

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 August 2019

Public Authority: West Sussex County Council
Address: County Hall
Chichester
West Sussex
PO19 1RQ

Decision (including any steps ordered)

1. The complainant requested information from West Sussex County Council (the Council) regarding parking bay sizes. The Council refused the request under section 14(1) on the basis that it was vexatious.
2. The Commissioner's decision is that the request was vexatious and the Council was therefore entitled to rely on section 14(1) of the FOIA to refuse to comply with the request. The Commissioner does not require the Council to take any steps as a result of this decision.

Background

3. The Council stated that this matter relates to a request by the complainant for a vehicle crossover (VCO). The Commissioner understands that a vehicle crossover is where the footway is reinforced to take the weight of the vehicle and the kerb is dropped to form a ramp.
4. By way of background, the Council's explanation was as follows:
"An enquiry was made requesting a VCO. The application was refused on the basis that the garden was not deep enough and it would remove on-street parking. This is in line with the current WSCC VCO policy. A subsequent enquiry was made by the complainant seeking to appeal the decisions for the VCO being refused."
5. The Council stated that the complainant is the partner of the person who had made the original enquiry and that the complainant and his partner had both applied for a VCO which had been refused.

6. The complainant requested contact from the Highways department at the Council, to discuss the VCO refusal. The Highways department confirmed that the original decision to decline the complainant's request for a VCO was correct in line with the policy. Following this, the complainant requested an escalation of his complaint which then led to him submitting a number of requests for information to the Council under the FOIA.

Request and response

7. On 18 November 2018 the complainant wrote to the Council and requested information in the following terms:

"Please disclose, by way of the Freedom of Information Act, the following information:
 1. *What policies are in place that regulate the sizes of residential parking space? Please provide copies of the relevant documents.*
 2. *Are there any provisions that would allow larger than the 2m parking bays? If yes what are they, what are the conditions etc.?*
 3. *What are the procedures for reporting/complaining about existing parking arrangements?"*
8. On 23 November 2018 the Council responded and provided its answers to the request.
9. On the same day the complainant wrote to the Council and stated that it had not provided its answer to question 2 of his request. The complainant argued that although the Council had answered "yes" to this question it had not responded to the remaining part of the question by stating the provisions regarding parking bays. The complainant therefore asked the Council for recorded information regarding question 2 of his request.
10. On 28 November 2018 the Council responded. However, the Council explained to the complainant that it was only able to provide a generic response, and if he wished to provide a location, the Council would be able to advise further details. The complainant therefore replied to the Council on the same day and stated the exact parking location which he was referring to in his correspondence.

11. On 21 December 2018 the complainant asked the Council for an internal review. He argued that its response did not answer question 2 of his request and the complainant asked the Council to list the conditions regarding this part of the request. He also asked the Council what it had based its decisions on if no documents are held.
12. The complainant's request for an internal review overlapped with the Council's letter of the same day. This consisted of the Council's application of section 14 (vexatious requests) to a previous series of ten requests. These 10 requests included the request quoted above and covered the clarification that the complainant had given on 28 November 2019 of question 2 of his request.
13. Within this series of 10 FOI requests, nine of them were submitted under a different name. All these requests were for information broadly related to vehicle access to private properties and dropped-kerb applications. The Council's reliance on section 14 was also against the background of a further 73 requests relating to parking bay sizes. The requests were made by the complainant, including some under an alias that the complainant has confirmed he used, during February 2018 to December 2018.
14. On 24 January 2019 the Council wrote to the complainant and declined to undertake the internal review requested on 21 December 2018. The Council maintained its reliance on section 14 of the FOIA to refuse to comply with the request.

Scope of the case

15. The complainant contacted the Commissioner on 31 January 2019 to complain about the way his request for information had been handled.
16. The following analysis considers whether the request was vexatious by virtue of section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – Vexatious requests

17. Section 14(1) 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.

18. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
19. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the “*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).
20. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
21. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests, which are set out in her published guidance². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

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

22. The task for the Commissioner is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal. In doing so she has taken into account the representations of the Council and the evidence that is available to her. In this decision notice, the Commissioner will also refer to her published guidance on defining and dealing with vexatious requests.

The Council's position

23. The Council provided the Commissioner with its reasons for applying section 14(1) of the FOIA. The Council argued the complainant's motive for the request in the following terms:

"Although initially your requests may have had a serious purpose, the frequency and nature of your requests has begun to demonstrate an obsessive and unreasonable campaign and any public interest served in your requests has been superseded by your conduct and approach. Evidence of your motive in making the significant requests for information is gained from the fact that you have sought to be deceitful by using different names and thus trying to divert the Authority from identifying the true number of requests being made. You have also made a request in one name, been provided with the information and then very quickly made an identical request in your alias, knowing that you had already been provided with that information. This demonstrates that your approach is unreasonable."

