

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2024

Public Authority: Cheshire East Council
Address: Municipal Buildings
Earle Street
Crewe
Cheshire
CW12 2BJ

Decision (including any steps ordered)

1. The complainant requested information relating to Cheshire East Council's (the Council) constitution. The Council relied on section 14(1) of FOIA (vexatious requests) to refuse the request.
2. The Commissioner's decision is that the request was vexatious and therefore the Council was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps.

Request and response

4. On 6 February 2024, the complainant wrote to the Council and requested information in the following terms:

"In an email dated 19th January 2024 the Council's Interim Director Environment and Neighbourhoods informed me that 'It is clearly evident that the Council has resolved to have an Overview and Scrutiny Committee given that Council itself is the only body which is empowered to approve its Constitution'.

With reference to the FOIA would you please provide me with the following information:

1. A reference/location within the Council's Constitution where I can find a copy of the Council's Standing Orders.
2. A reference/location within the Council's Constitution where I can find a copy of the statement informing members of the public that the Council has resolved to change from a cabinet led system of governance, to a committee led system of governance - the mandatory statement required by the Council to affect the change.
3. The reference/location within the Council's Constitution where I can find a copy of the statement informing members of the public that the Council has resolved to have an Overview and Scrutiny Committee. i.e. the mandatory statement required under section 9JA of the Local Government Act 2000.
4. The date when the Council last reviewed its Constitution against the Local Government Act 2000.
5. Would you please provide a copy of the legislation being relied upon by the Council that overrides Article 10 of the ECHR and allows an individual's emails to be viewed, vetted and blocked and also to inform other Officers and Members of the individual's sanctions, with regard to the fact that Article 10 of the ECHR protects the individual's right to hold their own opinions and to express them freely without government interference. This includes the right to express their views aloud (for example through public protest and demonstrations) or through the internet and social media. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The Council's Policy 'Managing Unreasonable and Unreasonably Persistent Behaviour' states on page 5 that "previous emails and correspondence will be reviewed to identify, as far as is reasonably possible, all the recipients of such communications. Those identified will be notified of the measures which have been implemented. If it becomes apparent that the individual is contacting new recipients, these people will be made aware of the restrictions in place. The Head of Customer Services will be updated quarterly on the status of the register. The Audit & Governance Committee will be notified via the Annual Complaints Report about the number of special contact arrangements which have been put into place during the year. Once the restrictions have been lifted, those previously identified as recipients will be notified of this."

5. The Council responded on 1 March 2024, citing section 14(1) (vexatious requests) of FOIA to refuse the request.
6. Following an internal review, the Council upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 23 April 2024, complaining about the application of section 14(1) to their request and, that the Council is not publishing the information which it has a statutory duty to do under the Local Government Act 2000.
8. The Commissioner's role is to determine whether a request for information has been handled in accordance with FOIA. The Commissioner is not able to consider matters under other legislation for which he does not have authority, such as the Local Government Act 2000.
9. In light of the above, this decision notice, will address the Council's application of section 14(1) to the request.

Reasons for decision

Section 14(1) of FOIA – vexatious requests

10. This decision notice concerns section 14(1) of FOIA. Details of this section of FOIA and how it is applied in a decision notice can be found in the Commissioner's [decision notice support materials](#).

The complainant's view

11. The complainant has argued that a request is only vexatious if it has no reasonable foundation.
12. They went onto state that, in this case, their request has a reasonable foundation because it relates to how the Council undertakes its business.

The Council's view

13. Within its submission to the Commissioner, the Council provided background and context to the request. It explained that, by the date of this request, the complainant has been provided with detailed responses in regard to their questions on governance arrangements. These were provided either in response to previous information requests, or as part of other correspondence with the Council.

