

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2015

Public Authority: Wigan Metropolitan Borough Council

Address: Town Hall
Library Street
Wigan
WN1 1YN

Decision (including any steps ordered)

1. The complainant has requested information concerning the legal status of Wigan Metropolitan Borough Council ('the Council'). The Council has refused to comply with the request which it says is vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the request is vexatious and the Council is not obliged to comply with it. He does not require the Council to take any steps.

Request and response

3. On 7 July, the complainant wrote to the Council and requested information in the following terms:

"Could you please provide recorded proof, as per the FoIA that your organisation is indeed Wigan Borough Council and/or that any response is from an employee or Civil/public Servant of Wigan Borough Council.

As per the Freedom of Information Act 2000, I would like to view this recorded instruction from the Court. Please make this available in whatever format it exists and notify me of its location."

4. The Council responded on 6 August. It said it considered the request to be vexatious and refused to comply with it under the provision at section 14(1) of the FOIA.

Scope of the case

5. The Commissioner accepted this complaint for consideration on 7 August. He has focussed his investigation on whether the Council is correct to apply section 14(1) to the request.

Reasons for decision

Background

6. On 26 April the complainant had submitted an earlier request to the Council - of considerable length - that also concerned the Council's legal status. The complainant included the three questions that are the subject of the current decision notice when he asked the Council to review its response to his first request. Since he had not submitted them on 26 April, the Council correctly approached the three new questions as one, separate request under the FOIA.
7. The complainant submitted a complaint to the Commissioner about the Council's response to his original request. The Commissioner has made a separate decision on that case: FS50584468.

Section 14(1) – vexatious request

8. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information under the FOIA, if that request is vexatious.
9. The term "vexatious" is not defined in the FOIA. 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. In short they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests

- Deliberate intention to cause annoyance
10. 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.
 11. The Commissioner's guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.
 12. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. These factors appear to be relevant in this case.
 13. The Council has told the Commissioner that it has been challenged by a number of individuals who have used various methods to attempt, ultimately, to discredit the Council by disputing it is a legally entity. It is the Council's understanding that the individuals believe that by doing this, they can find a loophole that prevents the Council from recovering council tax from them.
 14. It says that the volume of requests concerning council tax that it has received from the complainant and others, who the Council considers are working as part of a campaign group, is now such that it considers the requests are placing a disproportionate burden on the Council.
 15. The Council has drawn the Commissioner's attention to the complainant's appearance in a local newspaper in a story concerning his campaign and "battle" with Wigan Council about its brand names and legal status. In the story, the complainant says that he believes there are discrepancies between brand names that the Council uses. He refers to his original FOIA requests – submitted through *the 'What do they know'* (WDTK) website – and says that some of his questions remain unanswered and unclear. He pledges to continue his battle for further clarification and the journalist writes "[The complainant] *started on his mission to uncover the intricate workings of local government in Wigan, after spending several months trying to get answers about social housing from arm's length management organisation, Wigan and Leigh Homes.*"
 16. The Council says that, through WDTK, it has received a number of requests from other people about the legality of it collecting council tax.

It has responded to some of these requests in full and has refused others as vexatious under section 14(1). It has told the Commissioner that, on a number of occasions, the complainant has left annotations on some of these other requests, appearing to give advice to the requester or commenting negatively about Wigan Council. The Council has provided the Commissioner with the following example:

"[The Complainant] left an annotation (26 April 2015)

I have copied the FOI today 26-04-15 and I will personally sort out the petition myself. Once I have shown my ID to the town hall, I will be compiling a list of signatures and inform the local media of what I am doing and why.

I have contacted the ICO many times regarding Wigan Council, and should they circumvent my FOI, rest assured I will be in touch with the ICO again."

17. The Council considers this is evidence of an obvious campaign within the borough that is being played out by submitting FOI requests through the WDTK website. It says there are a number of requesters who seem to be challenging the Council's legal status and its ability to collect council tax and calculate tax liability summons costs.
18. The Council has explained to the Commissioner that it has a council tax appeals process that members of the public can use if they have a specific problem with their council tax bill. It is finding that a particular group of people appears to be using the FOIA as a route to finding a loophole in the legislation – a loophole the Council considers does not exist. Although it cannot confirm a personal connection between the members of the group, the Council says it has established a connection on WDTK, with annotations being made by the same requesters on one another's requests, encouraging each other to continue challenging the Council on the subject.
19. Liability Orders are obtained through the Magistrates Court under regulation 34 SI 1992/613 Administration and Enforcement regulations. The Council says that a summons issued to the complainant in 2013 was returned to the authority with 'No contract' handwritten across the summons. At a hearing in August 2013, the Council applied for a liability order, and this was granted. It says that all the indications are that the complainant did not attend the hearing, which would have been his opportunity to challenge the authority.
20. Based on these circumstances, the Council, having reviewed the Commissioner's guidance, argues that the request that is the subject of this notice is vexatious for the following reasons: it is based on

unfounded accusations, is a burden on the Council, is futile, is deliberately intended to cause annoyance, forms part of frequent and overlapping requests and responding to it would involve disproportionate effort.