24. The Council reported the volume of requests which the complainant submitted and that this current batch of ten FOI requests were made against a background of many other previous requests since February 2018. The Council stated that there had been a total of 73 requests to date, inclusive of the current batch of ten.
25. The Council is of the view that the requests were made in response to dissatisfaction about how the Council had addressed a complaint and it believes that the complainant's intention was to cause a burden to the Council and its officers.
26. In its submissions, the Council makes reference to a number of indicators taken from the Commissioner's guidance, including:
- Burden on the authority
 - Unreasonable persistence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance

- Scattergun approach
 - Disproportionate effort
 - No obvious intent to obtain information
27. The Council provided the Commissioner with a 122 page summary, which consisted of a record of requests. These detailed the complainant's requests, linked to over 70 other requests that were submitted under the complainant's name and under his alias and related to the same subject matter. The Council considers this clearly demonstrates the complainant's persistence in pursuing his enquiries and in refusing to accept that the matter is closed.
28. The Council said that the requests were frequent and overlapping and it considers the current batch of ten FOI requests were made in an attempt to overload the Council and its resources. It added that the requests had been identified as copies of requests made by other individuals to both the Council and other local authorities, the Council said "*which have simply been cut and pasted from the Whatdotheyknow website.*" A list of some of these requests were provided by the Council to the Commissioner in order to illustrate their frequency and overlapping nature.
29. The Council argued that there was a deliberate intention to cause annoyance. It reported that in addition to the FOI requests, the complainant had also made a subject access request for his own personal data. The Council stated that "*the form of that request was a cut and paste from a template request entitled 'The Nightmare Letter: A Subject Access Request under GDPR' from the LinkedIn website.*" The Council considers this to be a demonstration of a deliberate intention to act in a manner that will cause a significant burden to the Council and its officers, and it also believes it to be an unreasonable approach.
30. The complainant made nine FOI requests on 4 December 2018, which the Council said had been a cut and paste of requests made by other individuals on the Whatdotheyknow website. The Council believes that this shows the complainant has taken a "scattergun" approach and lacks any clear focus. Instead his requests seem to have been designed for the purpose of "fishing" for information without any real desire for that information.

31. The Council is of the view that the complainant's information requests require disproportionate effort on its part and considers the requests are relatively trivial and are of no genuine interest to the complainant. It believed that the nine FOI requests of 4 December 2018 were designed to require the Council to expend a disproportionate amount of resources to meet the requests.
32. With regards to the cut and paste requests previously made on the Whatdotheyknow website, the Council argued that the answers were published and therefore clearly known to the complainant, and it believes that the complainant's reason for making these requests was to cause additional work to the Council and its officers.
33. The Council considers another reason for the information requests, was for the complainant to vent his discontent at the Council's decision regarding his application for a VCO in front of his house, with the intention to harass and annoy the Council.
34. The Council asked the Commissioner to note that work had been undertaken to try to estimate the amount of officer time spent on the complainant's FOI requests. It estimated that approximately 50 hours of officer time had been spent on the requests, but it reported that this is not a precise calculation and it considers that it is likely to be an underestimate of time actually spent on the requests.

Does the request have a serious purpose or value?

35. Section 14(1) of the FOIA is not qualified by the public interest test. However, the Upper Tribunal in the Dransfield case confirmed that it may be appropriate to ask whether the requested information has a value or serious purpose in terms of the objective public interest.
36. The Council considers the complainant's approach suggests that he had no real interest in the information requested. Specifically, as the complainant had cut and pasted requests from the whatdotheyknow.com website, indicates to the Council that his intentions were to cause an impact and disruption to the Council and its officers in carrying out other public duties, rather than a genuine interest in the information sought.
37. As separate requests, the Council believes that they have on face value a serious purpose. However, the frequency of the requests, and the nature of them, demonstrated an obsessive and unreasonable campaign. Therefore, the Council is of the view that any public interest served in the requests had been superseded by the complainant's conduct and approach. The Council does not consider that the requests are of value in terms of the objective public interest.

The Commissioner's position

38. There are many different reasons why a request may be considered vexatious, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgment about whether a request is vexatious.
39. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow theme. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
40. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.
41. The Commissioner acknowledges that from the background of this case, it is clear that following the refusal for a VCO, the complainant had made numerous FOI requests to the Council. These were linked to his application for a VCO and to his complaint. Subsequently, the requests refocused to information about complaints, lack of parking due to VCOs and requests for internal reviews. The Commissioner recognises that the repeated requests for identical information were submitted by the complainant using two names interchangeably. The evidence provided demonstrates the complainant's grievances against the Council.
42. The Commissioner wishes to reiterate that the purpose of the FOIA is to promote transparency and accountability to the general public and it should not serve as a mechanism for addressing personal grievances.
43. The Commissioner notes the frequent correspondence and the voluminous nature of other material generated as a result of the complainant's approach to the Council. From the supporting evidence provided by the Council, it reveals correspondence and other contact between the Council and the complainant took place between February 2018 and January 2019. The Commissioner is of the view that it can be concluded that the cumulative impact may impose an unreasonable burden on the Council's limited administrative resources.

44. The Commissioner appreciates that the information the complainant has requested is of interest to him. She acknowledges that he had explained the reason for submitting requests under an alias, was because "*I knew that as soon as the WSCC finds out that I raised them they will react the way they did.*" However, a request made under an alias is not a valid request under the FOIA and so a public authority is not obliged to comply with it. The Commissioner also views repeatedly making requests under a pseudonym as a factor in favour of the request in question here being vexatious, as was repeating requests that the complainant had read on whatdotheyknow.com.
45. However, the Commissioner has to consider whether the request is of sufficient wider public interest or value that it would be reasonable for the Council to comply with it, despite the burden involved.
46. The Commissioner notes that the Council has already dedicated a considerable amount of time and effort to respond to the issues raised by the complainant. It is the Commissioner's view that if the Council was to comply with the request it would create a burden that is disproportionate to the request's wider value. In reaching this conclusion, the Commissioner also took into account the Council's limited resources available to it in performing its duties.
47. The Commissioner has given consideration to the findings of the Upper Tribunal in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1) of the FOIA. Taking into account all the above factors, the Commissioner's decision is that the request was vexatious and the Council correctly relied on section 14(1) in this case. Therefore, the Council was not obliged to comply with the complainant's information request.

Right of appeal

48. 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: 0116 249 4253

Email: grc@justice.gov.uk.

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

49. 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.
50. 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

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