

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2018

Public Authority: Lancaster City Council

Address: Town Hall
Dalton Square
Lancaster
LA1 1PJ

Decision (including any steps ordered)

1. The complainant has submitted a number of requests for information to Lancaster City Council, which relate to the Council's compulsory purchase of land at Luneside East, Lancaster. The Council has provided the complainant with some information which is relevant to some parts of his requests, however, it now relies on section 14(1) of the FOIA to refuse to make further responses.
2. The Commissioner's decision is that Lancaster City council has correctly applied section 14(1) of the FOIA to the requests detailed in this notice, on the grounds that they are vexatious.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. The complainant has submitted a number of requests for information to Lancaster City Council. The following is a chronology of the complainant's requests together with the Council's responses where these have been made.

Request 1:

5. On 5 June 2017 the complainant asked the Council for:
 - "...a copy of any response to my complaint received from Councillor [name redacted]";

- Confirmation that Ms Anne Streeter – the Council’s Monitoring Officer was suitably qualified to deal with this “very serious complaint”;
 - The identity and qualifications of the Council’s Independent Person;
 - Confirmation that the Council’s appointment of the Independent Person did not conflict with section 28.8 of the Act [the Localism Act 2011]; and
 - “the identity of the Chairman of the Standards Committee who considered my complaint about the conduct of Councillor [name redacted] together with the minutes of your meeting 24 May 2017”.
6. The Council responded to the complainant’s request on 29 June 2017. Deborah Chambers advised the complainant that she is the Council’s Deputy monitoring Officer and it is she who, when asked, deals with issues “as necessary”. The complainant was also advised that:
- “...the identity of the Council’s Lead Independent Person can be accessed in the Council minutes on this link (minute 145)
<http://modgov/ieListDocuments.aspx?CId=305&MID-6547#A135336>”
7. The Council told the complainant that the report attached to that minute [above] sets out who applied and their backgrounds, and it provided the complainant with a copy of the Council’s procedures for dealing with allegations of a breach of the Code of Conduct. The Council informed the complainant that it would not enter into further correspondence with him on this matter on the grounds that there is no appeal.
8. The Council advised the complainant that the appointment of its Lead Independent Person met all the necessary conditions, and that there is no conflict with section 28 Paragraph 8 of the Localism Act 2011.
9. Finally, the Council informed the complainant that his request for the minutes was being dealt with under the Freedom of Information Act 2000.
10. On 12 July 2017, the complainant wrote to the Council to complain about its failure to address the following:
- (i) His request for the minutes of the meeting regarding his formal complaint concerning Councillor [name redacted]’s ignoring the complainant’s correspondence of 24 May 2017;
 - (ii) His request to be given the identity and qualifications of the Council’s Independent Person, as the link previously provided did not work;
 - (iii) His request to be given a copy of Council minutes 145; and

- (iv) His request for the name and qualifications of the Independent Person who he met with on 24 May 2017.
11. The Council replied to the complainant's email on 13 July 2017 by providing the following link to the relevant committee minute:
- <https://committeeadmin.lancaster.gov.uk/ieListDocuments.aspx?CId=305&MID=6547#A135336>
12. Referring to the information found at the link, the Council said, "...which I trust will answer both of your questions".
13. On receipt of the Council's reply, the complainant wrote to the Council and asked it to confirm, "...the identity of the Independent Person who dealt with my complaint and attended the meeting on 24 May 2017 regarding the conduct of [name redacted] was the [name redacted]." The complainant went on to re-make his request of 5 June 2017, for:
- "...minutes of the meeting [name redacted] had with the Independent Person and Councillor [name redacted] Standards Committee Chairman on 24 May 2017 together with copies of any response to my complaint and allegations or wrongdoing from Councillor [name redacted]."
14. The complainant asserted that the Council's response of 29 June 2017 did not reveal any information nor did it advise him if his request would be dealt with under as a Freedom of Information request.
15. On 14 July, the Council confirmed to the complainant that his request for a copy of the minutes in question and for Councillor [name redacted]'s response to his complaint is being dealt with under the Freedom of Information Act under reference FOI 1100.
16. On 28 July, the complainant wrote to the Council to remind it that the deadline for responding to his request had passed and he asked the Council to provide him with the information he had requested.
17. The Council responded to the complainant's request on 1 August 2017. The Council provided documents from which it redacted third party personal data in reliance on Section 40(2) of the FOIA.
18. On 3 August 2017, the complainant wrote to the Council to complain about its response to his information request. The complainant said that, "...all of the information requested was not provided" and he therefore asked the Council to conduct an internal review. The complainant's email contained the following additional request for information:

