

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2024

Public Authority: Lydd Town Council
Address: Guild Hall
13 High Street
Lydd
TN29 9AF

Decision (including any steps ordered)

1. The complainant has requested information mentioned in Lydd Town Council's (the Council) meeting minutes.
2. The Council did not provide a response to the complainant's request, relying on section 17(6) of FOIA.
3. The Commissioner's decision is that the Council was entitled to rely on section 17(6) in this case.
4. The Commissioner does not require any further steps to be taken.

Request and response

5. On 12 March 2024, the complainant wrote to the Council and requested information in the following terms:

"The Lydd Town Council meeting minutes (dated 3rd September 2023) states the feasibility study is based around these four aims.

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| Item 1 | Discuss the Crime Statistics in Lydd v Kent County |
| Item 2 | Explore the need for CCTV in Lydd. |
| Item 3 | The responsibilities of the businesses and residents for security within the parish. |
| Item 4 | The cost of installing CCTV in the parish of Lydd. |

This request is for copies of your actual feasibility study documents that we the community funded that underpin the above aims:

Item 1 – Quote: The crime statistics had been examined and whilst the number of violence and sexual crimes seemed high the reports showed these were linked to domestic violence.

Request 1.1 – Please provide your Crime Statistic Report

Item 2 – Quote: Lydd has a 30% lower national average of crime rates and is considerably lower than Folkestone down to the Rype would need 7 cameras and 5 relays for the signal to reach the server and be sent out to the monitored system.

#Request 2.1 - Please provide your stated comparison document between Lydd and Folkestone

#Request 2.2 – Please provide your coverage plan/list for the 7 cameras and 5 relays...

Item 4 - Quote: This would come at a starting cost of £230,000 taking into account the groundworks and unit costs with a further annual cost to the monitoring company. To cover the parish as a whole would move into several millions of pounds.

#Request 4.1 – Please provide your financial breakdown of £230k starting cost and annual monitoring company costs.

Request 4.2 – Please provide detail of your statement quoting for several million pounds.”

6. The Council did not respond to the request.

Scope of the case

7. The complainant contacted the Commissioner on 18 June 2024 to complain about the Council’s failure to respond to the above request.
8. In line with his usual practice, the Commissioner contacted the Council on 18 June 2024 in relation to its apparent failure to respond to the request.
9. The Council responded on 4 July 2024, and the Commissioner has interpreted this response as the Council’s intention to rely on section 17(6) for the request.

10. The Commissioner therefore considers that the scope of his investigation in this case is to decide whether, at the time of the response, the Council was able to rely on section 17(6) of FOIA to refuse to provide a response to the request for information.

Reasons for decision

Sections 17(5) and 17(6)

11. Section 17(5) of FOIA requires a public authority that wishes to refuse a request as vexatious to issue a refusal notice, stating that fact within 20 working days.
12. However, section 17(6) of FOIA contains an exception to this rule. It states:

“Subsection 17(5) does not apply where

 - a) the public authority is relying on a claim that section 14 applies,
 - b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request”.

The Complainant's view

13. The complainant advised the Commissioner that the Council was relying on letters sent to the complainant back in September and October 2021, which refused to deal with future requests. The complainant stated that the ICO had previously allowed the Council to refuse the complainants requests using these letters.
14. The complainant referred to the Commissioner's guidance which states the following:

“You cannot refuse a request from the same requester just because it is for information on a related topic.”
15. The complainant also referred to some advice provided by the ICO during a previous case, which explained that a public authority cannot place blanket ban on an individual from making future requests under FOIA.

The Council's view

16. The Council pointed the Commissioner to his many previous decisions about this particular complainant and the decisions of the First-tier Tribunal (FTT) which had found previous requests to be vexatious. It argued that to provide further submissions would defeat the purpose of applying section 17(6) in the first place.

The Commissioner's decision

17. The Commissioner accepts that section 17(6) exists to give public authorities some form of protection against those who continue to make information requests.
18. He is conscious that section 17(6) is not, and should not, be used as a 'blanket ban' on an individual exercising their rights under FOIA. Nevertheless, where a request exhibits the same features that caused a previous request to be refused as vexatious, it is likely that that request will also be vexatious.
19. It is useful to first provide some background information to assist with the understanding of this case. The complainant in this case has made a number of requests to the Council previously, the Commissioner found that the Council was entitled to rely on section 14(1) to refuse these requests and a FTT decision from 16 May 2023 ([2023] UKFTT 00419 (GRC)) found that the complainant was making such requests, in an attempt to check and challenge the Council's decision making process.
20. The FTT recognised that the Council has previously dealt with "undoubtedly burdensome requests with some patience, diligence and courtesy culminating in the decision to rely on [section] 14(1) FOIA"
21. The FTT advised that "the Council, as a local democratic body, has a number of statutory procedures and processes governing its decision-making functions, including holding meetings in open forum and taking questions from members of the public (examples of minutes were provided to us, which has stated that the requester attends each meeting, and his questions are answered at the meetings). It is not reasonable for the Council to be under a constant obligation to continually prove in response to requests that everything it says and does is lawful and above board otherwise it could be constantly overburdened, and the costs would be disproportionate."
22. The FTT also explained that "On examination of the exchanges and evidence...before us we are satisfied that the staff at the Council who were required to deal with this request were caused harassment and distress to an unacceptable degree."

23. The Commissioner notes that there has been a more recent FTT decision ([2024] UKFTT 00471 (GRC)), which found that the complainant has continued to make vexatious requests to another public authority. This demonstrates to the Commissioner that the complainant is continuing to make vexatious requests to other public authorities alongside the Council.
24. The Commissioner is satisfied that the present request is simply a continuation of the same pattern of behaviour that caused the complainant's previous requests to be refused as vexatious. Requiring the Council to issue a fresh refusal notice, even if only to refuse the request as vexatious once again, would create yet more work for the Council and further waste its resources.
25. The Commissioner is therefore satisfied that the Council was entitled to rely on section 17(6) as it would have been unreasonable to expect it to issue a fresh refusal notice in the circumstances.

Right of appeal

26. 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

27. 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.
28. 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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