

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 April 2021

Public Authority: Oldham Metropolitan Borough Council
Address: Civic Centre
West Street
Oldham
OL1 1UT

Decision (including any steps ordered)

1. The complainant has submitted six items of correspondence (each containing multiple information requests) relating to various subject matters including child sexual exploitation, officers' registers of interest, the sale of public land, and General Election voting. Oldham Council ("the Council") refused to comply with the information requests under section 14(1).
2. The Commissioner's decision is that the Council is entitled to apply section 14(1). However, the Council breached section 17 by failing to issue a refusal notice within the time for compliance.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. Between 13 October 2019 and 27 January 2020, the complainant submitted six items of correspondence, each containing multiple information requests. The full text of the six items of correspondence can be found in Appendix A.
5. The Council responded on 24 July 2020. It refused to comply with the information requests under section 14(1).

Scope of the case

6. The complainant contacted the Commissioner to complain about the way their requests for information had been handled, and specifically that the Council was not entitled to apply section 14(1).
7. The Commissioner considers the scope of the case to be whether the Council is entitled to apply section 14(1) to the information requests.

Reasons for decision

Section 14(1) – Vexatious requests

8. 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.

9. The Commissioner has published guidance on vexatious requests¹. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are

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

vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation, or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requestor when this is relevant.

The complainant's position

10. The complainant has informed the Commissioner that he considers the requests to seek information in the public interest, and that this is particularly so in relation to those requests relating to child sexual exploitation, to which he considers the Council has attempted to subdue or hide related information.
11. The complainant is concerned that he has been subject to false claims by the Council, and that other members of the public have likewise been subject to false claims. The complainant also alleges that the Council has contacted the employers of those members of the public, to discredit them and adversely affect their employment.

The Council's position

12. The Council considers that the requests represent an ongoing pattern whereby requests are made to raise the profile of the complainant's various allegations of bias and corruption against council officers and councillors. These allegations have been contained in correspondence with the Council, and publicly on social media platforms such as Twitter, Patreon, and on the complainant's own website. The Council further considers that, on these platforms, the complainant has evidenced an ongoing grudge against the Labour Party, councillors, and the trustees of Oldham Central Mosque.
13. The Council has referred the Commissioner to the previous requests made by the complainant on [whatdotheyknow.com](https://www.whatdotheyknow.com), and specifically those made on 18 May 2019², 18 May 2019³, 5 July 2019⁴, and the

² https://www.whatdotheyknow.com/request/arooj_shah_deputy_leader_of_oldh

³ https://www.whatdotheyknow.com/request/sale_of_land_to_oldham_central_m

⁴ https://www.whatdotheyknow.com/request/ongoing_relationship_between_old

subsequent generation of further requests and correspondence following the Council providing responses under the FOIA. The Council considers that compliance with the requests refused under section 14 would generate further such requests and correspondence.

14. The Council has also referred the Commissioner to specific actions (including a Greater Manchester commissioned 'Independent Review') that it has taken in response to historic failings by the Council in respect of safeguarding duties and child sexual exploitation. The Council has explained that whilst the Independent Review has attempted to engage with the complainant in respect of specific allegations that he has made (and evidence that he claims to hold), it has struggled to gain engagement. The Council asserts that it is committed to supporting the Independent Review, and that this was a factor in its decision to not apply section 14(1) at an earlier stage to the requests as they were being submitted.

The Commissioner's analysis

15. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be 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 judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. 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.
16. 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 responding to 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.

The purpose and value of the requests

17. The Commissioner has reviewed the 6 items of correspondence in the context of the complainant's and Council's submissions and recognises that the requests seek information (or answers) relating to a variety of concerns relating to either the Council, or specific individuals who the complainant directly names – and appears to make allegations against -

within the correspondence (specifically Correspondence 1, 2, 4, and 5). The Commissioner recognises that these concerns are likely to relate to matters of public interest, and that it is important that such matters are subject to appropriate transparency by public authorities.

18. However, the Commissioner also recognises that the phrasing and content of the requests are likely to cause significant difficulties for the Council to issue responses under the terms of the FOIA. For example, a significant amount of the individual requests do not clearly seek recorded information that may be held by the Council, but rather, ask the Council to provide statements that confirm either the complainant's understanding of a subject, or whether a certain event has occurred.
19. The Commissioner considers that by requesting statements in response to highly specific questions, a significant amount of the requests do not clearly request recorded information.
20. It is also reasonable for the Commissioner to consider that the complainant is likely to have a range of appropriate avenues by which he can raise his concerns. Such avenues may include the Local Government and Social Care Ombudsman, the police, or the Courts.