- "Please provide... a copy of the Council's safety records providing details of the people entering and exiting Lancaster Town Hall on 24 May 2017";
 - "In Councillor [name redacted]'s response (18 May 2018), he offered to supply copies of the advice he received from Council officers and I therefore ask for the copies of this advice."; and
 - "Please provide copies of all background papers surrounding the Cabinet decision (3 June 2008)..."
19. The Council acknowledged the complainant's request for internal review of request FOI 1100 on 7 August 2017 and also its receipt of his additional request for information. The Council's email informed the complainant that it was unable to arrange an internal review as it was unclear as to what issues the complainant expected the review to cover. In response to the additional request, the Council informed the complainant that:
- "As of 12 May 2017, the Council no longer keeps records of staff & visitors entering or leaving Lancaster Town Hall for fire safety purposes... As such no record exists..."
20. In respect of the remaining elements of his additional request, the Council advised the complainant that it was refusing his request on the grounds that it is considered as being vexatious. The Council said that, "The requests cover similar ground to previous requests you have made regarding the Luneside East project, which were also refused as vexatious, and I refer you to prior correspondence (an in particular to our refusal notice for FOI 0578) for the Council's reasoning in coming to this decision."

Request 2:

21. On 7 August 2017, the complainant submitted another request for information. The information he asked to be supplied with was:
- "All the details of any inquiry or investigation past or present into the conduct of Councillor [name redacted].
 - All the details of any complaints past or present regarding the conduct of Councillor [name redacted].
 - Copies of all Councillor [name redacted]'s correspondence either received or sent regarding the allegations and evidence that the

Council Leader has been complicit in the Council's Luneside East fraud and complicit in perverting the course of justice.

- All the details of any meetings or discussions regarding the allegations and evidence that the Council Leader [name redacted] has been complicit in the Council's Luneside East fraud and complicit in perverting the course of justice.
 - A copy of Councillor [name redacted]'s response to the allegations and evidence that the Council Leader [name redacted] has been complicit in the Council's Luneside East fraud and complicit in perverting the course of justice".
22. The complainant acknowledged the Council's refusal of his previous request and its statement that "future requests on these topics will not receive any response". On 13 August, the complainant wrote to the Council to complain that it had not responded to his recent request.

Request 3:

23. On 28 July 2017, the complainant wrote to the Council and asked that it:

"...identify where all the expenditure Eversheds including the £29,899.10 previously requested is recorded in the Council's Statement of Accounts 2016/17 and provide full details of all the Council's expenditure with Eversheds including full details of what expenditure relates to and time sheets."

Request 4:

24. The complainant wrote to the Council on 15 August 2017 and asked to be provided with:

"Copies of any minutes relating to discussions/instructions together with copies of any correspondence, electronic or otherwise between Councillors/Council Officers, Eversheds and [name redacted]/Keppie Massie following the Council's receipt of a copy of my Formal [name redacted] complaint (8 April 2016);

Copies of any minutes of any meetings including copies of any correspondence, electronic or otherwise between Councillors/Council Officers, Eversheds, and [name redacted]/Keppie Massie relating to the Council's instructions to Eversheds to deal with matters relating to my Formal [name redacted] complaint sent to Keppie Massie (8 April 2016 and the ensuing RICS investigation."

