

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 July 2018

**Public Authority:** Leicester City Council  
**Address:** City Hall  
115 Charles Street  
Leicester  
LE1 1FZ

#### Decision (including any steps ordered)

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1. The complainant requested details of leisure centres which offer male-only swimming sessions. Leicester City Council ("the Council") refused the request under section 14(1) (vexatious requests) of the FOIA.
2. The Commissioner's decision is that Leicester City Council was entitled to rely on Section 14 of the FOIA to refuse the request.
3. The Commissioner does not therefore require the Council to take any further steps in relation to this request.

#### Background

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4. The request covered in this decision notice formed part of a chain of correspondence between the requestor and the Council.
5. The first request was as follows:
  - "1. A list of each council / public pool facility with address and contact details; phone & email address for either a pool only facility or a pool within a Sports / Leisure, or other, facility.
  2. Details of who manages the pools or sports / leisure, or other, facility; either council directly, a trust, management company or combination.

3. *Which centres have public single sex swimming sessions as part of the timetable (inclusive of normal and summer time table changes).*
4. *How many hours of single sex swimming sessions per week are provided per gender (female / male).*
5. *If only one gender, either female or male, is provided for please supply the data (supportive evidence) that shows need and the demand over and above a provision for the opposite gender."*
6. The Council responded to the request on 24 July 2017 and provided the requested information.
7. As part of further correspondence with the Council on this issue, the complainant then, quoting the Council's previous response, submitted a further request as follows:

*"The programming of female only sessions is in response to evidence that female participation is lower than male participation."*

*"I request under the Freedom of Information Act the name of the third party who do hold this information, or indeed citations of reports with which this statement / decision is based upon."*

8. The Council responded to this request on 17 October 2017 in the following terms:

*"The statement in our original response is based on the local observations in our locations of attendance at swimming sessions. In addition it is also in response to verbal requests from female local community members at Cossington Street, Spence Street and Evington. It has been observed that these female only sessions, put on due to these local community requests are particularly well attended. We would also like to confirm that there were also requests for male only sessions at these locations which were held for some time. We cannot be specific as to the dates as this data is not held. These sessions were replaced due to the local observation that they were not well attended.*

*"These decisions are not based on data held in any particular system or within any report. They are based on local verbal requests and observations of staff, which are not recorded or held in any system. Therefore this is information not held under the Freedom of Information Act 2000. This letter acts as a refusal notice under section 17.1 of the Freedom of Information Act 2000 because, in accordance with section 1.1 of the Act, this information is not held by Leicester City Council."*

## Request and response

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9. On 14 November 2017, the complainant, referring to the Council's previous response, requested information of the following description:

*"I refer to the letter you sent and in particular the reference in regards male only sessions having been previously be supplied but removed due to low attendance. You also advise that you are not able to offer the exact dates [of the male-only sessions]. However I would like to request not the exact dates [but] the approximation of the time period for these sessions and which centres held them."*

10. On 13 December 2017, the Council refused the request, citing Section 14(1) of the FOIA (Vexatious Request).
11. The Council provided an internal review on 18 December 2017 in which it maintained that the request was vexatious.

## Scope of the case

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12. The complainant contacted the Commissioner on 24 January 2018 to complain about the way his request for information had been handled. In particular, the complainant felt that the grounds for refusal were unjustified, given the importance of the issue.
13. The scope of the Commissioner's investigation was to determine whether the request, when seen in context, was vexatious.

## Reasons for decision

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14. Section 1 of FOIA states that:

*"Any person making a request for information to a public authority is entitled –*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and;*
- (b) if that is the case, to have that information communicated to him."*

15. Section 14 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."*

16. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the *"manifestly unjustified, inappropriate or improper use of a formal procedure"*. The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
17. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
18. *Dransfield* also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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).
19. The Commissioner has published guidance on dealing with vexatious requests<sup>1</sup>, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
20. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: *"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies"*.

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

21. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
22. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: *"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress"*.

#### *The complainant's position*

23. The complainant feels that the use of section 14 to refuse his request is unjustified because of the importance of the issue it relates to.
24. The complainant is keen to encourage more men to swim and has stated that male participation rates in swimming sessions are almost 50% lower than female rates in every age category.
25. The complainant believes that joint swimming sessions dissuade more men from swimming because men are also concerned about issues to do with body image. He believes it is unfair that the Council operates considerably more female-only swimming sessions than male-only and is concerned that this may be depressing participation within the city.
26. The complainant has provided evidence of support he has received for his work from Sport England and the Council's own public health team. However, as this correspondence originated several months after the request was responded to, it is not directly relevant here as this notice concerns the situation that applied at the time of the request.

