

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2024

Public Authority: Westminster City Council
Address: Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Decision (including any steps ordered)

1. The complainant has requested information from Westminster City Council (the Council), regarding the decision to merge with other councils and the decision to end that agreement. The Council provided some of the requested information, signposted that some information was available publicly via section 21 of FOIA and refused the remainder of the request under section 14 (vexatious request) of FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 14(1) to refuse the request.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 11 August 2023, the complainant wrote to the Council and requested information in the following terms:

"1. When and by what power was there a merging or collaborative arrangement between the Council and the Royal Borough of Kensington and Chelsea in relation to the Council's Gazetteer Custodian;

2. Were there similar arrangements in respect of any other Council departments ;

3. When did those arrangements cease ; and

4. Please provide all relevant documentation"

5. The Council responded on 11 September 2023. It provided some information within the scope of the request and advised that the remaining information was in the public domain and therefore exempt under section 21.
6. Following an internal review the Council wrote to the complainant on 11 October 2023. It maintained its original application, but advised that it was now also relying on section 12.

Scope of the case

7. The complainant contacted the Commissioner on 18 October 2023 to complain about the way their request for information had been handled.
8. During the Commissioner's investigation, the Council explained that it was now seeking to rely on section 14 for question 4 of the request as it imposes a grossly oppressive burden on the Council. If one part of a request triggers section 14 then it will cover the entirety of the request.
9. The Commissioner therefore considers that the scope of his investigation is to determine whether the Council was entitled to rely on section 14 to refuse the remainder of the request.

Reasons for decision

Section 14(1) of the FOIA – vexatious requests

10. Section 1(1) of FOIA requires a public authority to confirm whether or not requested information is held, and to provide a copy of that information to the requestor where no exemptions are applicable.
11. Section 14(1) of the FOIA states that a public authority does not have to comply with the requirements of section 1(1) where a request for information is vexatious.
12. 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 vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013) ("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 clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the value

and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it.

The Council's View

14. The Council advised the Commissioner that the complainant has made 22 requests for information within the last 15 months. The Council stated that this demonstrates the burden placed on it by this one complainant, along with numerous follow up emails.
15. The Council explained that most of the requests made by the complainant relate to the decision to renumber/name Cottesloe House / Jerome Crescent. The Council stated that two of the requests relate to the Gazetteer custodian role, which participated in the naming / numbering process. This request falls into the latter category.
16. The Council informed the Commissioner that to provide the complainant with "all relevant documentation" that relates to merging or collaborative arrangements between Royal Borough of Kensington and Chelsea in respect of the Gazetteer Custodian, similar arrangements with other council departments, and the ceasing of those arrangements, would impose a significant burden on the Council and its staff.
17. For the Council to locate any information regarding "similar arrangements" it would be required to look through a period of 13 years' worth of activities.
18. It explained that this is due to the Council entered into a Tri-Borough Shared Service arrangement with the Royal Borough of Kensington and Chelsea and the London Borough of Hammersmith in 2010. This arrangement ceased in 2017/2018 following a withdrawal from the London Borough of Hammersmith. The remaining two Councils continued in a Bi-Borough shared service agreement, until 2022 when the IT shared service agreement ended and the IT function disaggregated and reverted to sovereign boroughs.
19. The Council has considered that as the request asks for "all relevant documentation", this could amount to a vast range of information. It provided the following examples of information which would likely be retrieved and require reviewing: legal documents, Governance documents (such as briefing papers for decision makers), restructure information for several departments, structure charts / operating models (current and proposed), job descriptions and evaluations, consultation documents (reports and responses) and process mapping, including off-boarding and on-boarding for affected services.
20. The Council informed the Commissioner that, whilst specific information may be held by the Council's Legal and HR departments, officers from

each department could potentially hold documentation relating to restructures and/or service delivery. This would require a large number of officers from each service area to undertake searches for any information within the scope of the request.

21. The Council explained that it would also be required to locate all the relevant Council structures dating back to 2010 in order to identify how many teams were affected by the former structures back to 2010.
22. The Council stated that documentation would not be held in one database, rather it would comprise of documents, meeting notes, emails and other items, which would be held across the council's network. The Council added that due to the age of some of the requested information, relevant officers who would know the best search terms to use are no longer employed by the Council and are therefore unavailable to consult with.
23. The Council advised that even if it did undertake the proposed work, any information located would need to be reviewed and some would still be exempt from disclosure. It explained that any legal documents would be exempt under sections 41 and 42. The Council added that some of the requested information may also include commercial interests and therefore be exempt under section 43. Some information may contain personal information, which would be exempt under section 40.
24. In its previous submissions to the Commissioner, the Council advised that one officer in one of the affected departments conducted a sampling exercise and explained it took 3 hours to locate information relating to the 2022 IT disaggregation only. This search located 30 emails and 122 files relating to the IT restructure.
25. The Council advised that there were 7 teams who would need to undertake searches for the requested information and further information may be stored elsewhere by the Council.
26. The Council concluded its argument by stating that the request imposes a disproportionate burden on staff, and would divert resources across several teams within a number of departments. To comply with the request would lead to the Council being distracted from the provision of its services.

The Commissioner's decision

27. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.

28. In considering this case, the Commissioner has taken into account the Council's submissions and his own guidance. He recognises that section 14(1) may apply if a significant burden is imposed on a public authority for which it cannot claim section 12 (cost of compliance) of FOIA.
29. The Commissioner acknowledges that a search requiring the Council to review over 13 years' worth of information would impose a significant burden on the Council. The Council demonstrated that it took just one member of staff over three hours to locate information within scope of a very small element of the request and in order to comply with the request, in total, it would need staff from multiple departments to be consulted and to determine whether they hold any information within the scope of the request.
30. When considering a burdensome request, the Commissioner is required to consider both the burden involved and the public value of the information being requested. The Commissioner considers that in the circumstances of this case and the request in question, there is a genuine motive from the complainant in trying to access this information and a genuine public interest in disclosure of the requested information. This is because it relates to the decision to merge Council responsibilities and the decision to end of such agreements. The Commissioner recognises that these decisions would have had an impact on the residents within the areas in question.
31. However, having reviewed the Council's submissions the Commissioner does not consider that the public value in the requested information would be significant enough to override the large amount of work the Council would be required to undertake. The request is extremely broad in scope and the Council would be required to spend significant time searching for and collating information. The necessity of having to carry out redactions for elements of the information which are exempt under various sections of FOIA would also represent an extremely large burden in terms of time. The Council has therefore demonstrated to the Commissioner that compliance would cause a grossly oppressive burden and the request is exempt under section 14(1) of FOIA. As the request is exempt under section 14, the Commissioner has not gone on to consider section 21.

Right of appeal

32. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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