Request 5:

25. On 3 November 2017, the complainant wrote to the Council about his "claims against Lancaster City Council which appeared in the Lancaster guardian". The complainant's email contained a number of requests for information in respect of the comments made by Lancaster City Council which he considered were "untrue, inappropriate misleading and highly defamatory".
26. The Council responded to the complainant's request on 8 November 2017 by informing him that, "The Council does not intend to comment or respond further about its statements to the press on these issues".
27. On 20 February 2018, the Commissioner wrote to the Council following her examination of the documents supplied by the complainant in support of his complaint. The Commissioner set out a chronology of the complainant's requests together with her understanding of the Council's position in respect of those requests.
28. On 28 March 2018, the Council provided the Commissioner with the results of its internal review decision in respect of the complainant's requests. The Council confirmed that, "all of the requests referred to in the ICO's email are vexatious, and therefore under Section 14(1) of the FOIA, the Council is not required to comply". The Council referred the Commissioner to its emails to the complainant of 6 March 2017 and 16 November 2017, which informed the complainant that his requests were deemed vexatious and that "future requests on this topic would not receive a response". The Council's internal review provided the Commissioner with a detailed rationale for its reliance on section 14(1) of the FOIA.

Scope of the case

29. The complainant contacted the Commissioner 30 January 2018 to complain about the way his request for information had been handled.
30. Having considered the contents of the complainant's documents and the nature of his complaint, the Commissioner determined that her investigation should be focussed on whether Lancaster City Council has handled the complainant's requests in accordance with the provisions of the FOIA, namely; whether Lancaster City Council is entitled to refuse the complainant's requests in reliance on section 14(1) of the FOIA on the grounds that the requests are vexatious.

Reasons for decision

Section 14(1) – Vexatious requests

31. Under Section 14(1) of FOIA, a public authority is not obliged to comply with a request for information where the request is vexatious. The exemption provided by section 14(1) is not subject to consideration of the public interest test.
32. The term 'vexatious' is not defined in the Freedom of Information Act and therefore the Commissioner has adopted the Upper Tribunal's approach taken in *Information Commissioner v Devon County Council & Dransfield*.¹
33. In the Dransfield case the Upper Tribunal defined a vexatious request as, the "...manifestly unjustified, inappropriate or improper use of a formal procedure" and in making this decision the Tribunal determined that the concepts of 'proportionality' and 'justification' should be central to any consideration of whether a request is vexatious.
34. The Upper Tribunal found it was 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) and harassment or distress of and to staff.
35. The Tribunal stressed that these considerations were not exhaustive and therefore it is important to adopt an 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).
36. Following the approach taken by the Upper Tribunal, 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 its serious purpose and value.
37. In the Commissioner's opinion a balancing exercise is required which weighs the impact of the request on the Council against its purpose and value.

¹ UKUT 440 (AAC) (28 January 2013) paragraph 27

38. To assist in this exercise, the Commissioner has identified a number of “indicators” which she has set out in her published guidance² on the application of section 14(1). The fact that a request contains one or more of these indicators will not necessarily determine that it is vexatious, as all the circumstances associated with the request will need to be considered in making a judgement as to whether the request is vexatious.

