

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 September 2024

Public Authority: London Borough of Hillingdon
Address: 3E/04 Civic Centre
High Street
Uxbridge
UB8 1UW

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Hillingdon (the Council) relating to a definition of anti-social behaviour used by the Council. The Council deemed the request vexatious under section 14(1) of FOIA, and refused to provide a further response to the complainant, relying on section 17(6) as the basis for doing so.
2. The Commissioner's decision is that the request was vexatious under section 14(1), and that the Council was entitled to rely on section 17(6) of FOIA to decline to issue a further refusal notice.
3. As a result, the Commissioner does not require the Council to take any steps in relation to this complaint.

Request and response

4. On 4 October 2023, the complainant wrote to the Council, specifically the Hillingdon Community Multi-Agency Risk Assessment Conference (MARAC) and requested the following information:

"Please will you clarify and confirm what definition of anti social behaviour is used by Hillingdon Council when determining whether to serve a community protection notice warning letter?"

The definition of anti social behaviour set out on the Council's website is: "behaviour which either deliberately or due to negligence causes a nuisance to other people and unreasonably interferes with people's rights to use and enjoy their homes and community."

Please can an explanation be offered as to why the Council definition of Anti Social Behaviour differs from that set out in the Crime Act 2014 and for what purposes the Council definition is used?

How is it made clear to the ASB officers serving the CPN warning letters, what definition they should be using and the evidential thresholds for treating anti [sic] social behaviour as a criminal offence rather than for example, inconvenient conduct/behaviour?

It has been suggested that there are no training handouts or documents that ASB officers can use as part of their decision making processes prior to serving CPN Warning Letters? If this is true, this suggests that the ASB officers receive no training? Please clarify the details of the training that is delivered by Hillingdon Council to ASB officers prior to them serving CPN warning letters?

The reason for this request is in preparation for the roll out of the Governments ASB initiatives in 2024. The Govt initiative/plan heavily focuses on punitive measures to address anti-social behaviour for example, "immediate justice."

It is reasonable to request evidence of the current practices and guidance. The CPN warning letter is the stage where the local authority advises the person receiving the letter, for the first time, that he/she has committed the criminal offence of anti social behaviour."

5. The Council acknowledged receipt of the request for information and told the complainant that it would respond by 1 November 2023.
6. The Council wrote to the complainant on 1 November 2023. It informed him that the Council would not be responding to any further requests concerning Community Protection Warning Notice (CPWN) letters.
7. On 20 November 2023 the complainant made a request for an internal review on the basis of not receiving a response to his original request.

Scope of the case

8. Following the lack of response from the Council, the complainant contacted the Commissioner on 14 February 2024 to complain about the way his request for information had been handled. Specifically, the

complainant alleged that the Council had failed in its duty under the FOIA legislation to provide information he asked for as well as not conducting an internal review.

9. The Commissioner contacted the Council on 5 March 2024. He asked the Council to either provide a substantive response to the complainant or, confirm that a response to the request had already been sent and provide him with a copy of that response. The Council responded to the Commissioner on 20 March 2024 but did not send any further response to the complainant.
10. The Council provided the Commissioner with background information surrounding the case, detailing communication between the Council and the complainant. The Council also provided copies of letters it had previously sent to the complainant, informing him about Council's refusal notice relating to previous relevant requests citing section 14. The Council provided a copy of the letter sent to the complainant on 1 November 2023 which cited section 14(6) in respect of his request dated 4 October 2023. (The Council later clarified that this was an error and it had sought to cite section 17(6) of FOIA).
11. The Commissioner considers that there are two distinct but related questions that he must address, namely whether the request of 4 October 2023 was vexatious (section 14(1) of FOIA) and, if so, whether it would have been unreasonable in the circumstances to have expected the Council to have issued a refusal notice (section 17(6) of FOIA).