The burden upon the Council

21. The Commissioner recognises that compliance with any information request will, as a matter of course, require an authority to expend resources, and there is an inherent public interest that an authority does so to facilitate access to official information under the terms of the FOIA.
22. However, in this case the Commissioner considers that the requests would require substantial engagement by the Council to fulfil. This is because a significant amount of the requests do not, in the Commissioner's view, represent clear requests for recorded information, but rather ask the Council to provide statements. To consider whether such requests could be responded to under the terms of the FOIA, the Commissioner considers it likely that the Council would need to provide extensive advice and assistance to the complainant (under the duty imposed by section 16) to clarify what, if any, recorded information is sought.
23. In conjunction with the above, the Commissioner also considers that the provision of responses under the FOIA would be highly likely to generate further requests and related correspondence, which would of necessity, require further public resources to be expended.
24. It is also recognised by the Commissioner that the complainant has chosen to submit multiple requests in a single day (with three of the items of correspondence being submitted to the Council on 17 December

2019). It is reasonable for the Commissioner to interpret this action as having been taken to knowingly place a burden upon the Council.

Conclusion

25. In the circumstances of this case, the Commissioner understands that the requests have been made in relation to a range of concerns held by the complainant, and the Commissioner acknowledges that it is important that the actions of public authorities are subject to appropriate transparency and openness.
26. However, the evidence available to the Commissioner indicates that the complainant is failing to use the rights provided by the FOIA responsibly. The phrasing and content of the correspondence suggests that the intent of the requests is not simply to seek access to official information, but to raise and pursue various allegations in a public manner.
27. The Commissioner emphasises that the purpose of the FOIA is to provide a public access regime to official information; should a requestor hold concerns about the actions undertaken by a public authority, this should be escalated through the proper processes, e.g. the authority's complaints process or the appropriate review body.
28. Having considered the purpose and value of the requests, the Commissioner is also not satisfied that the burden placed upon the Council – in attempting to comply with its duties under the FOIA – would be justified.
29. Lastly, the Commissioner recognises that the Council has handled the requests poorly; only providing a substantive response in July 2020 following the ICO requesting it do so. However, having considered the context of the requests, she does not consider that this significantly lessens the case for the Council's application of section 14(1).
30. Having considered these factors, the Commissioner has concluded that the Council is entitled to apply section 14(1) to the requests.

Section 17 – Refusal of request

31. Section 17 specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
32. In this case, the Council did not seek to rely upon section 14(1) until outside of 20 working days. As such, the Council breached section 17.

Right of appeal

33. 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

34. 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.
35. 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
Head of FoI Casework and Appeals
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix A

36. On 13 October 2019, the complainant submitted Correspondence 1:

1. You claim that [redacted name]'s declaration was updated on the 30th April 2019. You are fully aware that this was during purdah. Please provide me with both OMBC guidelines for publishing during purdah and also OMBC policy for purdah.

2. You refuse to answer my questions regarding [redacted name]. You confirm I asked the following.

*- Did [redacted name] do this with the authority of Oldham Council?
- Was this an official response from Oldham Council or had [redacted name] hijacked the Council log in details and used them for her own ends?*

3. You are by now no doubt aware that having allegedly made her declaration of Directorship of GELATO's ICE LOUNGE to Oldham Council on 30th April 2019, Deputy Leader of Oldham Council, Cllr [redacted name], has now amended records at Companies House and backdated her resignation there to 1st February 2018. Can you confirm that you have investigated this anomaly and/or referred the matter to the Police for fraud?

17. On 12 November 2019, the complainant submitted Correspondence 2:

On the 5th June 2019, Oldham Council's Planning Committee approved 'Land to east of Alexandra Centre Retail Park' to be approved for a proposed soccer centre. The application was made by FIRST CHOICE PROPERTY INVESTMENTS. The applicant [redacted name] even attended the planning meeting and addressed the Committee. There are no notes from the minutes of the Committee that declare that [redacted name] as either Cllr [redacted name]'s brother or business partner.

A previous FOI has gleamed some information on the sale of this land to Cllr [redacted name]'s brother and Business Partner.

Can Oldham Council please now confirm

1. When planning was approved, was the Council aware that [redacted name] was brother and business partner of Cllr [redacted name]?