The Council's representations

39. The Council has confirmed its application of section 14(1) of the FOIA to all of the complainant's requests and it has referred the Commissioner to an email of 28 March 2018 which sets out its considerations of the detrimental impact of the complainant's requests and why this impact is unjustified.
40. The Council's email includes the results of its internal review which took into account the context and history of the complainant's requests, together with its considerations of their purpose and value measured against the burden on the Council which would necessarily flow from complying with those requests.
41. The Council advised the Commissioner that the complainant has been in ongoing correspondence with the Council since 1999 in relation to the redevelopment of a site at Luneside East, Lancaster. The Council says, “For much of this time there has been a dispute between Thomas Newall Limited [the complainant's company] and the Council over compensation for the site, which was acquired from the company under a Compulsory Purchase Order in 2006”.
42. Matters relating to the Council's purchase of the site have been heard by the Lands Tribunal and the Court of Appeal. The initial case³ was concluded on 4 September 2012 and an appeal⁴ was concluded on 11 July 2013. The overall outcome of these cases was that the compensation was determined at just under £2m and Thomas Newall Limited was made liable to pay the majority of the Council's costs of approximately £750,000.
43. According to the Council, from late 2013, the complainant, on behalf of Thomas Newall Limited, has made several attempts to reopen various

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

³ [2011] UKUT 437 (LC)

⁴ [2013] EWCA Civ 802

aspects of the case. The complainant has argued that critical evidence was withheld and he has alleged the Council has committed fraud.

44. Despite several applications to the Lands Tribunal and the Court of Appeal, the complainant has not been successful in arguing any of these points. In his decision to refuse Thomas Newall Limited permission to appeal⁵, Lord Justice Briggs stated:

"There is, quite simply, no real prospect that the Claimant will be able to demonstrate that this is a case of fraud, still less a fraudulent conspiracy in which Mr Massie, the Council and its solicitors were all complicit."

45. Notwithstanding the above, the Council says that complainant has continued to assert the Council has committed fraud and has alleged that the Council is in breach of contract in relation to an earlier building agreement it had with Thomas Newall Limited. The complainant has not been able to pursue this last matter in court as Thomas Newall Limited went into administration in 2016, and the administrators have not pursued the claim.
46. In his more recent correspondence, the complainant has repeatedly threatened to sue the Council for defamation, though so far he has not acted on these threats.
47. The Council has informed the Commissioner that, since 2013, the complainant has submitted a large number of information requests under the Freedom of Information Act which relate to the foregoing matters. It says that these requests are generally very wide ranging and often include repeat requests for information that has already been provided or refused, and usually form part of wider correspondence making accusations against the Council and its officers.
48. In the Council's opinion. The complainant's requests and related correspondence has placed a significant burden on the Council's resources due to the amount of time officers have spent in gathering and reviewing the requested information.
49. The Council says that it first applied section 14(1) on 16 November 2016 to the complainant's request of 20 and 24 October – FOI 0578, which the Council upheld following its internal review of 5 December 2016.

⁵ [2016] EWCA Civ 31

50. The complainant made a further request - FOI 0851, which the Council refused in reliance on section 14(1) on 24 February 2017. Rather than provide a full explanation of this decision, the Council referred the complainant to its previous refusal notice on the basis that the new request was being refused on the same grounds. On internal review the Council upheld its original decision and decided that it should rely on Section 17(6) of the FOIA, should it receive requests for related information.
51. Under section 17(6) of the FOIA the duty to provide a refusal notice does not apply 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 [refusal notice] in relation to the current request.*
52. Section 17(6) effectively removes the obligation to provide refusal notices (or a response of any kind) to repeated vexatious requests. As such, and in line with ICO guidance the Council's internal review advised the complainant that future requests on the same or similar topics would not receive any response.
53. To determine whether section 17(6) could be relied on, the Council says that its officers were advised that each request should be considered on a case-by-case basis to determine if it was sufficiently similar to previous requests. The Council says it "did not at any point determine that all of the complainant's requests should be considered vexatious". The Council referred the Commissioner to the complainant's request - FOI 1100, which it assured her was responded to in full.
54. The Council also advised the Commissioner that, in addition to the court cases referred to above, the complainant has also submitted complaints and objections to a number of other bodies, including the Local Government Ombudsman. The Council says that "None of these organisations have found any merit in [the complainant's] complaints", which it believes supports the view that the complainant's requests and complaints all stem from the fact that he is unwilling to accept that the decisions of the courts are final.
55. To support its view, the Council directed the Commissioner's attention to the Local Government Ombudsman's statement that:

"almost everything of significance [the complainant] complains about has already been before a court or tribunal, or inextricably linked with those issues. That which remains could reasonably be considered by a court and the liquidator may well choose to take action on behalf of the company."

