

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2019

Public Authority: Copeland Borough Council
Address: The Market Hall
Market Place
Whitehaven
Cumbria
CA28 7JG

Decision (including any steps ordered)

1. The complainant requested information relating to her belief that the Mayor failed to register a pecuniary interest within 28 days of being elected. Copeland Borough Council (the Council) refused to comply with the request under section 14(1) of the FOIA, on the basis that it was vexatious.
2. The Commissioner's decision is that the Council failed to provide sufficient evidence to support the decision to refuse the request for information and it is not entitled to rely on section 14(1) of the FOIA with regard to the request.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - The Council must issue a fresh response to the request that does not rely on section 14(1) of the FOIA.
4. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 29 January 2019, the complainant wrote to the Council and requested information in the following terms:
- "1. Can you please confirm that the Mayor failed to register a disclosable pecuniary interest he had, within 28 days of being elected?*
 - 2. Can you please confirm that such a failure was a breach of the Code of Conduct?*
 - 3. Can you please confirm that once your Council was aware of this misconduct there was no formal action taken under your policy for dealing with a breach of the code of conduct but that the Mayor was simply asked to correct his register without the issue being placed in the public domain as Code Complaints usually are when an investigation has been concluded?*
 - 4. Can you please confirm that the Mayor simply added his wife's employment to his original register of interests, without disclosing the date he added it, and which gave an appearance of it having been disclosed within the statutory 28 day period?*
 - 5. Can you please confirm that a failure to so register such a disclosable pecuniary interest is made a crime by virtue of s34 of the Localism Act 2011 unless the party failing to so register had a reasonable excuse?*
 - 6. Was there any investigation into whether the Mayor had a reasonable excuse for not knowing that his own wife was employed (the registrable interest)?*
 - 7. Was the Mayor referred to the Police over this incident? If not then what were the reasons for not doing so? I assume here that there will have been a decision record completed by the person who held the delegated authority to make decisions on prosecutions.*
 - 8. Can you please confirm that Mayor Starkie became a Director of certain "Energy Coast" companies in 2015 but failed to register those disclosable pecuniary interests until June 2018 despite being required by the Council's Monitoring officer in June 2016 to ensure that all such interests had been registered?*
 - 9. In relation to 7 was there ever any Code of Conduct investigation into that failure to comply with the Monitoring Officer's directions?"*

6. The Council responded on 11 February 2019 and refused the request under sections 14(1) and (2) of the FOIA (vexatious and repeated requests).
7. Following an internal review the Council wrote to the complainant on 12 March 2019. At this stage, it changed its position to refuse the request under section 14(1) (vexatious requests) only.

Scope of the case

8. The complainant contacted the Commissioner on 12 March 2019 to complain about the way her request for information had been handled. She disputed the Council's decision to refuse her request on the basis that it was vexatious.
9. The scope of this case and the following analysis is the determination of whether the Council correctly refused to comply with the request under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – Vexatious requests

10. 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.
11. 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 & Dransfield¹. 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.
12. 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

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

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.

13. 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."*
14. 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.
15. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests, these 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.

The Council's position

16. The Council provided the Commissioner with very limited evidence and arguments to support its position that the request in this case was vexatious.
17. In its initial response to the request it said:

"When considered in isolation we would agree that the request is not vexatious. However, we would argue that when the context and history of the requestor's communications with the Council is taken into account it is clearly vexatious. There have also been a number of emails containing derogatory references about staff and the Authority. We have also considered the purpose of the request, whether it has any wider value and have concluded that there is little wider value to the public at large. Points are being argued rather than asking for fresh recorded information."

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

The Authority has already responded to previous requests on the matter raised. Copeland Borough Council's experience of dealing with your previous requests suggests that you will not be satisfied with any of the responses supplied and are likely to submit numerous follow up enquiries no matter what information is supplied".

18. In her correspondence to the Council the Commissioner explained her approach to investigating the application of section 14(1). She asked the Council to provide detailed representations in support of its position that the request in this case was vexatious. In line with her standard approach, she asked the Council to provide:
 - details of the detrimental impact of complying with the request,
 - why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value, and
 - if relevant, details of any wider context and history to the request if the Council believes that this background supports its application of section 14(1), including relevant documentary evidence to support such a claim.
19. Upon receipt of the Commissioner's correspondence, the Council contacted her by telephone to discuss the case. The Council explained that it had found the complainant to be a vexatious complainant across the Council. It said that she had made a number of other complaints and had been using pseudonyms. The Commissioner explained that while the Council may have found the complainant to be vexatious in line with its own policies, it was required to provide specific submissions to support its application of section 14(1) to the request.
20. Initially, the Council provided the Commissioner with a letter it sent to the complainant on 5 April 2019, in which it confirmed that it would no longer have any contact with her as it considered her to be vexatious. The letter stated that the complainant had made "*endless and constant attacks on the Council*", as well as a number of libellous comments which were damaging to the reputation of the Council and numerous individuals within it. It stated that her persistent harassment was having an impact on its staff which it would no longer tolerate.
21. However, the Commissioner notes that this letter was sent to the complainant after the Council had refused the request and concluded its internal review. Other than a brief covering email to which the letter was attached, the Council did not provide directly to the Commissioner any written explanations for its application of section 14(1).