#### *The Council's position*

27. The Council's position is that the complainant's request, whilst benign on its face, is vexatious when seen in the context of his other correspondence with various sections of the Council and the Mayor's Office.
28. The Council sees the request as being of little value and cites the complainant's habit of contacting multiple council officers and the Mayor's Office as evidence of a scattergun approach which ties up a great deal of resources in ensuring that correspondence is properly logged, information requests recognised and responses co-ordinated.
29. The Council notes that because of the "obsessive" nature of the complainant's correspondence it has had to allocate him a Single Point of Contact within the Council, but that he continues to ignore this request.

30. The Council has further stated that the complainant in this case shows an unwillingness to accept the answers that are supplied to him. What might begin as a benign enquiry soon mutates into a complaint followed by an escalation to the Local Government Ombudsman and a separate track of information requests and lengthy phonecalls or voicemails.
31. In adopting this method the complainant has, the Council contends, demonstrated a habit of using information requests as a means to reopen decisions which have already been taken, or grievances which have already been addressed via more appropriate channels.

*The Commissioner's view*

32. The Commissioner frequently deals with complaints about requests that have been deemed vexatious, some of which are clearly vexatious, others clearly not. She considers that this complaint falls into neither of these categories. The arguments on either side are finely balanced (although the responsibility is on the Council to justify why a request is vexatious). However the Commissioner's view is that the request *was* vexatious.
33. It is clear from the correspondence which the Commissioner has seen that the complainant's communications with the Council did not include the sort of intemperate language which often characterises a vexatious request.
34. When asked, the Council was only able to cite a single instance of intemperate language from the entirety of its communication with the complainant, when it stated that he had once "accused someone at the Council of being an idiot." Having reviewed the original correspondence, the Commissioner notes that the language was only mildly insulting and was not directed against a specific individual. The actual quote, which related to a particular Council policy, was "*what idiot thought of that one?*" It is an expression of frustration and nothing more.
35. Nor was there evidence of repeated allegations of corruption, malfeasance, cover-ups, collusion, gross incompetence and perverting the course of justice from the complainant of the sort which can be evidence of a vexatious request. The complainant does appear to have accused the Council of having breached the Equality Act 2010 because it provides more female-only swimming sessions than male-only, but the Commissioner does not consider that relevant to the question of whether the request was vexatious.
36. Finally, the Commissioner has not been presented with any evidence which suggests that the complainant has attempted to harass or cause distress to any particular member of staff. Whilst the Commissioner will

go on to consider the burden on the Council as a whole and on individuals, she does not consider that the complainant has sought to personalise his complaint in any way by targeting specific staff members.

*Motive of the Requestor and Value of Request*

37. It is clear to the Commissioner that the Council sees no value in any of the requests in relation to this issue. It has stated that there is no wider public interest and would presumably point to the lack of demand for take-up in male-only swim sessions.
38. However the Commissioner disagrees with this view. Obesity, exercise and increasing public participation in sport are pressing issues of public policy. Understanding how public authorities are making decisions which affect policy in this area is of legitimate public interest and should be subject to scrutiny. The Commissioner therefore believes that there was, at least at the outset, a serious purpose and value (although the earlier requests are not the subject of this decision notice).
39. Equally, the Commissioner is happy to believe that the complainant is motivated by a genuine desire to increase male participation in swimming.
40. Where the complainant's position is undermined is in his inability (or at least unwillingness) to consider the Council's responses properly and hence his tendency to pursue a matter beyond what would be considered to be reasonable.
41. For instance, responding to a complaint on 23 August 2017 that the Council's higher provision of female-only swim sessions breached the Equality Act, the Council stated that it considered that its actions were a "wholly proportionate" method of achieving a legitimate aim: increasing low female participation. The response was sent out at 16:46. At 18:21 the complainant challenged the assertion and requested evidence. The Council followed this up on 1 September by re-sending a copy of a previous FOI response which it said provided its view on the subject. The complainant responded on 3 September at 16:40 by claiming that response "has no relevance". He followed up with a further email at 17:06, in which he complains about a lack of evidence supporting the Council's position and a third email at 17:52 in which he complained about the Council's "stonewall" attitude and noted that he had raised the matter with the Mayor's Office – who, he had previously been informed, would not deal with such operational matters. He also appears to have left a voicemail for an officer at the Council. At this point a Complaints Manager at the Council attempted to close the matter down by pointing out that the Council had advised the complainant of its position and thus

would not be engaging in further correspondence. On 7 September, the complainant sent another email in which he continued to dispute the Council's position. On 11 September, having received no response, the complainant emailed again, restating his position and asking for a review of his complaint. The Council responded on 19 September, noting that the complainant had left several voicemails since his previous email and advising again that it would not be responding further on the matter. The complainant again responded to this email.