56. Although the complainant has failed to achieve redress through the courts, he has continued to send letters and emails to Council officers and members which detail his allegations. The Council says that some of complainant's allegations are targeted at individuals.
57. In the Council's opinion the complainant's behaviour, at times, amounts to harassment. It says the unjustified burden of dealing with the complainant's correspondence has put on the Council's resources has caused its Management Team to designate the complainant as an unreasonably persistent complainant in line with its complaints policy.
58. The Council has advised the Commissioner that the complainant has publically associated himself with a campaign against the Council in respect of issues concerning Luneside East and other issues which the campaigners allege are connected.
59. Another of the campaigners has also submitted numerous FOI requests and complaints to the Council which concern Luneside East and other matters. That person has also been designated as an unreasonably persistent complainant. The Council says that, "As these two individuals are, by their own admission, involved in a campaign, the Council feels that correspondence from either one of them is relevant when taking into account the application of Sections 14 and 17(6) of the FOIA".
60. The Council has advised the Commissioner that its decision to designate the complainant's requests as vexatious was made in line with the Commissioner's own guidance, which advocates a balancing exercise between the purpose and value of a request and the level of disruption that it would place on the authority dealing with it. The Council has identified a number of factors which it considers are relevant to the Commissioner's decision:
61. The Council asserts that complainant's requests appear to have been an attempt to uncover new evidence which would allow him and Thomas Newall Limited to reopen the case in court. The Council believes that this is evidenced by the fact that previous appeals by Thomas Newall Limited have been submitted based on documents which have been disclosed in response to previous FOI requests.
62. However, since Thomas Newall Limited has now gone into administration, the complainant is no longer able to act on behalf of the

company. The Council argues that the complainant's purpose has now shifted to one where he now claims to be acting as a local taxpayer concerned as to how public money is being spent. This however has not changed the focus of the complainant's correspondence, which continues to resolve around accusations of fraud and misuse of public money.

63. The Council argues that there is little value in the complainant continuing to make requests. It points out that the compensation case has been settled in court, and multiple requests to appeal the decision and admit fresh evidence have been refused. It says that the complainant could have accessed all relevant documents at the time of the court proceedings through civil procedure rules.
64. Additionally, the Council says that, "Many of [the complainant's] requests cover very broad topics, and any response to these requests would be likely to cover a large amount of information that had already been made available in response to previous requests or be contained in information disclosed to Thomas Newall Ltd during court proceedings". The Council argues that there is no value in providing the complainant with multiple copies of information he already has, nor does it accept that any documents the complainant has uncovered shows any evidence of wrongdoing.
65. The Council asserts that the complainant has repeatedly shown his unwillingness to accept any response the Council makes to his requests: It points to an email of 7 August 2017, which was the complainant's reply to the Council's response to one of his requests for information – FOI 1100, where the complainant appears to raise doubts over whether or not a meeting had actually taken place. The Council suggests this is evidence that there is little value in providing information to a requester who is unwilling to believe that the information is genuine.
66. Finally, the Council argues that the complainant's requests will not lead to any conclusion in respect of the matters of concern to him. It points out that many of the complainant's stated aims are now out of his hands by virtue of Thomas Newton Ltd being put into administration. These aims are; a reopening of the original compensation case; to sue the Council for breach of the building agreement; for the Council to compensate Thomas Newton Ltd; rescuing it from administration; and opening an independent public enquiry into the case.
67. None of the complainant's aims are likely to be achieved and, in the Council's opinion, it is hard to see how continuing to disclose information to the complainant would lead to a satisfactory conclusion for either party.