2. When the land was sold to FIRST CHOICE PROPERTY INVESTMENTS, was the Council aware that the Director of the company, [redacted name], was brother and business partner of Cllr [redacted name]?

3. *Was Cllr [redacted name] in any way involved in the sale of the land or the approval of planning permission?*
 4. *You claim that a total of 6 bids were received. Can you confirm if the 6 bids were from 6 different sources? If not how many multiple bids were there from the same sources?*
 5. *Can you confirm that FIRST CHOICE PROPERTY INVESTMENTS submitted the highest bid?*
 6. *Can you confirm that FIRST CHOICE PROPERTY INVESTMENTS bid was received before the advertised deadline?*
 7. *Can you confirm that due diligence was carried out with FIRST CHOICE PROPERTY INVESTMENTS to confirm that they had proof of funds to purchase the land and also to develop it as per their proposals?*
 8. *Can you confirm how market value was determined for the land and what this market value was?*
 9. *Can you confirm the amount of the successful bid? If not, because you are still in negotiations etc, can you confirm if the accepted bid was above or below the market value that the Council had determined prior to placing the land on the market?*
 10. *Can you confirm if there have been any complaints received regarding the sale of this land from party's that for instance claim that they submitted a bid that was subsequently lost?*
 11. *Can you confirm if Oldham Council has sold any other plots and/or buildings to any company associated with [redacted name]? If so please provide the details.*
18. On 17 December 2019, the complainant submitted Correspondence 3:
- At the General Election Count, Oldham Council split the votes cast in to 18 tables. Each table clustered various areas. Could you please confirm*
- *how this clustering was determined (was it by ward or some other method) and the name, if any you gave to each of these 18 clusters*
 - *the total verified number of votes per table*
 - *the total number of votes per table that were cast in the ballot box*
 - *the total number of votes per table that were cast by postal vote or all other means*
 - *a breakdown per candidate, per table, the number of votes each received by ballot box*

- a breakdown per candidate, per table, the number of votes each candidate received by postal vote or all other means

19. On 17 December 2019, the complainant submitted Correspondence 4:

[redacted name] represented Shaw Ward for 25 years before resigning on the 9th December 2017.

- Please confirm if Oldham Council was aware of any investigation in to Cllr [redacted name] prior to his resignation. I don't need the details, just a simple yes or no please

- Please confirm if Cllr [redacted name]'s Council laptop and other digital devices were removed from him prior to his resignation. If they were by who.

- Please confirm if Oldham Council issued any statement to the public regarding Cllr [redacted name]'s resignation

- Please confirm if Oldham Council undertook any reviews, checks or investigations of any kind following Cllr [redacted name]'s resignations and if so what these were.

20. On 17 December 2019, the complainant submitted Correspondence 5:

Alarmed Oldham parents first found out that [redacted name] was convicted for sexually assaulting children after reading newspaper reports. Though his convictions were associated to a school outside Oldham, they read horrified over how this paedophile primary school teacher had called girls 'darling' and 'sweetheart' before sexually assaulting them inside classrooms and the school canteen.

Unfortunately, since the newspaper reports, evidence has emerged that [redacted name] taught in at least one school in Oldham, South Failsworth Primary. As an agency worker, the likelihood is that he also worked in other Oldham schools.

Please provide details of

- all Oldham Schools in which this paedophile worked directly and/or through an agency

- the dates that he worked in each school

Please also confirm details of what, if any, investigations have taken place in these schools to determine if [redacted name] also abused children whilst he was there.

20. On 27 January 2020, the complainant submitted Correspondence 6:

I request the following information regarding Oldham Council's expenditure specifically with the following publications

- *The Oldham Evening Chronicle*
- *The Oldham Times*

I request this expenditure is broken down as follows

- *During the period that [redacted name] was Leader of Oldham Council, what was the year on year spend with each of these publications and the total amount spent whilst he was leader?*

- *During the period that [redacted name] was Leader of Oldham Council, what was the year on year spend with each of these publications and the total amount spent whilst she was leader?*

- *During the period that [redacted name] has been Leader of Oldham Council, what was the year on year spend with each of these publications and the total amount spent whilst he was leader?*

- *Please also confirm the details of staff that you have recruited from either publication on a freelance or permanent position in to the Council. Specifically, times and dates of appointments and also for freelance/consultancy roles, the amount spent on each occasion.*