

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2016

Public Authority: Ealing Council
Address: 5th Floor North East
Perceval House
14-16 Uxbridge Road
London
W5 2HL

Decision (including any steps ordered)

1. The complainant has requested from Ealing Council (the 'Council') information relating to premises licence applications.
2. The Commissioner's decision is that the Council is entitled to rely on section 14(1) of the FOIA to refuse this request. Therefore, he does not require the Council to take any further steps.

Request and response

3. On 10 October 2015 the complainant wrote to the Council and requested information in the following terms:

"We seek information under the Freedom of Information Act on the following:

1. The number of premises licence applications received in the last twelve months.

2. The number of those applications that were resolved within the 28 day consultation period.

4. The number of those applications that were not resolved within the consultation period and were dealt with by way of a licensing sub-committee hearing.

5. *The number of those licensing subcommittee hearings that have been opened within the 20 working days post consultation period.*"
4. The Commissioner has noted a typographical error in the complainant's numbering of his requests – the third request has been listed as "4".
 5. Following correspondence between the Council and the complainant, on 6 November 2015 the Council provided its response and refused the information request under section 12 of the FOIA.
 6. On 9 December 2015 the complainant requested an internal review.
 7. Following an internal review the Council wrote to the complainant on 8 January 2016. It upheld its position to apply section 12 to the request and also refused the request under section 14 of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 18 January 2016 to complain about the way his request for information had been handled. The complainant clarified which of his requests he wanted investigating and which he considered to be outstanding.
9. The Commissioner considers the scope of the case is to determine whether the request is vexatious and if the Council is entitled to rely on its application of section 14. If this exemption does not apply to the request, the Commissioner will then consider section 12 of the FOIA.

Reasons for decision

Section 14 – vexatious requests

10. 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).
11. 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.

12. 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.

The Council's position

Burden on the authority

13. The Council explained that its licensing team is a small team of five officers working on a high volume of licensing work given the size of the borough. The Council argued that the licensing team leader had tried to assist the complainant but that he would return to him/her directly for further information as soon as the FOI response was issued.
14. The Council argued that the complainant had been regularly seeking information from officers directly and that he had adopted a scattergun approach in requesting information formally through the FOIA. It reported that these requests were large and that the responses to the requests combined were in excess of 270 pages. The Council provided evidence of emails and other correspondence which the complainant had submitted in relation to licensing issues.
15. The Council said that there is a clear overlap of the complainant's formal information requests using FOI and requests directly to officers. It argued that this high volume of requests for information has had a detrimental impact on the licensing team's ability to conduct their daily tasks. Therefore the Council considers that this has placed a burden on the authority which has gone far beyond the "appropriate limit" set in section 12 of the FOIA. It believes that there is a risk of other applications being processed incorrectly because of the demands the complainant has placed on the team.
16. The Council said that the complainant's requests and contacts with the licence team had created a significant burden in terms of expense and distraction. The Council is of the view that the complainant's emails are taking up a great deal of officer time and it does not consider that it is in the public interest for the Council to spend this amount of time dealing with his correspondence. It said that this had become detrimental to the Licensing Officers being able to continue their daily work.
17. The Council said that it refused to comply with the requests as it considered them as vexatious under section 14. It reiterated that the requests and regular correspondence from the complainant had caused undue burden on its resources in terms of staff time and expense.

