

Freedom of Information Act 2000

Decision notice

Date: 22 February 2016

Public Authority: Teignbridge District Council
Address: Forde House
Newton Abbot
Devon
TQ12 4XX

Decision (including any steps ordered)

1. The complainant requested information relating to a member of staff at Teignbridge District Council (the Council). Specifically, any investigation into the conduct of that member of staff and any resulting disciplinary actions.
2. The Council initially refused the request under section 40(2) of the Freedom of Information Act 2000 (the Act) because it considered that the information relating to the named officer would be third party personal data and disclosure would breach the data protection principles. The Council altered its position in its internal review and refused the request under section 40(5) of the Act, by which it neither confirmed nor denied that relevant information was held.
3. During the course of the Commissioner's investigation the Council changed its position again. In its submissions to the Commissioner the Council argued that the request was now being refused under section 14(1) of the Act as it was viewed as vexatious.
4. The Commissioner's decision is that the Council breached sections 17(1) and 17(7) of the Act by not issuing the complainant with a valid refusal notice. With respect to the application of section 14(1), the Commissioner's decision is that the request is vexatious. No steps are required.

Request and response

5. On 17 June 2015, the complainant wrote to Council and requested information in the following terms:

"[U]nder the terms of the Freedom of Information Act, please let me have full details of the action/investigation, if any, undertaken by Mrs. Bulbeck [Council's Chief Executive] and T.D.C. after I had reported to her that [Employee A] had committed perjury whilst giving evidence on oath at Newton Abbot Magistrates Court. Also please provide detail of disciplinary procedures taken against [Employee A], again, if any."

6. The Council responded on 30 June 2015. It stated that the information was exempt under section 40(2) of the Act because it was third party personal data, and disclosure would breach data protection principles.
7. Following an internal review the Council wrote to the complainant on 25 September 2015. It stated that the citing of section 40(2) was incorrect, and that instead the Council's position was that it would neither confirm nor deny whether information was held.

Procedural matters

8. Section 17(7) of the Act states that when a public authority is relying on an exemption to refuse a request then it must provide the complainant with details of how to appeal against the decision, and inform the requester of the details of their right to appeal to the Commissioner as per section 50 of the Act.
9. In the Council's refusal notice, it cited the exemption at section 40(2) of the Act but did not provide details of how the complainant could appeal nor provide the details of their right under section 50 of the Act. This is a breach of section 17(7) of the Act. The Council has acknowledged its error and informed the Commissioner that measures have been taken to ensure all freedom of information responses contain references to the requester's right of appeal.
10. The Commissioner also wishes to raise a point about the Council's internal review. When a request is refused under a neither confirm nor deny exemption then the public authority must state under which specific exemption the request is being refused; in this instance, under section 40(5). As the Council failed to do so it breached section 17(1) of the Act.
11. Additionally, the Council also started the letter by stating that it did not hold any information relevant to the request. This would contradict the

later position that it was neither confirming nor denying whether information was held, as it had already denied that the information was held. This, itself, was contrary to the position put forward in the refusal notice that information was held but exempt from disclosure. The Commissioner asks that the Council be clearer in its communications in the future, as such confusion is unnecessary and does not help requesters understand how their request has been dealt with.

Scope of the case

12. The complainant contacted the Commissioner on 4 August 2015 to complain about the way his request for information had been handled. Specifically, that his request had been refused under section 40(2), and that the Council had not responded to his reply to the refusal notice.
13. Following the Council's internal review the Commissioner contacted the Council for its submissions to justify the use of section 40(5). The Council responded and stated that it would be altering its position again to refuse the request under section 14, on the grounds that the request was vexatious. The Commissioner advised the complainant of this development, and the complainant subsequently provided the Commissioner with comments in that regard.
14. The Commissioner considers the scope of the case to be whether the Council is allowed to refuse the request as vexatious under section 14 of the Act.

