

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 June 2019

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested a copy of complaint monitoring forms and the dates when these were introduced by the council. The council applied section 14 and refused the request on the basis that it was vexatious.
2. The Commissioner's decision is that the council was correct to rely upon section 14(1) to refuse to respond further to the request. She has however decided that the council failed to comply with section 10(1) in that it did not respond to the complainant's request within the required period of time.
3. The Commissioner does not require the council to take any steps.

Request and response

1. On 31 May 2019 the complainant wrote to council and requested information in the following terms:

"I note that LCC has a complaint monitoring system e.g. the attached monitoring form Stage 2. Could you please: -

Inform me of when this form and the equivalent Stage 1 forms were introduced by LCC.

Could you also provide me with copies of all such or similar complaint monitoring forms used in the last 5 years providing copies and details of when they were in use."
2. Having received no response within the time period set by section 10 of the Act the complainant sent a further email to the council on 16 July 2018 asking for the council to respond to his request. His email included a request under the Data Protection Act for any personal data held about him relating to the councils actions following the receipt of his request.
3. He issued a further 'chaser email' to the council on 25 July 2018, again asking for the council to respond to his FOI request, and again asked the council provide all personal data held about him relating to the request up to that date. He also asked the council to explain why it had not yet responded to his request for information.
4. The council responded on 26 July 2018. It applied section 14 of the Act and refused to respond further to the request. It also said that it would not offer a review of its decision and directed the complainant to make a complaint directly to the Commissioner should he be unhappy with the council's response.

Scope of the case

5. The complainant contacted the Commissioner on 10 September 2018 to complain about the way his request for information had been handled.
6. He considers that his request for information is not vexatious and therefore the council was not correct to apply section 14 to refuse it.

Reasons for decision

7. Section 1(1) of the 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."

8. Section 14 of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

9. 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.
10. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
11. 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).

12. The Commissioner has published guidance on dealing with vexatious requests¹, 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.
13. 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".

14. 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.
15. 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 background to the complaint and the complainant's position

16. The Commissioner notes that the complainant's reason for making the complaint relate directly back to statements of the First-tier Tribunal in an appeal in case EA/2017/0288². The requests for information which were under consideration in that case related to a request dated 3 December 2015 for:

"Could you please therefore provide all relevance (sic) LCC guidance, rules and codes which apply to this situation."

A later request, dated 9 December 2015, for:

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

² This decision is not available on online

"Would you please also provide all relevance (sic) LCC guidance, rules and codes which apply to officers conducting or involved in complaint or concern investigations"

and a similar request of the same date for:

"...but first I request the information requested from LCC, including that you were tasked with dealing with on behalf of the CEO personally:

'Could you please therefore provide all relevance (sic) LCC guidance, rules and codes which apply to this situation.'

17. On 9 December 2015, the Council's Senior Policy and Performance Officer wrote to the complainant on behalf of the CEO and provided him with a link to its complaints procedure. The complainant however argued that further information was held by the council. The council disputed that that was the case and the Commissioner agreed that no further information was held.
18. The Tribunal considered that there was no material difference between the three requests, when read in context and decided to treat the request as one request overall.
19. In its decision the Tribunal referred to evidence from the council relating to a Complaints Investigation Record and procedures which it used in its complaints process. A Complaints Investigation Record had been disclosed to the complainant in response to a request from him under the Data Protection Act 1998, (the DPA), however the same, or a similar form, had not been provided to him in response to an FOI request. The complainant believed that the form fell within the scope of his complaint and had been deliberately withheld by the council.
20. In the Tribunal decision it records, at paragraph 28, that:

"The Appellant also drew attention to a document that had been provided to him under a different request, for his personal data under the DPA, which was a Complaints Investigation Record dated 16 February 2017. This recorded the steps that were taken, and the conclusions reached, by an Investigating Officer tasked with a complaint which the Appellant had made about the actions of a member of the Council's legal team. He argued that this document fell within the definition of "procedures, policies, guidance, codes of practice" and should have been disclosed to him."
21. However at paragraph 33 the tribunal found that:

"We agree with [name of council officer redacted] that the additional information provided at that stage fell outside the scope of the Second Request. So, too, did the Complaints Investigation Record referred to in paragraph 28 above (both by its nature and the date of its creation). The existence of those documents does not therefore affect our view of the willingness of the Council to disclose relevant information or the thoroughness of the searches it undertook."