Unreasonable persistence

18. The Council argued that the complainant's frequency and persistence of correspondence is considered unacceptable. It provided an example of this by saying that the complainant was seeking an un-redacted version of a document from the Council in many of his emails.
19. The complainant had also confirmed that he had already had sight of the un-redacted information which had been published. The Council therefore argued that the complainant is being unreasonably persistent and said that the information had been "reasonably accessible" although the complainant refuses to accept closure of the matter.
20. In order to demonstrate what the Council considers to be unreasonable persistence, it provided the Commissioner with a timeline and copies of email correspondence of the contacts with the Licensing Officers which the complainant had made in an attempt to obtain further information. The Council stated that the timeline shows that the complainant had adopted a scattergun approach in requesting information.
21. The Council explained that during September 2015 and particularly October 2015, the complainant's requests had become the main part of a Senior Licence Officer's work. The Council reported that they were spending 10-14 hours per week (2 days out of their 4 day week) gathering information for the FOI requests and responding to the complainant's emails.
22. The Council estimated that it would take 5 hours in reading and interpreting the emails/queries/FOI requests. It estimated that for gathering information for FOI responses, collating and checking responses, scanning documents, redacting information and sending to its FOI team totalled to 42 hours.
23. The Council also estimated meetings with colleagues, the line manager, legal advisor and FOI team which it worked out as 3 hours. It reported an estimation of 15 hours looking into email queries, gathering and collating information and responding to email queries. The Council calculated this to a total of 65 hours.
24. The Council argued that the complainant had demonstrated unreasonable persistence in submitting frequent correspondence regarding the same issue.

Futile requests

25. The Council said the complainant considered that he had not had a response to several emails but the Council rejected this and argued that responses had been issued by the FOI team and the licensing team. The

Council stated that the complainant had refused to accept a conclusion where issues had been resolved by internal review or informally through the FOI team and the licensing team.

26. Following a further complaint which related to the FOI handling and licensing matters, the Council said that these had been concluded and it considered the complainant's requests to be futile. The Council argued that the FOI process had been exhausted and it had provided the complainant with its internal review response and numerous informal communications.
27. The Council said that it had supplied the complainant with copies of correspondence in relation to several requests for information. The Council considered there to be a pattern of repetitive requests and that when a matter had been concluded the complainant would not accept it. It gave an example of one of the topics of interest and stated that it had received numerous FOI requests and follow ups to the FOI team, countless informal emails with licensing officers and an internal review request and response.

Personal grudge

28. The Council argued that there may be a personal grudge from the complainant towards the licensing team. Its arguments can be found in the confidential annex attached to this decision notice.

The complainant's position

29. The complainant provided the Commissioner with a brief clarification of the Licensing Act 2003:

"...when an application for a premises licence is submitted and accepted there is a 28 day consultation period during which representations against that application may be made. If representations are not resolved within that period a hearing 'must' be held within 20 working days after the consultation period the application."

30. The complainant argued that the Council had refused to respond to his request due to his belief that the Council are acting unlawfully. He considered that it was apparent from the Council's website that it is *"failing to comply with legislation."* He said that the Council's refusal to comply with his FOI request prevents him from being able to determine the scale of what he believes is their non-compliance.
31. He explained that a previous FOI request provided that a licence application was submitted and months later it had not been resolved or a hearing held. Therefore, following the Council's response to this the complainant submitted this recent FOI request for information.

32. The complainant does not consider his requests to have been "scattergun" and he rejected the Council's response that they are vexatious, repeated and unreasonably persistent.
33. The complainant accepted the Council's point that he had contacted the Licensing team for clarification but he argued that this was regarding a previous request and that it was not regularly. The complainant added that he had only contacted one Licensing Officer and that he had in fact avoided contact with the Licensing Team since then, except for licence applications.

The Commissioner's position

34. The Commissioner has considered the Council's arguments and he acknowledges its concern about the amount of requests made by the complainant. He has viewed the timeline provided by the Council which shows email contact from the complainant commencing from January 2015 - October 2015.
35. After reviewing the Council's submissions, the Commissioner is aware that the Council had tried to assist and advise the complainant. In particular, when some of the requests had been, what the Council had considered as extensive. It has been noted that the Council had also guided the complainant to its website regarding information relating to licensing committee and licensing applications.
36. The Commissioner has reviewed the requests and he accepts that there has been a series of persistent and repeated information requests submitted by the complainant.
37. The Commissioner considers the complainant's repeated information requests to be an unnecessary use of the FOIA legislation.
38. Having considered all the circumstances of this case, the Commissioner accepts that this repetitive nature of returning to the public authority with the same or similar requests has imposed an unreasonable burden on the Council.
39. The Commissioner has determined that the Council is entitled to characterise these requests as vexatious and has correctly applied section 14(1) of the FOIA to the request. Therefore the Commissioner has not considered section 12 in this case.

Right of appeal

40. 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

41. 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.
42. 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
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