Reasons for decision

Section 14 – Vexatious requests

12. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
13. The word "vexatious" is not defined in FOIA. However, as the Commissioner's guidance on section 14(1)¹ states, the provision is designed to protect public authorities by allowing them to refuse requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

14. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, or disruptive, or which have a disproportionate impact on a public authority. The Commissioner's guidance on what may typify a vexatious request stresses that it is always the request itself, and not the requester, which is vexatious. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.
15. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal ('UT') in the leading case on section 14(1), Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield").² The Court of Appeal subsequently upheld the decision, supporting the UT's general guidance, and establishing the Commissioner's approach.
16. The four broad themes considered by the UT in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
17. However, the UT emphasised that these four broad themes are not a checklist, and are not 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).
18. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. The Commissioner therefore considers that the key question to consider is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, whether a reasonable person would think that the purpose and value of the request are enough to justify the impact on the public authority.

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

19. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the Council in this case, together with the frequency and overlapping nature of the complainant's requests.

The complainant's position

20. To dispute the Council's decision about the vexatious nature of his request, the complainant contended that:

"The I.C.O. have advised me that they will be accepting the case for investigation without an Internal Review to avoid further delays, their reference IC-288427-D8T5, your reference FOI 00114.

Please note that I wrote to you on 2 November 2023 requesting that you clarify whether Hillingdon Council's grounds for a refusal notice was section 14 (6) of the FOIA or section 17 (6). See forwarded email to you. I have had to wait until today's letter from the I.C.O. to receive clarification that "the Council have advised (the I.C.O. but not the applicant) that it should have in fact cited section 17 (6) of FOIA."

It is an example of despicable and unacceptable behaviour that you should try to avoid providing a full and honest answer to FOI 00114 by seeking to label me a Restricted Person or Vexatious, without having completed the prescribed due process for labelling me as such.

The matter in question is neither trivial nor vexatious. If you had previously provided a full and honest answer to FOI 00114 then MARAC would have simply answered my question in October 2023 with the necessary evidence of the training delivered to Anti Social Behaviour officers, or alternatively you could simply copy and paste the details that you claim to have provided in some earlier communication.

Unless the Council can provide evidence to the contrary, on a balance of probability assessment of the evidence previously presented, Hillingdon Council have acted ultra vires in substituting their own definition of the crime of Anti Social Behaviour for that contained in the Crime Act 2014.

Hillingdon Council's definition of anti social behaviour is purposely vague, and full of gray areas, that provide the Council's ASB officers with wide latitude to potentially prosecute anyone.

This will be of particular concern if the Council's vague definition of an ASB crime is used, instead of the Crime Act 2014 statutory definition,

to impose the penalties of "immediate justice" and "payback" on vulnerable members of the public.

Please get on with providing a full and honest answer to FOI 00114 instead of wasting public sector resources in labelling me a Restricted/Vexatious Person for simply highlighting the problem."

The Council's position

21. In its submissions to the Commissioner of 20 March 2024 the Council provided information about actions taken relevant to this particular complaint. This included copies of letters it sent to the complainant on 25 August 2023 citing section 14, and on 1 November 2023 citing section 17(6) as a basis for not issuing a further refusal notice.
22. The Council also provided further background information, which it believed was relevant to this complaint and provided justification for the Council's reliance on section 17(6).
23. The Council explained that some six weeks prior to receiving the complainant's request of 4 October 2023, it had conducted an internal review into six other requests for information from the complainant. These requests also concerned a definition of 'anti-social behaviour' used by the Council, and were all considered vexatious by the Council. The Council provided a copy of the internal review letter that it had issued to the complainant on 25 August 2023.
24. In this letter the Council confirmed to the complainant that it was relying on section 14 in response to the six requests for information, as well as requests for internal reviews.
25. The Council's position was that the complainant had repeatedly requested information stemming from the Council serving the complainant with a CPWN in 2019.
26. The Council pointed out to the complainant that the lengthy history of his correspondence with the Council and others about this notice were attempts to reopen a historic matter which had already been reviewed by statutory bodies. The Council said that the Local Government and Social Care Ombudsman had refused to consider the complainant's complaint on this matter. It added that the FOIA complaints related to this matter made to the ICO were not upheld either.
27. The Council argued that the long history and sheer volume of emails to the councillors, FOIA team and other officers about the same matter sought to harass officers into reopening this historic matter, or tried to generate information which may differ slightly so as to make further requests.