68. The Council accepts that there is inherent value in the disclosure of information which concerns spending and decision making on large development projects such as the Luneside East in order to satisfy the public interest in accountability and transparency. In this case however, the Council argues that the public interest has been comprehensively addressed by the courts and other regulatory bodies, and the matter has for the most part been brought to a close.
69. In addition to having a lack of purpose, the Council has described the burden which would flow from having to comply with the complainant's requests.
70. In the Council's opinion, the complainant's requests have tended to be broad and vague and consequently to identify and compile the requested information would be likely to take a considerable amount of time. Additionally, the amount and nature of the information the complainant has requested is likely to engage a number of exemptions, including sections: 32 – court records, 40(1) – personal information of the requester, 40(2) – personal data of third parties, 42 – legal professional privilege, and 43 – prejudice to commercial interests.
71. The likelihood that these exemptions would be engaged would require the Council to review all documents the complainant has requested in order to identify any exempt information and to document why redactions were made. The Council says that this would also take a considerable time.
72. The complainant's refusal to accept any response the Council gives to his requests, places an additional burden on its resources. Every time the Council responds to the complainant's requests or correspondence, regardless of whether information is provided, results in the complainant raising additional queries and complaints which must then be addressed.
73. The Council says, "The adversarial tone and content of [the complainant's] emails places an additional strain on Council officers – especially those who are subject to his ongoing harassment, threats of litigation and accusations of misconduct".
74. The Council acknowledges that, whilst some of the complainant's requests may not appear burdensome or vexatious in isolation, each request he makes, along with his other complaints and correspondence, contributes to the aggregated burden on the Council.
75. To support its application of section 14(1), the Council has drawn the Commissioner's attention to the judgment in *OPI Ltd v ICO & MHRA* [2018] UKUT 192 (AAC). In the Council's opinion this judgment has a number of parallels with the complainant's case. It asserts that, whilst

all of the complainant's requests are vexatious, some may not appear so in isolation. However, in the context of the complainant's campaign against the Council, which includes a large volume of FOI requests and other complaints, the cumulative effect amounts to a disproportionate and unjustified detrimental impact on the Council and its officers.

76. The Council also considers the concept of "vexatiousness by drift" to be relevant to this case and it directs the Commissioner to the judgment in *Wise v Information Commissioner* (GIA/1871/2011; EA/2010/0166). The Council says, "Whilst it is arguable that there may have been some merit to [the complainant's] requests when he began making them, his correspondence has now become entirely disproportionate to his original aim". The Council argues that the concept of drift is important in understanding why it considers the complainant's requests to be a continuation of a campaign of vexatious requests.
77. To support its representations, the Council has provided the Commissioner with copies of the judgements of the Lands Tribunal and Court of Appeal with respect to the complainant's case, together with a copy of the decision of the Local Government Ombudsman in relation to a complaint brought by the complainant.
78. Additionally, the Council has provided the Commissioner with a table detailing 26 requests for information submitted to the Council by the complainant, or those known to be his associates, between September 2013 and July 2017, which relate to the Luneside East project. The Council notes that its table includes only those requests which directly relate to Luneside East, and not those related to the complainant's wider campaign.
79. The Council points out that, from February 2017, it made the decision that future FOI requests on the topic of Luneside East would not receive a response. From that date, whilst the Council continued to maintain full records of the complainant's correspondence and other campaigners, it did not systematically differentiate between vexatious requests and other persistent complaints. Effectively, the Council only logged those requests which required it to make a formal response, i.e. where the request was not considered vexatious. As such the Council does not have a separate record of the exact number of vexatious requests received between February 2017 and April 2018.
80. From April 2018 onwards the Council has improved the way it logs the complainant's correspondence, including separately categorising any correspondence which included a request for information. It has advised the Commissioner that, from April 2018, it has received 17 further requests (of which 12 have been refused as vexatious) within 78 emails.