42. Following this exchange, the complainant had an FOI request answered, yet he continued to send further emails on 13 November, 23 November and 13 December (the date on which the request was deemed vexatious).<sup>2</sup>
43. The Council has also provided the Commissioner with a further chain of emails in relation to a separate grievance the complainant had, in which the same unwillingness to accept the Council's position is demonstrated. Every response leads to further enquiries, or complaints, or requests for information.
44. The Commissioner therefore takes the view that the serious purpose and genuine motivation of the requestor has been undermined by the way in which he has gone about making the request and engaging with the Council.
45. The Commissioner has also noted from the correspondence that, whilst on the face of it, the complainant appears to be engaged in a genuine search for evidence, he also demonstrates a tendency to reject any response which he does not agree with. In the case of male-only swimming sessions, the complainant took a complaint to the Local Government Ombudsman. When the Council subsequently pointed out that the LGO had declined to accept the complaint for investigation (because it lacked evidence that maladministration had occurred), the complainant described the LGO as "irrelevant."
46. The Commissioner further considers this to be evidence that the complainant is using information requests as a way of reopening and revisiting matters that have already been addressed through more appropriate channels – which again undermines the motive behind the request.

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<sup>2</sup> The Council provided evidence demonstrating that the complainant had continued to pursue this matter beyond the date at which the request was responded to. However, the Commissioner can only consider the situation at the time that the request was made.

47. For the avoidance of doubt, the Commissioner offers no opinion about the Council's provision of male-only swimming sessions. Equally, she offers no opinion as to the quality of evidence upon which the Council has based its decision. Her sole concern is that the complainant's pursuit of this matter (particularly through the making of information requests) has crossed the narrow line between tenaciousness and unreasonable persistence.

*Burden upon the Council*

48. The FOIA exists to provide public access to official information. The Commissioner encourages public authorities to be open and transparent in the way that they deal with the public. Equally, she has a duty to step in where she considers that individuals are having the effect of (even if not the intent of) using the FOIA to annoy, harass or disrupt a public authority.
49. It is clear from reviewing the Council's submissions and from the evidence that has been provided, that the Council is having to spend a considerable amount of time and resources in responding to the complainant.
50. Whilst it has not provided a definitive log of, or any central estimate of the time spent dealing with, the complainant's correspondence, the Commissioner is satisfied that the correspondence is frequent and the time required to issue considered responses significant.
51. Whilst the Commissioner does not agree that this is evidence of a "scattergun" approach (which she defines as being a more random approach to making information requests – to see if something interesting can be found rather than for a specific purpose), she does consider the correspondence, with multiple officers and departments of the Council to be "frequent and overlapping."
52. Even where the complainant's correspondence is being dealt with by the dedicated information governance team within the Council (whose job is to respond to information requests), those staff will necessarily have to keep consulting with the relevant subject matter experts in order to respond. The Commissioner considers that the frequency of the correspondence is such that it would have an impact on the ability of those subject matter experts to perform their normal functions. As the complainant's correspondence is restricted to a relatively narrow area, it is likely that, in practice, a very small number of staff would have to field all these requests, placing a considerable burden upon those staff.
53. As the Commissioner has already noted, the complainant does not confine himself to information requests. Correspondence quickly

escalates to formal complaints – which not only drag in additional staff but increase the burden on those staff already dealing with the issue. The Commissioner considers that, at the time of the request, that burden had exceeded that which a public authority might reasonably be expected to tolerate.

54. As mentioned previously, section 14(1) concerns whether the *request*, rather than the requestor, is vexatious, but the requestor's behaviour, prior to making the request and in relation to previous dealings with that public authority, provides the context in which the request was made. In this case, it is that context which transforms this particular request from a benign one into a vexatious one.
55. All parties agree that the request itself would be relatively easy to answer. However, the Commissioner has to consider the likelihood that the Council answering this request would bring a conclusion to the chain of correspondence. In this case the Commissioner considers it to be highly likely that responding to this particular request would be unlikely to cause the pattern of the complainant's behaviour to change in any significant way. She thus concludes that the request was indeed vexatious and therefore the Council was entitled to rely on section 14(1) to refuse the request.

## Other matters

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56. The Council's initial submission, to the Commissioner, in respect of this complaint fell well below the standard that the Commissioner would expect. Had the Council not (in response to the Commissioner's intervention) provided the further supporting information that it did, the Commissioner would likely have ordered the Council to issue a fresh response which did not rely on section 14.
57. When inviting the Commissioner to agree with its position on section 14 the Council (or any other public authority), must provide detailed *evidence* of the vexatious character of the request or the context in which the request might be considered to be vexatious. The "professional opinion" of council officers, regardless of their rank or how qualified they consider themselves to be, is unlikely to be convincing evidence to the Commissioner when identifying a vexatious request.

## Right of appeal

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58. 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)

59. 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.
60. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**Cheshire**  
**SK9 5AF**