28. The Council concluded that given the history and the circumstances of the requests it considered further communication about the matter an unreasonable drain on the Council's limited resources and therefore refused the requests under section 14 of FOIA.
29. Finally, the Council informed the complainant that because he had been once again placed on the Council's Restricted Persons Register (RPR) his emails would not be responded to. The Council clarified that instructions were given to direct any future requests from the complainant to the legal team to assess whether any new requests were vexatious and so to use the resources appropriately as well as to protect the complainant's rights to information.
30. The Council stated that the complainant continued to submit correspondence. It advised the Commissioner that its letter of 1 November 2023 had referred to seven emails that had been received after 23 August 2023 and which referred to the same matter. The Council pointed out that the last email of 30 October 2023 was a request for a response in relation to the request already made on 4 October 2023, which was the subject of the current complaint to the ICO. The request also relates to the CPWN warning letters issued by the Council.
31. The Council then informed the complainant that, having reviewed all the correspondence, it would no longer respond to his emails, in reliance on section 17(6) of FOIA.³
32. In a letter to the Commissioner of 20 March 2024 the Council argued that there cannot be any value in repeated requests for information about the definition of antisocial behaviour that related to a matter which had also been exhaustively considered by independent statutory bodies and resolved almost five years ago. The Council further added that, as stated in the letter of 25 August 2023, it believed that:

(...) "by continuing to make requests about "definition" to different departments of the Council he [the complainant] seeks to generate a response that might differ from a previous response and so generate further requests for information."
33. The Council therefore argued that the evidence, i.e. letters to the complainant, referred to above and actions in response to the

³ In later correspondence to the Commissioner, the Council explained that it made an error where instead of citing section 17(6), it mistakenly cited section 14(6). This was explained in the correspondence to the complainant from the Commissioner.

complainant's communication demonstrate sufficient grounds for the Council's reliance on section 17(6).

34. The Council also referred the Commissioner to other complaints made to the ICO by the complainant, stemming from the same core matter. The Council pointed out that the ICO had not upheld any of these complaints.

The Commissioner's findings

35. In cases where a public authority is relying on section 14(1), it must demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA.
36. The Commissioner is mindful that both the Council and the complainant are fully aware of the background and history leading up to this request. The Commissioner carefully considered information available to him, including the Council's submissions and the complainant's grounds of complaint, into account in reaching his decision in this case.
37. The Commissioner acknowledges the context of the request and the complainant's sense of grievance over the CPWN he received from the Council in 2019. However, he is also conscious of the evidence provided by the Council that the complainant has made numerous requests for information about this matter.
38. He has also viewed the complainant's other cases submitted to the ICO to verify their relevance to the current complaint. However, the Commissioner wishes to emphasise that this decision notice is based on the evidence provided in this case.
39. Having been made aware of the background, history and context of this request, the Commissioner is satisfied that there is no wider benefit to the general public that would flow from the Council responding to the complainant's request of 4 October 2023. Whilst he acknowledges the complainant's position the Commissioner is satisfied that the matters which resulted in his request have been fully considered by the Council and they have not been substantiated by independent regulators. The complainant therefore appears to be attempting to 're-open' matters that have already been thoroughly considered, therefore diverting Council resources in the hope that he might find something to further his personal aims.
40. In summary, the Commissioner is satisfied that this request can be traced back to the complainant's underlying dispute with the Council, ie the CPWN issued to the complainant in 2019.