81. The Council says that many of the complainant's emails contain lengthy polemics repeating his allegations of corruption and misconduct. It argues that isolating requests for information within these documents is itself very burdensome and therefore the Council has confirmed that, the complainant and his co-campaigners have submitted at least 43 requests for information over the past five years, in addition to a large volume of other correspondence detailing complaints and accusations against the Council.

The complainant's representations

82. The complainant has provided the Commissioner with a detailed rebuttal of the representations made by the Council. The Commissioner has considered the contents of the complainant's document, much of which disputes matters of fact or details his various allegations of wrongdoing by the Council.

83. It is not necessary for the Commissioner to repeat the complainant's representations in this notice, as for the most part they do not relate to the Commissioner's primary role of determining whether the Council is entitled to rely on section 14(1) of the FOIA. The Commissioner has included below some of the points made by the complainant as she considers these to be germane to her consideration of the Council's position.

84. The complainant asserts that the representations made by the Council contain numerous inaccuracies and misrepresentation of fact which he believes is aimed at discrediting him and others who question the Council. The complainant drew parallels between Luneside East and 'Blobbygate', in which, the complainant claimed that the District Auditors described the Council's actions as "irrational and unlawful" and "No local authority acting reasonably and having regard to its [...] duty to local taxpayers could have taken such a decision."

85. The complainant noted that the District Auditor decided not to pass the case to the High Court because the Council said they had "already taken steps to secure that there should be no repetition of the disastrous venture."

86. The complainant asserts that, "In common with "Blobbygate⁶" and other cases, the Council, rather than deal with matter via Council Policy, have sought to discredit the messenger and I contend have unlawfully abused their position of trust by concealing and fabricating critical evidence. They have also made false statements together with manipulation and clever legal argument in order to circumvent contracts as well as their statutory obligations."
87. The complainant made allegations about the Council and its representatives having taken advantage of their financial position to present cases to the Courts in order to circumvent the building agreement with Thomas Newall Ltd, which he says "they knew not to be true".
88. The complainant referred the Commissioner to the definition of fraud provided by the Fraud Act 2006 and he alleged that the Council is in breach of its own policy by failing to address false representations and by failing to disclose information. He then made other allegations to the Commissioner which relate to the Council having unlawfully used taxpayer's money to defend the decision of the Tribunal decision in the Court of Appeal and a Royal Institute of Chartered Surveyors investigation. He then asserted that the Council refuse to address an allegation of inappropriate conduct and refuse and to enter his allegations in the Council's "Fraud Log".
89. The complainant holds the strong belief that the disclosure of further information via his information requests would undoubtedly incriminate those involved and therefore this would serve the public interest.
90. The complainant believes that his information requests under the FOIA are strongly in the public interest and that the information he seeks about Luneside East would allow proper transparency, integrity and honesty.
91. The complainant admits to being persistent in making his requests, which he says are made 'to out the truth'. He believes the Council is portraying him as being unreasonable, vexatious and harassing in order to circumvent addressing matters which his requests are the subjects of his requests, and he rebuts the Council's claim that all matters have been dealt with by the Courts or other bodies.

⁶ A reference to the 1990s theme park based around the TV character Mr Blobby. Where the theme park was found to have been inadequately planned and researched before construction, which led to a significant loss of money for the company concerned.

