

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 4 July 2017

Public Authority: Oldham Council
Address: Civic Centre
West Street
Oldham
OL1 1UT

Decision (including any steps ordered)

1. The complainant has requested information regarding abuse and its cover up. The Commissioner's decision is that Oldham Council has correctly applied the provision for vexatious requests at section 14(1) of the FOIA. She does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 11 December 2016, the complainant wrote to Oldham Council and requested information in the following terms:

"In the light of the recent media reports about abuse in football I would like to make the following freedom of information act request. I used to work for Rochdale MBC as a Senior Trading Standards Officer. This role is supposed to be about identifying and challenging wrongdoing. At least that's what they said. As you have probably seen there are a lot of reports in the media about abuse in Rochdale and a possible cover up by Rochdale MBC and Greater Manchester Police. I was being abused by my senior manager. I notified the council corporately by writing to them on 6 April 2009. I was known to be both disabled and suffering chronic health problems and be particularly vulnerable. This had been identified by the council's occupational health advisers but **nothing** had been done to help me. Instead of addressing the abuse Rochdale council assisted offenders, allowed the abuse to escalate and then tried to cover up the abuse. They even deliberately and repeatedly lied to and withheld evidence from a court of law in order to cover up the abuse and pervert the

course of justice.

The council's Director of Planning [name redacted] is fully aware but actively supports and/or condones the abuse.

The council's former solicitor [name redacted] is fully aware but actively supports and/or condones the abuse

The council's former head of legal services [name redacted] is fully aware but actively supports and/or condones the abuse.

The council's current solicitor is fully aware but actively supports and/or condones the abuse

The council's current head of legal services [name redacted] is fully aware but actively supports and/or condones the abuse.

The council's head of personnel [name redacted] is fully aware but actively supports and/or condones the abuse

The council's former chief executive [name redacted] is fully aware but actively supports and/or condones the abuse

The council's current chief [name redacted] is fully aware but actively supports and/or condones the abuse

Every single councillor (as at July 2012) plus councillor [name redacted] are personally aware but actively support and/or condone the abuse

Many others are fully aware including Greater Manchester Police (and the chief constable personally) but actively support and condone the abuse.

Ironically Rochdale MBC have a policy in which they claim to do 'everything in their power to tackle abuse' but it is now clear beyond any doubt that Rochdale MBC don't follow their own policies let alone the laws of the land.

1. What is your policy on dealing with abuse?
2. Do you actually follow it?
3. How many reports of abuse have you been notified of?
4. Have you ever ignored reports of abuse like Rochdale MBC? If so how many times?
5. Have you ever attempted to cover abuse up like Rochdale MBC? If so how many times?
6. Have you ever assisted offender like Rochdale MBC in order to cover up abuse? If so how many times?
7. Have you ever lied to a court of law like Rochdale MBC in order to cover up abuse? If so how many times?
8. Have you ever withheld evidence from a court of law like Rochdale MBC in order to cover up abuse? If so how many times?
9. Do you work with Rochdale MBC in any collaborative ways?
10. Do you intend to change your working relationship with Rochdale MBC?"

3. The council responded on 12 January 2017 and refused to provide the requested information citing the exemption for vexatious requests at

section 14(1) of the FOIA. The complainant requested an internal review on the same day.

4. On 18 January 2017, the council confirmed to the complainant that it will not be conducting an internal review.

Scope of the case

5. The complainant contacted the Commissioner on 19 January 2017 to complain about the way his request for information had been handled.
6. The Commissioner has considered whether the council has correctly applied section 14(1) of the FOIA to the above requests for information.

Reasons for decision

7. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
8. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
9. 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 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. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

¹ UKUT 440 (AAC) (28 January 2013)

“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).

10. The Commissioner therefore needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
11. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests². 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.
12. In relation to the serious purpose and value of the request, the complainant said that he is not trying to cause disruption but has made this request in order to establish and identify the level of abuse against vulnerable people so that the abuse can be addressed. He said that his accusations are not unsubstantiated and provided a court judgement in which he said that Manchester Crown Court held that one of the officers formally employed by Rochdale Council, and now working for Oldham Council, had victimised and abused him and therefore Oldham Council ‘clearly condone the abuse and harassment of disabled people’.
13. As way of background and in order to provide context and history, the council provided the following details of previous requests made to it by the complainant:
 - In 2013 a request was made that predominantly focused on the key terms ‘Trading Standards’, ‘discrimination’ and ‘bullying’ in which there was a clear focus on highlighting the complainants views on alleged discrimination by his former employer (Rochdale Council) and their employees. This request was sent to a number of Greater Manchester local authorities at the same time and was responded to

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

by the council in October 2013 and further information provided in January 2014 as a result of an internal review.

- A former employee of Rochdale Council and manager of the complainant took up employment with Oldham Council in August 2015 and in April 2016 a request was made which was again predominantly focused on the key terms 'Trading Standards', 'discrimination' and 'bullying'. This request directly named the former Rochdale Council employee who was the main focus of the request. The request was responded to in May 2016.
- In July 2016, the complainant made a further request in the same vein of his previous requests. This request contained disparaging comments regarding Oldham council and the former employee of Rochdale Council. A response to the request was provided in August 2016 and the complainant's subsequent comments were also responded to that month.
- In December 2016, the requests which are the subject of this decision notice were made.
- A request regarding instances of abuse and hate crimes being ignored was made in January 2017. This has not been responded to as it met the same criteria as the request which is the subject of this decision notice
- The complainant sent an email petition in March 2017 to the council, other Greater Manchester local authorities, Rochdale MP's and local newspapers/stations regarding the cover up of abuse and hate crimes.