22. The complainant considers that the Tribunal made this decision on the basis that this document did not fall within the scope of the complaint as the recorded date on this document was after the date of the Appellant's request. However, the complainant argues that the Tribunal did not consider whether the council's complaints procedure, or a similar procedure, existed at the time of the relevant request or, if not, what, relevant system the council did have in place at the relevant date to monitor complaints as they were received and acted upon.
23. The Commissioner understands the complainant's arguments to be that if the council had similar procedures in place at that time, and therefore used similar forms at that time, then a complaints form and associated procedure should exist which fell within the scope of his request in that case, and this information should therefore have been held by the council and provided to him in response to his request for information. He considers that the Commissioner, and the Tribunal, would therefore have been incorrect to find that no further information was held.
24. It should be noted that the Tribunal found that the council had provided some documents to the complainant in the form of the Council's Constitution, Complaints Policy and its Information Access Regimes, on 17 December 2015. It also disclosed further documents as recorded in paragraph 32 of the Tribunal's decision. It had also disclosed documents entitled "Reporting Fraud and Corruption" and a second entitled "Raising Concerns" during the course of the Commissioner's investigation, but the council argued that this information did not fall within the scope of the complainant's requests.
25. The Commissioner notes that the complainant is currently taking an appeal to the Upper Tribunal regarding the First-Tier Tribunal's decision that no further information was held.
26. The complainant's stated intention in making his current request is therefore to determine whether the Tribunal and the ICO had been misled by the council, or were incorrect in respect of their decision.

27. The complainant argues that the council is aware of his reasons for making his current request, and it is therefore fully aware that his request has both a value and a purpose and that it is not vexatious.

The council's position

28. To support its position the Council provided the Commissioner with background information. The council referred the Commissioner to a previous decision notice issued in June 2016 which found that the complainant's request in that instance was vexatious. The decision³ in case FER0615064 outlines the reasons why this was found in a paragraphs 18 to 43. The Commissioner will not repeat the arguments from that case in this decision notice, however the factors it outlines are taken into account in her decision on this complaint.
29. The council noted that following an appeal to the Tribunal on that case the Tribunal upheld the complainant's appeal against the Commissioner on a technical point⁴; the Commissioner had only addressed one information request when the Appellant had in fact asked the Commissioner to investigate two.
30. However, during the course of the preparations for the hearing the council withdrew its reliance upon section 14. It argues that it did so as it considered that it would likely be less burdensome for it to simply resolve the complainant's outstanding concerns rather than to expend further resources pursuing complaints through the ICO and the First Tier Tribunal.
31. It says that, in spite of this, the complainant sent a further complaint to the ICO, which was resulted in decision notice FS50694337⁵. The complainant's complaint was not upheld. This decision was then subject to a further First Tier Tribunal appeal, which was dismissed in EA/2017/0288 as outlined above.

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624586/fer0615064.pdf>

⁴ EA/2016/0182 – This decision is not available online

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172772/fs50694337.pdf>

32. It says that the complainant then submitted a further complaint to the ICO, FER0695235⁶, which the Council again sought to respond to rather than consider the request as vexatious. The complainant's complaint was again not upheld by the Commissioner, and is currently subject to a further appeal to the First Tier Tribunal.
33. It says that the complainant then submitted his current request to the Council Customer Relations Team. The council argues that the complainant has dealt for a number of years with the Information Governance team, who are responsible for information requests. It considers that he chose to approach the council via the Customer Relations Team in order to circumnavigate the Information Governance team given his previous history.
34. Whilst the Commissioner understands the point which the council is trying to make, she does not place any weight on this argument. The requirements for making a request for information under the Act are set out in section 8 of the Act⁷. Any request which meets the criteria set out in section 8 of FOIA which is received by an authority is a valid request for information. The processes which an authority sets up to deal with requests may not be known or not understood by a requestor. No 'set procedures' for requestors can therefore override the validity of a request which is received by any part of the authority. Nevertheless it is in the interests of requestors to follow procedures where they are available in order to avoid unnecessary complications or delays in receiving a response to the request. This is consequently what occurred in this case.
35. The council says that the email was not addressed by the Customer Relations Team on receipt. Nor was it referred on to the Information Governance team and so its response to his request for information only followed following the receipt of further correspondence from the complainant. This included a subject access request to establish why no response had been received, a further complaint letter, and subsequently it says he also another subject access request for information relating to how his complaint had been dealt with by the council.