21. The complainant's position appears to be that Wigan Council is not authorised to collect council tax and, as such, it is a criminal offence for the Council to require him to pay it.
22. In addition to the request that formed the basis of FS50584468 and the current request, which concern the same subject, the Council has provided the Commissioner with a 'brief catalogue' of other correspondence the complainant had with its council tax department during 2014. This amounts to six items of correspondence and it is unclear whether this is *all* the related correspondence. The Council says that the complainant has also raised the same council tax matters, and other topics, with his local councillor at her surgery. It has provided the Commissioner with details of some of the correspondence it has received from the councillor on the complainant's behalf, which appears to include at least one request that is substantially similar to the present request.
23. The Council says the correspondence it is receiving on the same matter appears to be from a group of requesters acting in concert as part of a campaign. Over the last five years, its council tax service has been subjected to approximately 50 FOI requests from a small number of requesters (some using pseudonyms) who appear to want to discredit the service by saying in their requests that the Council's processes are illegal and unlawful.
24. It says that dealing with this correspondence including the correspondence it receives from the complainant – as FOIA requests or as queries to its council tax department - places a significant burden on the Council. Moreover, the Council says this and previous, related requests are futile because its council tax service is legitimately carried out under the Local Government Finance Act 1992.
25. The Council says that during 2015, it has received 1082 FOIA requests in total and has categorised less than 2% of these requests as vexatious. It argues that in the past, it has responded to requests for information about its council tax service and has been as open as it can possibly be. However, it has reached a point now where it is satisfied that continuing to respond to these requests – within and outside of the FOIA – is placing a substantial burden on the Council's financial and human resources. It also diverts and distracts staff from their usual work; staff who are also responsible for supporting all other service users within the borough of Wigan.

26. Finally, the Council argues that the public interest favours the Council being able to carry out its wider obligations fully and effectively, so that it can meet the needs of all the communities that it serves. The Council says that the public interest is not served by diverting its resources from its core duties in order to answer the many requests and questions it receives concerning its council tax service – the purpose of which appears to be to undermine its legitimate legal functions. The Commissioner notes however that section 14 (1) is not subject to a public interest test and therefore he cannot consider any public interest arguments in this context.
27. The Commissioner has noted that, in his submission to him, the complainant has said that it appears to him that the Council appears to be operating under several names at the same time. He says that one of the questions in his request is for clarification that public servants will respond to his request and not individuals working for a franchise or arm's length company. He says the remaining questions concern the Council's response to FS50584468 – he is requesting the proof that the Council said it holds in its response to that request.
28. To come to a decision on this case the Commissioner has also considered the Council's arguments and his own guidance on section 14(1). His guidance says that an authority must have sufficient evidence to substantiate any claim of a 'campaign' or links between requests before it can consider whether section 14(1) applies on these grounds. The guidance gives as evidence that an authority might cite: requests that are similar or identical, email correspondence in which other requesters have been copied in or mentioned, an unusual pattern of requests or a website that makes an explicit reference to a campaign against the authority.
29. It says that authorities must be careful to differentiate between cases where requesters are abusing their information rights to engage in a campaign of disruption, and those instances where the requesters are using the Act as a channel to obtain information that will assist in their campaign on an underlying issue.
30. Based on the suggested evidence at paragraph 28, the Commissioner is not entirely convinced that the information the Council has provided to him is evidence of a formal 'campaign' against the Council, the aim of which is to intentionally disrupt its services. He considers it more likely that requesters are using the Act to channel information that will assist in their campaign on an underlying issue – that the Council is not a legal entity for the purposes of collecting council tax.
31. In such cases, the authority will only be able to apply section 14(1) where it can show that the aggregated impact of dealing with the

requests would cause a disproportionate and unjustified level of disruption, irritation or distress. This will involve weighing the evidence about the impact caused by the request(s) submitted as part of the campaign against the serious purpose and value of the campaign and the extent to which the request(s) further that purpose.

32. The Commissioner considers that dealing with the request that is the subject of FS50584468 and the other correspondence that the Council has received from the complainant on the same matter will have disrupted the Council and diverted its resources. Responding to the request that is the subject of this notice would be a continuation of that disruption. The Commissioner considers that the disruption is disproportionate because, as the Council has explained, its appeals process and formal liability order hearings already provide opportunities for individuals to challenge the Council about council tax matters. He also notes that the Council's council tax function is set out in the Local Government Finance Act 1992. While the complainant may have his own genuine concerns about council tax, he has not provided the Commissioner with any evidence to support his position that the Council is not a legal entity for the purposes of collecting this tax.
33. It appears to the Commissioner that the complainant is using FOI as a means of pursuing the grievance he has with the Council. He disagrees with the Council about whether or not it is a legal entity and it appears that nothing is going to satisfy him. It therefore seems likely he will continue to submit requests on this matter.
34. The Commissioner is persuaded that the aggregated impact of dealing with this request would cause a disproportionate and unjustified level of disruption to the Council, and that section 14(1) applies to the request for this reason.

Right of appeal

35. 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

36. 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.
37. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF