

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 January 2017

**Public Authority:** City of London Corporation  
**Address:** Guildhall  
London  
EC2P 2EJ

#### Decision (including any steps ordered)

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1. The complainant made a request to the City of London Corporation ("the CoL") for information about employees of the CoL with responsibility for the state of repair of his place of residence, including their contact details. The complainant also sought information about jobs being carried out at the location by a named contractor. The CoL refused all of the requests on the basis that they were vexatious, in accordance with section 14(1) of FOIA, and stated that it would not respond to future requests on related matters. The complainant then made a further request for the name of another officer at the CoL. The CoL did not respond to this.
2. The Commissioner's decision is that the CoL acted appropriately by refusing to respond to the request under section 14(1), and by not responding to the further request in accordance with section 17(6). She therefore does not require the CoL to take any further action.

#### Request and response

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3. On 13 September 2016, the complainant wrote to the CoL and requested information in the following terms:

*"Please provide me with the following information under FOIA 2000:*  
*1. Full name, position and direct email address of*  
*[redacted information]*

*City of London*

*Department of Community and Children's Services.*

*2. Full name, position and direct email address of Director of the housing department.*

*3. Full name and position of the Director of Department of Community and Children's Services.*

*4. Who in COL personally is responsible for disrepair and serious neglect of [redacted information] and why all complaints of our residents and [redacted information] are ignored by COL?*

*5. Who personally is responsible for long over 6 months disrepair of lift No. 1 in [redacted information] and when the lift will be back in service?*

*6. Who personally is responsible for lack of progress in double glazing, breach of contractual obligations by Keepmoat Ltd and serious distress of residents over 3 month living in unacceptable conditions due to lack of progress by Keepmoat Ltd?*

*7. Why Keepmoat Ltd in breach of complaint procedure did not investigate, addressed and replied to my complaint, sent to the CEO c/o [named individual]?*

*8. Who personally responsible for consistent breach of health and safety regulations and continuing ingress of toxic and nerve gases into the flats of [redacted information] as a vendetta for their rightful complaints (please see 3 complaints of our residents from [redacted information])?*

*9. Due to serious concern about breach of health and safety regulations by COL and Keepmoat Ltd and installation of illegal equipment by Keepmoat Ltd around my flat please send me all documentation and technical jobs done by Keepmoat Ltd over last month around my flat as well as flats below and above me [redacted information]*

*10. What has happened with previous Area housing manager [named individual] and what his position and job in COL now? What is his work email address?*

*11. What is the name of the new one?"*

4. The CoL wrote to the complainant on 14 September 2016 and declined to respond to the requests. It cited section 14 FOIA (vexatious or repeated requests), stating that the requests were "*consistent in subject, nature and tone*" to requests made previously by the complainant and considered by the Commissioner in decision notice FS50592211. The CoL also referred to section 17(6) and explained that it would not respond to further correspondence, nor to similar FOI requests from the complainant.

5. In its response, the CoL also commented as follows:

*"In order to be helpful on this occasion, the CoL would comment on your request as follows:*

*With regard to the Officer referred to in your request, we note that you have already included the full name and position in your request, and that you have been in direct correspondence with them for several months.*

*Additionally, as previously explained to you, personal information in relation to employees is anyway exempt from disclosure under the FOIA, and organisational structures and contact details are publicly available on our website.*

*The handling of any correspondence between you and third parties, such as Keepmoat Ltd, is not the responsibility of the CoL.*

*Your allegations regarding toxic gasses have been repeatedly investigated."*

6. On 16 September 2016, the complainant wrote to the CoL and asked for the following information:

*"Prior to further legal actions, may I request the following information under FOIA 2000:*

*1. full name of the assistant of FOI officer with explanation why the name was hidden from me in the below reply;*

*2. Full name of the Information officer."*

7. The CoL did not issue a response.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 21 September 2016 to complain about the CoL's refusal to provide him with information, stating that it was a breach of FOIA.
9. The Commissioner has had to consider whether the CoL handled the requests in accordance with the FOIA. She has considered whether the CoL was correct to apply section 14(1) to the requests of 13 September 2016. The Commissioner has also considered whether the CoL was entitled not to respond to the complainant's request of 16 September 2016, in accordance with section 17(6).
10. In decision notice FS50592211, the Commissioner has already considered substantially similar arguments from the same complainant against the same public authority. Her views here are similar to those set out in that decision notice.

## Reasons for decision

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### Section 14(1) – vexatious requests – requests of 13 September 2016

11. The CoL refused the requests of 13 September 2016 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. There is no public interest test.
12. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of *Information Commissioner vs Devon County & Dransfield* (GIA/3037/2011) and concluded that the term could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's decision clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is 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 of, or distress to, staff. The Upper Tribunal did, however, also caution that these considerations were not meant to represent an exhaustive list. Rather, the Upper Tribunal stressed the "*importance 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).
14. 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<sup>1</sup> ("the Commissioner's guidance"). However, 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.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