14. In its initial response to the request, the council said the following:

- "The requests target particular employees or office holders against whom they have some personal enmity.
- The requests make completely unsubstantiated accusations against public authorities or specific employees.
- The requester is abusing their rights of access to information by using the legislation as a means to harass and annoy the authority.
- The request is designed to cause disruption."

It also said that the requests in this case use a language of inappropriate personal allegations and comments.

15. In its response to the Commissioner's enquiries, the council also said that the content, tone and language of the requests were viewed as inappropriate and beyond the level of criticism that the council or its employees should reasonably expect to receive.
16. The council explained that during its investigations into the issues raised by the complainant, it has come to light that there is a restraining order in place against him which was issued by the Judge in the Crown Court case. It said that the restraining order prevents the complainant from –
 1. "Contacting either or indirectly [former Rochdale Council employee] or [initials redacted]
 2. Contacting either or indirectly any employee of Rochdale MBC except through a solicitor
 3. Making any Freedom of Information requests of Rochdale MBC unless –
 - i. the request is being made by a solicitor, and
 - ii. It has not been the subject of a previous Freedom of Information request
 4. Publicising or seeking to publicise the ruling in this appeal by any means"
17. The council pointed out that that under the terms of the restraining order, the Judge does not allow the complainant to publicise his findings, which it said has clearly has been done by sending a version of the judgement to both the council's Information Management Team and the Information Commissioner. It also said that Rochdale Council's lawyers believe that the Judge based his decision on the wrong evidence and are currently in the process of referring the matter back to the courts.
18. The former Rochdale Council employee has also expressed how upset she is that this issue is now affecting her employer, Oldham council, and has described the incredible emotional distress and pressure this has caused her, both in her professional and personal life, over a number of years.
19. The Council said that it views the complainant's use of the FOIA legislation, in this highly personal matter, as improper and a medium to circumvent the legal restrictions put in place by the restraining order. It expressed that the requests repeat issues that have already been considered by Oldham council and that the accusations of wrong doing by Oldham council have no basis.
20. As stated in paragraph 10, the Commissioner needs to consider whether the request is likely to cause a disproportionate or unjustified level of

disruption, irritation or distress in relation to the serious purpose and value of the requests.

21. She understands that the complainant considers the purpose and value of the requests to be to identify the level of abuse against vulnerable people so that the abuse can be addressed. Taken in isolation, this would appear to be a serious purpose which has value. However, it is clear that the requests stem from a highly personalised matter, and given the actual terms of the request, she questions whether they have wider benefit to the public, which restricts their value.
22. Given that these requests stem from the complainant's underlying grievance with Rochdale Council, the Commissioner considers that the council can establish a case for saying that the request seeks to reopen issues which have already been adjudicated upon in the courts; which reduces the serious purpose and value of the requests.
23. The Commissioner notes that the council has pointed out that Rochdale Council's lawyers believe that the Judge in the Crown Court based his decision on the wrong evidence and are currently in the process of referring the matter back to the courts. It is not within the Commissioner's remit to adjudicate on the issue that was dealt with in the Crown Court.
24. The Commissioner views the council's position that the request targets particular employees against whom the complainant has some personal enmity, as being an indicator of vexatiousness in this case. She considers that the level of distress caused to the former Rochdale Council employee carries weight in this case, particularly as there is a restraining order against the complainant which directly relates to that employee.
25. In relation to the council's position that the requests make completely unsubstantiated accusations against public authorities or specific employees, as indicated above, the Commissioner cannot make a judgement on the allegations against Rochdale Council. However, it does not follow, as suggested by the complainant, that the council condones 'bullying the disabled and lying to attempt to cover it up' by employing the former Rochdale Council employee.
26. In relation to the council's position that the request is designed to cause disruption and a means to harass and annoy the authority, although the requests may well have these effects, the Commissioner hasn't seen any evidence that this is the complainant's deliberate intention.
27. The Commissioner has considered the content, tone and language used by the complainant, examples of which include the following:

"It is no wonder that vulnerable children are abused by the likes of Jimmy Saville, Cyril Smith and the gangs identified in Rochdale and elsewhere when local authorities act like you!"

She agrees with the council that such language is an indicator of a vexatious request.

28. When considered in the context and history of this case, including the existence of vexatious 'indicators' as detailed in the aforementioned guidance on vexatious requests, the Commissioner does not consider that the purpose of the requests justifies the disproportionate effect on the authority. She considers that responding to the requests is likely to cause harassment and distress to staff as it would appear to be a means of furthering the complainant's underlying grievance. This can be considered as an inappropriate use of information rights under the FOIA. The Commissioner also considers that providing the requested information may not satisfy the complainant. Compliance with the requests may result in further correspondence and the Commissioner has seen no evidence to suggest that providing the requested information in these specific requests would satisfy the complainant or bring an end to the issue. Conversely, she considers that the complainant may use the requested information to create further points of dispute. The Commissioner can understand how responding to this request, when coupled with previous dealings on the same matter, would cause a disproportionate or unjustified level of disruption, irritation or distress.
29. Returning to the findings of the Upper Tribunal in Dransfield, and its view that a holistic and broad approach should be taken in respect of vexatious requests, the Commissioner has decided that the council was correct to deem the requests as vexatious. Accordingly the Commissioner finds that section 14(1) of the FOIA is engaged.

Right of appeal

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

Website: 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

Deborah Clark
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