those have resulted in the Council applying its 'persistent and vexatious complainants' policy to the complainant.
  - The Council has balanced the purpose or value of the request, which relates back to historic matters, and considers that detrimental impact of continuing to comply with requests on this matter, would be unjustified and disproportionate.
18. In *Information Commissioner v Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) 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.
  19. In further exploring the role played by circumstances, the Upper Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. They also cited two previous section 14(1) decisions where the lack of proportionality in the requester's previous dealings with the authority was deemed to be a relevant consideration by the First Tier Tribunal.
  20. After taking these factors into account, the Upper Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure' (paragraph 27). The Commissioner notes and concurs with this definition.
  21. The Commissioner's decision, for the reasons laid out below, is that the Council correctly applied the exemption at section 14 not to provide the requested information
  22. Part of the background to this matter, as explained in the complainant's letter of 12 November 2012 to the Council, relates to malicious

correspondence received by the Council in 2010. The complainant says that he was the target of a multi-letter anonymous attack and that he was "targeted by a forged letter". He was, he says, accused of being involved with the forged letter and was the victim of an elaborate lie.

23. The complainant states that he wrote to the Council's Interim Chief Executive on 12 November 2012, in correspondence marked 'Strictly Private & Confidential'.
24. The letter has a sub-heading stating "The Bassetlaw District Council Anonymous Letters...Scandal". The contents of the letter are indeed (as stated in the sub-heading) about the "anonymous letter" and the ensuing "saga". The letter details a recent meeting where the anonymous letters and surrounding circumstance and events are discussed. The letter then goes on to the complainant re-affirming his position and beliefs regarding the anonymous letters and surrounding circumstances. The letter concludes with the complainant postulating that "sinister forces" could be at play and invites the Council to treat, as the complainant sees it, the new information with the seriousness it deserves.
25. The letter is, unfortunately for the complainant, evidence that he indeed was concerned with re-visiting matters that occurred sometime ago. These matters were the subject of numerous inquiries by the Council, the police and other statutory or regulatory bodies.
26. The complainant's letter (of 12 November 2012) was the precursor to the complainant's complaint to the Council about how it had handled his letter and concluded with this freedom of information request. This is, the Commissioner finds, a pattern of behaviour as alleged by the Council.
27. The Commissioner has not given any weight to the Council's submission that the complainant has acted wrongly with others to harass it. Within the supporting evidence provided to the Commissioner it is clear that at times the complainant has stated he was acting on behalf of himself and identified others. However it is a large leap from that, to the complainant acting maliciously with others to achieve a mischievous objective, in this case "harassing" the Council. It is a connection the Commissioner cannot properly and confidently make on the evidence provided by the Council. Similarly the Council's figure of £120,000 is an estimated aggregate spend on dealing with the complainant and others. Accordingly this figure, as an aggregate, cannot be held against the complainant in the absence of clear evidence that he was acting mischievously with others to "harass" the Council.

28. However it is clear from the evidence seen by the Commissioner that the complainant has pursued the issue of the anonymous letters since 2010 with varying bodies and organisations. What was reasonably describable as robust and tenacious behaviour has regrettably become an obsession on the part of the complainant. This has led him to utilise formal Council's procedure and more importantly (in the context of this decision notice) information requests, in a manner and frequency that is manifestly unjustified and overall an inappropriate use of a formal statutory procedure.
29. Having found that the Council correctly relied upon section 14 not to meet the complainant's request the Commissioner did not go on to consider whether section 40(2) was applicable.



## Right of appeal

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30. 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: [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)

31. 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.
32. 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 .....**

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