41. That matter has been responded to and it was made clear to the complainant on 25 August 2023 that further FOIA requests about his underlying case would be treated as vexatious.
42. Despite this, the complainant persisted in sending further communication to the Council about this matter. It seems therefore apparent that the complainant seems determined to continue to submit FOIA requests about his underlying case despite having been advised that they will be treated as vexatious and will not be responded to.
43. The Commissioner is satisfied that continuing to interpret and respond to the complainant's requests about his underlying case would constitute an oppressive burden, particularly given the frequency and the nature of those request, which the Commissioner deemed of no sufficient value to the public interest.
44. It is of note, however, that the Council explained to the complainant that, to avoid risk of refusing future legitimate requests and to protect his right to make requests for information from the Council, all his requests are directed to one person to evaluate them. Therefore the Commissioner accepts that the Council has taken reasonable steps to ensure that the complainant is not unfairly disadvantaged.
45. As part of his decision making, the Commissioner has balanced the grounds for the complainant's grievance and the impact of interfering with his right of access to information against the impact on the Council's resources if it was obliged to respond to the request.
46. He attaches significant weight to the Council's argument about the impact on its resources as a result of the pattern of the complainant's behaviour in this case. He also notices that the complainant's request is a mixture of requests for recorded information, and requests for explanation, the latter of which fall outside the scope of FOIA.
47. Based on the evidence provided in relation to this complaint as well as taking into account an historic background of the request, including a protracted and voluminous communication with various departments of the Council, the Commissioner is satisfied that the request of 4 October 2023 was vexatious and thus the Council was entitled to rely on section 14(1) of FOIA to refuse it.

Sections 17(5) and 17(6): refusal notice

48. 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.

49. However, section 17(6) of FOIA contains an exception to this rule. It states:

“Subsection (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”.

Was the Council obliged to issue a refusal notice?

50. As set out above, section 17(6) of FOIA allows a public authority to not issue a refusal notice where three conditions are met.

51. In relation to the first condition, the Council has relied upon a position that the request is vexatious. As explained above, the Commissioner is satisfied that the Council was justified in doing so.

52. The second condition has also been met as the Council had informed the complainant in its response to the request for an internal review letter of 25 August 2023 that his request, which preceded the complainant’s request of 4 October 2023, was vexatious in accordance with section 14(1) of FOIA. It advised the complainant that it would not issue a further refusal notice to any future FOIA requests associated with his underlying case related with the CPWN issue in accordance with section 17(6) of FOIA.

53. Finally, the Commissioner must consider whether the third condition was met, namely whether it would have been unreasonable in the circumstances to have issued a fresh refusal notice.

54. The First Tier Tribunal in *Scranage v Information Commissioner EA/2020/01534*⁴ cautioned against assuming that the mere passage of time would materially affect whether or not a public authority may continue to rely on section 17(6) of FOIA. The Tribunal noted that the

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2757/Scranage,%20Kevin%20\(EA.2020.0153\)%2029.01.21.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2757/Scranage,%20Kevin%20(EA.2020.0153)%2029.01.21.pdf)

purpose of this part of the legislation was designed to protect scarce public resources from individuals who repeatedly abuse their right of access.

55. The Commissioner notes that, despite the Council's explanation in the refusal notice that it will not respond further to the complainant , the complainant continues to send correspondence to the Council on the subject of his underlying case.
56. The Commissioner agrees that, in the circumstances, it would have been unreasonable to have expected the Council to have issued a further refusal notice. Refusing the earlier requests as vexatious had clearly not brought matters to a close and therefore the Council is entitled to draw a line in the sand.
57. Continuing to issue further refusal notices would, in the Commissioner's view, only serve to prolong the correspondence further whilst diverting the Council's staff away from their core functions. In other words, the time spent on responding would be a disproportionate use of the Council resources.
58. The Commissioner is therefore satisfied that the Council was entitled to rely on section 17(6) of FOIA in not issuing a refusal notice.

Right of appeal

59. 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

60. 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.
61. 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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