15. 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.
16. With regard to its application of section 14(1), the CoL has argued that the requests impose a disproportionate burden, are unjustifiably persistent and have the sole aim of continuing/reopening issues that have long been resolved "*to the fullest extent*". It further considers that the complainant's actions "*are of an obsessively persistent and harassing nature, and are wholly vexatious when viewed in the context of his history with the [CoL].*"
17. To support its argument, the CoL has provided the Commissioner with evidence of previous correspondence with the complainant, some of which was considered by the Commissioner in decision notice FS50592211. While not providing the Commissioner with all of the correspondence that the CoL has received from the complainant, for illustrative purposes the CoL has provided a selection of the papers that it considers demonstrates the reason for using section 14(1) of FOIA. This includes a schedule of the correspondence received by the CoL from the complainant between 29 October 2014 and 2 November 2016, detailing 40 separate emails that were sent during this period, including the requests under consideration. The majority of the requests ask for the names of officials that the complainant believes have some involvement with, or part to play in, his complaints about issues affecting the estate and particularly his place of residence.
18. Following the approach of the First-tier Tribunal in *Gregory Burke v The Information Commissioner* (EA/2015/0050), the Commissioner accepts that it may be appropriate to consider the evidence in context, in order to confirm whether a public authority's argument for vexatiousness has validity. Using the information supplied by the CoL, the Commissioner would agree that the volume of correspondence received overall is significant and could be seen to be of a "*persistent and harassing nature*". It would also seem fair to conclude from this that the management of the correspondence is likely to have required the CoL to divert staff time away from its normal business functions, even if the requests currently being considered are not unduly onerous. As stated in the Commissioner's decision notice from which the Burke appeal stemmed (FS50548810, 15 December 2014<sup>2</sup>), a "*high frequency and*

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<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042938/fs\\_50548810.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042938/fs_50548810.pdf)

*volume of correspondence may further weaken the justification for the continued making of requests'* (paragraph 18).

19. The Commissioner goes on to say though that *'potentially offsetting the weight of this factor is the seriousness and complexity of the dispute itself and the importance of the requested information.'* Although section 14(1) is not qualified by the public interest test, the Upper Tribunal in the Dransfield case expressed the view that it may be appropriate to ask the following question: *'Does the request have a value or serious purpose in terms of the objective public interest in the information sought?'* This goes to the heart of whether a request is proportionate and justified in the circumstances.
20. The complainant's core concerns are evidently distressing to him, and he has serious concerns about the way his complaints to the CoL have been handled. Furthermore, from the tone of the requests, the complainant is patently frustrated in respect of what he considers to be the CoL's lack of engagement and transparency. It should be noted here that a fractious relationship between an applicant and a public authority does not automatically mean that an arising information request is vexatious, and the requests themselves, while critical, do not contain abusive or intemperate language. Furthermore, a factor in the consideration of where the balance of the public interest lies is outlined at paragraph 63 of the Commissioner's guidance. This states: *'If the problems which the authority now faces in dealing with the request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the argument, or its impact upon the public authority, is disproportionate or unjustified.'* These factors would lend weight to the case against the application of section 14(1) of FOIA.
21. The CoL has, however, provided evidence that the complainant's concerns about gas and radio waves, which date back to 2006, have been fully investigated not only by the CoL but by other public authorities including the City of London Police and the National Grid.
22. The Commissioner recognises that there is a fine line between persistence and obsessiveness. The evidence supplied by the CoL indicates that the requests of 13 September 2016 ultimately refer to either long-standing complaints or a matter connected to a long-standing complaint, all of which have been investigated by the CoL and in some areas by independent third parties, including the Local Government Ombudsman and even the Courts. In the Commissioner's view, one prominent indicator of a vexatious request is where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

23. It is noted that these reviews took place some years before the date of the requests. However, there is nothing to suggest that a fundamentally new issue has evolved, or further evidence come to light, that would justify the continued requests to the CoL. In this regard, it is not within the Commissioner's remit to consider the robustness of these reviews but she considers that the fact that an applicant is dissatisfied with the outcome of a review is not the same as saying that the review was unsound. This is particularly the case where an applicant has had an opportunity to have his concerns investigated independently.
24. Although the Commissioner recognises the extent of the grievances felt by the complainant, she doubts in any event that compliance with the requests would lead the complainant any nearer to a resolution of these grievances. This is because the request itself does not ask for anything probative in respect of his underlying complaints. The Commissioner considers this is important as it significantly weakens the argument that the disruption to the CoL created by the handling of the complainant's correspondence is justifiable. Leading from this observation, the Commissioner considers the pattern of the complainant's contact with the CoL indicates that compliance with the request would likely only generate further requests and complaints. Again, the Commissioner considers this is a notable factor in the assessment of whether the request is vexatious.
25. In conclusion, the Commissioner has found that the line between justified persistence and obsessiveness has been crossed. To paraphrase the Upper Tribunal in the Dransfield case, she considers that the request emphasises the attributes of manifest unreasonableness and a lack of proportionality when viewed holistically. The Commissioner has therefore determined that the CoL was correct to refuse the request in accordance with section 14(1).

### **Section 17 – Refusal of request – request of 16 September 2016**

26. Section 17(6) considers whether a public authority should be required to issue a section 17 refusal notice when one has previously been issued in accordance with section 17(5). Under section 17(6) there is no requirement to issue a notice where:
  - a) the public authority is relying on a claim that section 14 applies,
  - b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
  - c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

27. In this case, the CoL stated on 14 September 2016 that it was relying on section 14 to refuse to provide information to the complainant, and referred to decision notice FS50592211. The CoL also gave the complainant notice that it would not respond to "*any further correspondence or similar FOI requests on these particular or related matters, or other requests which are considered to be consistent in subject, nature and tone.*"
28. As the Commissioner has found that the complainant's request of 13 September 2016 is vexatious, she considers that it would be unreasonable to issue another response in this instance.
29. Therefore the Commissioner upholds the CoL's position that they were correct not to respond to the complainant's request of 16 September 2016, in accordance with section 17(6) FOIA.



## **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: 0870 739 5836

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 .....**

**Christopher Hogan**  
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