

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2016

Public Authority: City of York Council
Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant made a freedom of information request to York City Council ("the Council") for information about posters and advertising hoardings which she believed had been illegally posted in York City Centre. The Council refused the first part of the request under section 14(1) on the grounds that it was vexatious and for the second part of the request it said that the requested information was not held.
2. The Commissioner's decision is that the Council correctly applied section 14(1) to the first part of the request. The Commissioner requires no steps to be taken.

Request and response

3. On 8 September 2015 the complainant made a freedom of information request to the Council for information about posters and advertising hoardings which she believed had been illegally posted in York city centre. The request read as follows:

"The great Yorkshire Fringe illegally posted multiple large advertising hoardings all around the Fountain in Parliament Street for a period of roughly a month in July/August..."

Please provide all written records of this matter including all internal memos & correspondence to or copied to city of York staff, Make it York, the town centre team - and councillors to establish who authorised this illegal signage and who knew what.

Please also provide all similar correspondence for the illegal posters erected (& quickly removed) by city of York council at the top of the shambles at the time of opening the shambles market."

4. The Council failed to respond to the request and this led to the complainant asking the Council to carry out an internal review on 17 February 2016. The Council issued its findings on 21 March 2016 which was in effect a refusal notice. The Council now explained that the first part of the request was considered to be vexatious and was therefore refused under section 14(1) of FOIA. For the second part of the request the Council confirmed that no information was held.

Scope of the case

5. On 22 March 2016 the complainant contacted the Commissioner to complain about the Council's decision to refuse her request.
6. During the course of the Commissioner's investigation the Council undertook further searches for information falling within the scope of the second part of the request. It now found that it did in fact hold some information and this was provided to the complainant.
7. The Commissioner had asked the complainant whether she was happy with the information that was disclosed and she agreed that this part of the request had been resolved. Therefore the Commissioner considers the scope of her investigation to be to consider whether the Council was correct to refuse the first part of the request under section 14(1) of FOIA.

Reasons for decision

Section 14(1) – vexatious requests

8. The Council has refused the first part of the request under section 14(1) of FOIA which provides that a public authority is not obliged to comply with a request if the request is vexatious.
9. The term 'vexatious' is not defined in the FOIA. The Upper-tier Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner and Devon County Council vs Mr Alan Dransfield* (GIA/3037/2011) (Dransfield) and concluded that the term could be

defined as “manifestly unjustified, inappropriate or improper use of a formal procedure”.

10. The Dransfield case identified four factors that may be present in vexatious requests:
 - the burden imposed by the request (on the public authority and its staff)
 - the motive of the requester
 - harassment or distress caused to staff
 - the value or serious purpose of the request.

11. The Commissioner has also identified a number of ‘indicators’ which may be useful in identifying vexatious requests. These are set out in her 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; and
 - deliberate intention to cause annoyance.

12. 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.

13. 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 on it and balance this against the purpose and value of the request.

14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. However, it is important to recognise that one request can in itself be ‘vexatious’ depending on the circumstances of that request.

15. In this case the Council explained that it had refused the request under section 14(1) because it had already dealt with the issues surrounding the advertising hoardings in Parliament Street with the complainant. It provided a number of emails to show that it had already given a full

explanation of the Council's involvement, what action it had taken and the reasons for this. In particular, the Council had explained that planning consent had not been sought or granted for the advertising hoardings and on this basis the case had been dealt with through planning enforcement.

16. Although the Council had explained that no consent had been given for the posters and it had been dealt with through planning enforcement, it said that the applicant was not prepared to accept this and stated in her request "It is not credible to think these hoardings would have been commissioned without an OK from someone in authority." Also that the purpose was "...to establish who authorised this illegal signage and who knew what" and "... to establish the facts in both cases which can be used as case studies to ensure planning laws are not abused knowingly or unknowingly by event organisers and cyc staff."
17. In light of this the Council said that it had decided that the request was vexatious for the following reasons:
 - That a full explanation of the issues had already been provided, to both the applicant directly and to a Councillor.
 - That responding to the request would not have any value in establishing facts which could be used in relation to unrelated circumstances where planning consent may or may not be required.
 - That it would not have any value in promoting further transparency, understanding or appropriate participation in council decisions, actions and democratic process.
 - That responding to the request would require the council to search a number of filing systems, consider the public interest test in relation to qualified exemptions and redact information under appropriate exemptions – where it had already explained the issues to the complainant in detail.
18. The Council concluded that responding to the request would create a disproportionate and unjustified level of disruption to council services. It also referred to the wider context in which the complainant had made her request which it said included:

"...repeated requests, comments on social media and correspondence regarding the applicants view that senior managers and some Councillors involvement in wholly and partly owned organisations, including Make it York and their decision making relating to specific high profile developments is corrupt."

19. The Council provided the Commissioner with examples of screen shots from social media which focused on the complainant's allegations of wrongdoing regarding its officers. In particular, the comments relate to senior managers from the Customer and Business Support Services (CBSS) Directorate and their positions on the Board of the City of York Trading Company and the remunerations they received. It said that whilst the comments relate more specifically to managers from CBSS and this request relates to issues with the City and Environmental (CES) part of the Council, it concerned the same issues of alleged favouritism to particular organisations and developers and discrimination against others.

20. The Commissioner also finds that the Council's position is supported by the following comments the complainant made in her previous communications with the Council which ultimately led to her making the request in this case.

When the law is clear, we cannot allow favouritism between council departments or council businesses or 'friends' or friendly supplier agencies

Nothing worse than two standards, one for 'us' and our friends - and one for the rest. This is something we got well used to under the last administration.

21. The Council also provided the Commissioner with details of previous requests from the complainant where she had made allegations of corruption involving Council employees.

22. The Commissioner has considered the Council's arguments and is satisfied that the request can be reasonably characterised as vexatious within the meaning of section 14(1). In reaching her decision the Commissioner has taken into account the fact that the Council had already provided a detailed explanation of the issues surrounding the advertising hoardings which were the subject of the request. In the Commissioner's view the request would impose a burden on the public authority which is unjustified by its limited value, given the information that has already been provided to the complainant.

23. The Commissioner also considers that the request can be seen as obsessive when seen in the context of the complainant's earlier correspondence on this issue as well as her other requests. For instance, the Commissioner notes that the complainant had already been told explicitly that there had been no written communication with Make it York (the City's "Destination Management Organisation" and a Limited

Company wholly owned by the Council) regarding the advertising hoardings. Yet the complainant still chose to make a formal request specifically asking for this information despite previously being told it was not held. This suggests that the request was unreasonably persistent and that the complainant would be unlikely to be satisfied however the Council responded to the request.

24. The complainant's previous requests and communications with the Council, as well as the comments on social media all suggest that the request is the continuation of a pattern of behaviour that is unreasonably persistent and that collectively imposes a significant burden on the Council. The Commissioner is also mindful that some of the language used by the complainant is somewhat aggressive and confrontational. It also appears that this request is part of her wider protest and opposition to the Council due to what she perceives as wrongdoing or corruption by some of its officers. In the Commissioner's view this adds weight to the argument that the request is indeed vexatious.
25. Finally, the Commissioner is reassured that the Council has taken a reasonable and proportionate response to the request by only applying section 14(1) to the part of the request where it had already explained its position and where complying with the request would be an unjustified use of its resources, rather than to the request in its entirety.
26. In conclusion, the Commissioner has found that the request would cause an unjustified or disproportionate level of disruption and that therefore section 14(1) was correctly applied.

Right of appeal

27. 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

28. 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.
29. 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

Paul Warbrick
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