⁶ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2259052/fer0695235.pdf>

⁷ <http://www.legislation.gov.uk/ukpga/2000/36/section/8>

36. The wider background to this case, according to the Council, is that the complainant first raised concerns about a particular wall in 2011 whereby he expressed a view that the Council should take enforcement action against its owner. After consideration, it decided that it would not take enforcement action. It says that, during this period, the Council endeavoured to keep the complainant up-to-date on proceedings, and this involved the Council answering a number of requests for information, which led to the past history outlined in case FER0615064.
37. It argues that over the last 4 years, the complainant has made dozens of information requests to the Council under the FOI Act, the Environmental Information Regulations, and through Subject Access Requests under the DPA. These requests have culminated in at least four decision notices by the Information Commissioner, and 3 appeals to the First-tier Tribunal.
38. The council argues that it has expended thousands of hours of resources, and has spent thousands of pounds responding to requests by the complainant and notes that none of his previous complaints to the ICO, and none of his appeals to the Tribunal to date, have resulted in the Council being ordered to disclose any further information. It considers that the current request is designed only to prolong a long running dispute with the authority and it considers that the current request has not been made in good faith.
39. It considers that the current request is also clearly connected to the complainant's previous requests (which initially concerned his complaints over the wall but then expanded to him making further complaints against Council staff).
40. Further to this it argues that there is no reasonable foundation for thinking that historic information about the council's complaint monitoring forms would be of any value to the complainant, or to the public or any section of the public.
41. It therefore argues that, taking the past history of events into account, it was correct to apply section 14 to refuse the request.

The Commissioner's analysis

The burden of the request

42. The Commissioner does not consider that the request is in itself burdensome on a public authority of the size, and with the resources of the council. However in the wider context of previous events, the council has outlined that it has, and is, expending significant costs

and resources dealing with requests and complaints from the complainant which all relate back to the issue of the wall.

43. The Commissioner also considers that any response would be likely to lead to further correspondence and questions from the complainant. The Commissioner notes that some of the arguments submitted by the council relate to its actions after the request for information had been received. Although the council can only take into account factors which occurred prior to it deciding that the request was vexatious, in addition to the overall context of the complaints regarding the council, the Commissioner does recognise that it provides evidence of a continued and consistent pattern of behaviour.

The motive behind the request/the value and purpose of the request

44. The Commissioner understands that the complainant's intention in making the current request is to demonstrate evidence that the council did have a procedure in place at the time of his request in December 2015, and therefore that the Commissioner and the First-tier Tribunal were wrong in their decision that no further information was held. The complainant's request in this case is based upon his opinion that proving the council had the same, or a similar complaint process in place at the time of his request in December 2015 will demonstrate that the Commissioner was misled during her investigation, and the First-tier Tribunal mistaken in its decision in EA/2017/0288.
45. The Commissioner does understand the complainant's point that if a form of this nature was in place at the council at the relevant time this might be evidence that a procedure was in place to manage requests and complaints. It could be then be argued that any information held by the council outlining the procedure would fall within the scope of the complainant's request as considered in EA/2017/0288. The complainant stated in his complaint to the Commissioner that:

"The Appellant makes the obvious observation that all [local authorities] and ICO share the necessity to have codes and procedures for Complaint Investigation Officers and monitor and record their progress of what was required at the various stages of investigations".

46. This view does not however appear to be supported by the Tribunal's decision that no further information was held. The Tribunal specifically considered that the form fell outside the scope of the complainant's request in its decision in EA/2017/0288 because of the time when it was drafted, but *also* because of its 'nature', albeit that

it did not elaborate upon what it meant by that statement further. The Commissioner surmises however that the Tribunal's statement intended to convey the obvious point; that the Complaints Investigation Record did not fall within the scope of the requests as it was not council guidance, a council 'rule' or a council 'code' which applies to officers conducting or involved in complaint or concern investigations. Its decision, extrapolated to the current position, would suggest that even if a form of a similar nature was used by the council in 2015 it would likely have fallen outside of the scope of the request which was in issue in EA/2017/0288.