22. As this appeared to be the only evidence the Council was submitting in support of its position, the Commissioner contacted the Council again. She explained that any documentary evidence it wanted to provide to support its position should predate the request being made or dealt with. She advised the Council to respond to the points she had previously asked it to, as outlined above at paragraph 18, and recommended it read her published guidance on vexatious requests.
23. The Council then provided a letter which it had sent to the complainant on 6 March 2019, in response to an email the complainant sent to the Mayor on 1 March 2019. It explained to the Commissioner that the letter made reference to this request and previous requests, but no additional details were provided. The letter stated that the complainant was submitting highly repetitive questions via a scattergun approach. It said that it was now considered to be "*an aggressive and sustained campaign of personal attack on the Mayor, and harassment in the form of malicious and vexatious requests*". It also told the complainant that she was using up a disproportionate amount of time and resources that could be used for the benefit of delivering services to residents.
24. The Commissioner wrote to the Council again to explain that she did not consider the evidence it had provided to date was sufficient to support its position. She highlighted that it was the Council's responsibility to satisfy her that it had complied with the FOIA and that it had correctly applied section 14(1) to this particular request. The Commissioner explained that if the Council chose not to provide any further representations then a decision would have to be made, based purely on the information available to her.
25. The Council sent a further brief response to the Commissioner which focussed on a previous request the complainant submitted in 2018. The Council explained that the 2018 request also asked for information relating to the Mayor's disclosure of pecuniary interests. It stated that it had, therefore, already answered parts of the request being considered in this notice in its response to the previous request. The Council said it had sent the Commissioner the outcome of the internal review for the previous request as evidence, but the Commissioner notes this was not attached to the Council's correspondence.
26. The Council did not provide any further submissions.

The complainant's position

27. The complainant informed the Commissioner that the request sought information relating to her belief that the Mayor failed to register a disclosable pecuniary interest within 28 days of being elected. Specifically she alleged that the Mayor failed to register his wife's

employment with a local estate agent. She stated that this was a possible breach of both the Councillor Code of Conduct and section 30 of the Localism Act 2011. The complainant argued that there was a legitimate interest in holders of public office being held to account publicly for their conduct.

28. The complainant told the Commissioner that she believed the real reason the Council refused her request was because it would reveal *“the possibility of the Mayor having committed a crime and then to have sought to have covered it up by the alteration of documents.”*
29. In her request for an internal review, the complainant disputed the Council’s argument that she had previously submitted a similar request in 2018. She stated that the request she made in 2018 *“concerned the Mayor not noting in his register of interests his directorships of various Energy Coast Companies”*. She explained that this was not a disclosable pecuniary interest and was, therefore, a separate matter.

The Commissioner’s decision

30. The Commissioner considered both the complainant and the Council’s arguments in order to reach her decision. However, as referred to earlier in this notice, the Council’s representations in this case were very brief.
31. The Commissioner recognises that in some cases it will be obvious that a request is vexatious. However, in many cases the question of whether section 14(1) applies is likely to be less clear-cut. In such cases, the public authority will usually need to weigh the evidence about the impact on the authority against the purpose and value of the request. Often, the wider circumstances surrounding the request will also be a major factor in determining whether the request is vexatious.
32. In its initial response, the Council stated that it did not regard the request to be vexatious when considered in isolation. Instead, it argued that when considered alongside the context and history of the requester’s communications with the Council the request was clearly vexatious. The Council’s initial response stated that the complainant had made derogatory references about the Council and its staff. However, the Council did not provide any evidence to support either of these assertions, such as a log of correspondence or requests, or examples of particular correspondence.
33. The Commissioner’s guidance specifies what she expects from a public authority when investigating whether or not a request is vexatious. The guidance explains that when building a case to support its position a public authority must bear in mind that the Commissioner will primarily

be looking for evidence that the request would have an unjustified or disproportionate effect on the authority.

34. The Commissioner does not consider that the Council has outlined the detrimental impact of complying with the request. Furthermore, it has not explained why any impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value.
35. The supporting evidence the Council provided in this case was two letters, both of which the Council sent to the complainant after it had already refused the request. The Commissioner considers that public authorities may take into account any evidence it has about events and correspondence which led up to the request being made. It may also take into consideration anything that happens within the period during which it is dealing with the request. However, anything that happens after this cut off point will not usually be relevant. Therefore, these letters cannot be considered as evidence to support the Council's decision to refuse this request on the grounds that it is vexatious.
36. The only other factor the Council raised for the Commissioner to consider was the previous related request the complainant made in 2018. While the previous request asked for information on a similar matter regarding the Mayor, the Commissioner does not consider that this is substantial evidence to support the Council's application of section 14(1) to the request in this case.
37. For the reasons set out above the Commissioner has concluded that the Council has failed to provide sufficient evidence or arguments to support its assertion that the request in this case was vexatious.
38. The Commissioner's decision is that the Council was not entitled to rely upon section 14(1) of the FOIA to refuse to comply with this request. At paragraph three above, the Council is now required to issue a fresh response to this request.

Right of appeal

39. 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

40. 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.
41. 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
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