Reasons for decision

15. Section 14(1) of the Act states:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

16. The term "vexatious" is not defined in the Act. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield.¹ The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the

¹ GIA/3037/2011 – <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

17. 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 authority 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.
18. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"[I]mportance 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).
19. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

Complainant's position

20. In his correspondence to the Council the complainant has made it clear that he considers the Council officer named in his request is guilty of committing perjury at Newton Abbot Magistrates Court, and that this was well known within the Council. He felt that his request was being refused because disclosure would bring about severe repercussions for the staff involved and the Council's reputation.
21. The Commissioner has noted the complainant's accusations and considers that an argument can be made that a request is not likely to be vexatious if it has a wider public value, such as exposing malpractice or corruption within a public authority.

Council's position

22. The Council argued to the Commissioner that the basis for the request was a council tax dispute between both parties, and that despite the focus being on the conduct of a Council employee the complainant is effectively seeking to revisit matters which have already been determined by an independent investigation – as the council tax matter had been decided at a magistrate's court. The complainant's accusations result from the proceedings of that case.

23. The allegation of perjury by a member of Council staff is an issue that the complainant has brought up previously. The Council provided evidence of correspondence going back to 2011 from the complainant in which he makes the same allegation. The evidence shows that on numerous occasions the Council has rejected the accusation, including a letter from the Chief Executive in which she states the allegations are "without foundation". The accusations continued until 2013, at which point it ceased until the complainant submitted his request. This shows that the context in which the request was made is an issue the Council is well aware of, and one it has responded to previously. It has informed the complainant it does not think his allegations have merit, which would negate the need for any disciplinary action against the member of staff concerned. That the complainant continues making this allegation is unhelpful and unnecessary, and using the Act in order to obtain information he has effectively been told does not exist is an unwarranted use of the rights afforded to him.
24. The Council also stated that the request from the complainant was a disruption of its functions, and even went so far as to state that this was the complainant's intention. The Council had previously made several efforts to address the complainant's concerns, and this correspondence made it clear that there would be no disciplinary action against the named member of Council staff. Resort to a request under the Act was not going to produce the results the complainant wanted, and it was inappropriate to expect staff to revisit this issue again when the matter had previously been addressed several times.
25. The Council also confirmed that the complainant had taken a number of his concerns (including the allegation of perjury mentioned in the request) to the Local Government's Ombudsman (LGO). The result of this was the LGO concluding that "enquiries have not revealed fault on the issues warranting an intervention".
26. Finally, the Council argued that the complainant showed obsessive tendencies in his pursuit of this matter. In the correspondence to the Chief Executive the complainant clearly states that because he does not consider his allegations are being handled properly he has been left "little alternative than that of coming up to [named town] to ask these questions of you there at your home". This shows the complainant is not willing to accept the Council's position, and that he would resort to physically presenting himself at staff members' homes in order to produce a different result. There is correspondence from the Council's solicitors to the complainant stating that because of this and other "threats" to the Chief Executive, that the Council had informed the police about the complainant's conduct.

Commissioner's position

27. The Commissioner considers that allegations of misconduct by those in public office should not be dismissed lightly. However, in this instance, he does not support the idea that this justifies the complainant's request. The context in which it was made shows that the complainant has been informed of the Council's position with regards to the named employee's conduct. Asking under the provisions of the Act is not going to produce a different result. Thus, the request is seen as being an unjustified intrusion on the Council's functions.
28. The Commissioner also notes the evidence from the Council, which displays the complainant's obsessive pursuit of this matter. The complainant has made a number of accusations against Council staff, and his actions have led the Council considering it must contact the police in order to protect its own staff. For the complainant to want to carry on this matter is seen as causing a disproportionate level of distress.
29. Finally, the Commissioner considers that if the complainant is so concerned about perjury from a member of staff then there are more appropriate bodies with which to raise these concerns. The allegations relate to a criminal offence, so would be better made to the relevant authorities, rather than expect it to be dealt with inside a Council. That the complainant has repeatedly returned to the Council is seen as the complainant trying to carry on matters relating to the dispute with the Council over council tax. In the Commissioner's view, this is the context in which the request was made, and this is an improper use of the rights afforded to the complainant under the Act.
30. The Commissioner's decision is that the request is vexatious under the terms of the Act. He does not require any steps from the Council.

Right of appeal

31. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

32. 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.
33. 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
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