47. She notes that the complainant may wish to establish whether such a form was held at the time of his request in December 2015 in order to present this as evidence to the Upper Tribunal. The complainant is however able to raise this issue in the Upper Tribunal's if he wishes it to argue this as a potential error of law.
48. The Commissioner therefore considers that the value or purpose of the request are limited by the fact that this point has specifically been considered previously by the First-tier Tribunal, and that it may be specifically raised by the complainant to the Upper Tribunal should he wish to do so. Nevertheless she accepts that the complainant's argument may have a degree of merit in this respect

Harassment or distress of, and to, staff

49. The Commissioner has considered the past history and dealings between the parties, the nature of some of the correspondence, accusations and complaints against some officers which the complainant has previously made, the number of overall requests stemming from the initial complaint regarding the wall, together with the costs and disruption this issue has generated overall.
50. She has also considered the complainant's continued persistence in making further requests, the fact that this all relates back to issues originally arising from his complaint about the wall, a number of years after this issue was dealt with by the council.
51. Additionally she has taken into account the number of complaints made to the Commissioner and appeals to the Tribunal which have ultimately been generated over this, or associated issues which the council has then had to provide responses to. At page 8 of the Commissioner's guidance on vexatious requests she states:

"Unreasonable persistence

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."

52. Clearly in this case both the Commissioner and the First-tier Tribunal have considered whether further information was held by the council in relation to case EA/2017/0288 and decided that the council did not hold any further information.
53. The Commissioner also notes the unfounded accusations which have been placed against the council and its staff, previously, such as outlined by the Tribunal in its decision in paragraph 27 of EA/2017/0288. The Tribunal states that: "*We thought, at one stage, that the Appellant wished to argue that the late submission of those materials suggested that the previous search had not been effective. However, he explained that his belief was that information had been deliberately withheld, rather than overlooked*". This followed the disclosure of the further information to him as outlined in paragraph 28 of EA/2017/0288, which the council argued, and the Tribunal agreed, did not fall within the scope of his request.
54. Taking all of this into consideration she considers it clear that council employees would feel harassed by the complainant's request.

The requirement to consider the complaint holistically, including any evidence of any lack of proportionality that typically characterises vexatious requests

55. Given the above points she considers that there is strong evidence of a lack of proportionality being attributed to the issues which the complainant has raised in this case and over the issue of decisions taken by the council more widely. The issues initially relates to the wall, and from this stemmed further complaints to the council and to the Commissioner, and appeals to both the First-tier and the Upper Tribunal wherein the complainant's arguments have been, or will be, fully considered.
56. The Commissioner also states on page 8 of her guidance on vexatious requests that:

"Frequent or overlapping requests

The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries."

57. She considers that making a further request for information which relates to a matter currently before the Upper Tribunal falls firmly within the scope of this point.
58. The complainant has used his right to appeal cases to the Tribunal over this particular matter on a number of occasions, and given the Upper Tribunal's ability to reconsider the issues involved in this case she is satisfied that complainant has the potential for it to be reconsidered in this forum rather than through the medium of further FOI requests, placing a greater burden upon the council.
59. The Commissioner considers that the Council is likely to be correct in its belief that the complainant is trying to sustain a dialogue with the Council in a matter which was not concluded to his satisfaction. The result has been significant burden, disruption and costs to the council over a long period of years. She is satisfied that council staff would feel harassed and irritated by the continued persistence of the complainant, many years after the initial reasons for his complaint have been considered and dealt with and subsequent complaints and requests independently scrutinised.
60. Responding to the request further in this instance would therefore require a disproportionate use of the Council's resources compared the value and purpose behind the request. Additionally, taking a holistic view of the history behind the request, the Commissioner is satisfied that the council was correct to refuse the request under Regulation 14(1).

Section 10(1)

61. Section 10 (1) of the FOI Act requires that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
62. The complainant submitted his request for information on 31 May 2019. The council did not however provide its response to the request until 26 July 2018.
63. The Commissioner has therefore decided that the council did not comply with the requirements of section 10(1) of FOIA.

Other Matters

Section 45 - internal review

64. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed.
65. In providing its response to the complainant in this case the council told him that it was not offering a review and that he should make a complaint directly to the Commissioner should he disagree with its response to his request.
66. However as the council's processes normally involve offering requestors the opportunity to request a review the Commissioner considers that the council should have provided this opportunity to the complainant in this instance.

Right of appeal

67. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

68. 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.

69. 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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