92. Finally the complainant points to the lack of action taken by the Council in respect of the accusations he has made in respect of it having acted fraudulently with regard to their involvement in Luneside East. The complainant argues that the Council has not taken action against him because it doesn't want to address the evidence he already has, nor does it want to reveal the information he has requested in his various requests.
93. To summarise, the complainant says that his concerns "relate to the conduct of the Council as a whole including third party employees and legal representatives who have concealed and falsely presented crucial information relevant to the Council's statutory and contractual obligations regarding Luneside East". He adds, "The Council's conduct has commonalities with other cases of which I am aware. Matters of contract and the hard evidence of wrongdoing and irregularities have not been fully addressed by the Council nor any external or third-party adjudicator save for the Tribunal's determination (16th December 2016) regarding matters relating to the [Thomas Newall Ltd] Building Agreement (16th February 2006).
94. The complainant noted the Land Tribunal's determination that the compulsory purchase value of the Thomas Newall Ltd was less than the contracted price and that it said, "There is no reason in principle why the claimant should not have a cause of action for damages for breach of the development agreement and an entitlement to compensation for the taking of land by the exercise of powers of compulsory purchase."

The Commissioner's considerations and decision

95. Having noted the contents of the complainant's rebuttal document, the Commissioner considers it necessary to outline her role with respect of his complaint.
96. Under section 50 of the FOIA, any person may apply to the Commissioner for a decision whether a request for information he or she has made to a public authority has been dealt with in accordance with the requirements of Part I of the Act.
97. In this case, the Commissioner is required to consider only whether Lancaster City Council is entitled to rely on section 14(1) of the FOIA on the grounds that the complainant's requests are vexatious.
98. The Commissioner makes clear her role is not to determine whether any of the complainant's allegations are correct or for that matter justified: It is the Commissioner's sole purpose in this case to determine whether the complainant's requests are vexatious to the public authority. She

does this by considering the well-established criteria referred to at paragraphs 32 – 39 above.

99. It is clear to the Commissioner that the complainant is particularly aggrieved by the actions of the Council in respect of the compensation paid for the compulsory purchase of the site at Luneside East. It is equally clear to her that the complainant is using the provisions of the FOIA as a means of discovering recorded information which would substantiate his claim of wrongdoing on the part of the Council.
100. The Commissioner accepts that the complainant has been in dispute with the Council from 1999 onwards and that, throughout this period, he has made a number of detailed requests for information, together with sending the Council significant amounts of related correspondence. This is acknowledged by the complainant by his admission to being persistent in making his requests.
101. The question for the Commissioner is this: Does the volume, frequency and complexity of the complainant's requests – all of which relating to Luneside East – render those requests as vexatious?
102. The Commissioner is assisted in answering this question by referring to the judgment in the Dransfield case, where the concepts of 'proportionality' and 'justification' are key considerations.
103. Here, the Commissioner is clearly able to find that the complainant's requests are part of a continuing pattern of behaviour which has persisted over a long period of time. As such, when considered in their entirety, those requests point to a real and significant burden to the Council.
104. The Commissioner acknowledges that the complainant feels that he has been unjustly treated by the Council in respect of his purchase of the Luneside East site. Nevertheless, she must also acknowledge the words of Lord Justice Briggs, at paragraph 45 above.
105. The Judge's statement that there is no real prospect that the complainant will be able to demonstrate fraud in this case, suggests to the Commissioner that ultimately the complainant's requests lack true value.
106. The Commissioner considers that a point has now been reached where requiring the Council to comply with the complainant's requests about Luneside East only serves to add to the already significant burden on this public authority.

107. The Commissioner does not find any untoward motive behind the complainant's requests. She accepts that they have been made in good faith in an attempt to substantiate the complainant's belief that the Council has committed wrongdoing.
108. The complainant's purpose may or may not be justified. However, the Commissioner cannot allow the complainant to continue to place an unwarranted burden on the Council as a result of his tenacious requesting behaviour.
109. Adopting the Tribunal's holistic and broad approach to this complaint, and in consideration of the combined effects of the complainant's requests, the Commissioner considers that the requests have become significantly burdensome to the Council. Their lack of true value and their disproportionate effects has resulted in the complainant's requests becoming vexatious.
110. It is for these reasons that the Commissioner has decided that the Council has correctly applied section 14(1) to the complainant's requests.

Right of appeal

111. 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

112. 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.

113. 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

Andrew White
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