14. The Council explained that the request being considered here follows, and is related to, a long chain of requests and general correspondence. The complainant's correspondence on this matter has spanned several years, with the substantive subject matter being a complaint that the Council did not serve an abatement notice in relation to odour from a waste facility operated by ANSA Environmental Services in Middlewich (a Cheshire East wholly owned company) in 2020.
15. The Council acknowledges that the request in isolation would not be vexatious, nor would it place a significant burden on it. However, it considers it to be vexatious when viewed in the context of the aggregated burden of dealing with the multiple complaints, information requests and overall correspondence from the complainant.
16. Between July 2020, and the date of the request being considered here, 6 February 2024, the complainant submitted 18 FOIA or Environmental Information Regulations 2004 (EIR) requests. Twelve of these requests were submitted between 11 January 2023 and 6 February 2024.
17. The Council stated that the basis of much of the complainant's correspondence or requests is to reference points from responses to previous correspondence or requests which have already been fully addressed.
18. It believes that any response to this request would simply be re-referencing matters which have already been explained to the complainant, and that this would only restart the cycle of correspondence.
19. The Council explained that, within the complainant's correspondence, they have made allegations that the Council is acting unlawfully. These allegations include claims of misconduct and maladministration towards specific officers of the Council.
20. The Council states that the complainant continually contacts it via multiple routes and via multiple Council officers, explaining that these multiple lines of enquiry are across various departments, individuals or groups of Members. These contacts also include direct enquiries to the Council's supply chain partners. It argues that managing these multiple contacts from the complainant is becoming significantly disruptive to its day to day activities.
21. The Council added that the recipients of these continued enquiries include the officers who are the focus of the various accusations of misconduct. These accusations have, and continue to cause distress to those individuals.

22. The Council states that it does not believe that there is a serious purpose or value to the request. This is because it believes that the nature of the request has shifted away from genuine attempts to access information, to being used to vent frustrations and to force continued engagement by the Council on a matter that has been investigated and concluded.
23. The Council stated that the complainant's concerns about the substantive matter (explained at paragraph 14) have been exhaustively investigated and concluded by the Council. It confirmed that the matter has also been the subject of independent scrutiny by the Local Government and Social Care Ombudsman (LGSCO) and the Office of Environmental Protection. In both cases there was no requirement for the Council to take any further action.
24. The Council have stated that it believes that this is an example of "vexatiousness by drift", a concept previously acknowledged by the Commissioner. The Council acknowledges that, when considered in isolation, it is not obvious that this request is related to the odour complaint initially raised in 2020. However, it considers that this request is a further attempt by the complainant to get the Council's scrutiny committee to re-open and investigate the original complaint. As such, the Council considers that this is a clear continuation of correspondence on the same substantive matter.

The Commissioner's decision

25. The Commissioner is keen to stress that in every case, it is the request itself that is vexatious and not the individual who submits it.
26. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect of responding to the request on the Council.
27. While there is value in promoting transparency and openness in local government, no wider purpose to this request has been identified by the complainant.
28. The Commissioner notes that, in this case, the complainant is asking for information relating to the Council's constitution. Given that the constitution is available on line, and the Council's statement that they have already provided the complainant with detailed responses in regard to their questions on governance arrangements, this reduces any serious purpose and value of the request.

29. In the Commissioner's guidance on section 14(1) of FOIA, consideration of the background and history of the request can be taken into account. The Commissioner notes the length of time over which requests have been made, the number of repeated requests, and the amount of time the Council has already spent addressing the various requests and complaints from the complainant.
30. The Commissioner also notes that the requests and correspondence have shifted from specific matters relating to the odour complaint, to wider governance issues. The Commissioner accepts that the request which is the subject of this notice is linked to the significant body of correspondence and requests that the complainant has submitted to the Council since 2020 when they made an odour complaint. The Commissioner is satisfied that the Council has provided evidence of 'vexatiousness by drift'.
31. From the evidence available to him, the Commissioner considers that the Council has sought constructively to respond openly and positively to previous requests and correspondence from the complainant about the subject matter since 2020. However, given the volume of linked or repetitive queries submitted by the complainant, the Commissioner recognises that this is having a significant negative impact on the Council.
32. The Commissioner notes the Council's representations that responding to this request would likely generate further related requests and correspondence, thereby placing an extra burden on the resources of the Council. The Commissioner's view is that it is not appropriate for finite public resources to be further expended in this way.
33. The Commissioner is of the view that there is limited public interest in the type of information the complainant is seeking within the given context. In considering the serious value and purpose of this request the Commissioner has considered that, in continuing to complain about matters which have already been dealt with, by both the Council and external parties, the complainant is showing an unreasonable persistence in their enquiries and this reduces the argument for any serious value and purpose in the request.
34. Whilst the Commissioner acknowledges that there is some wider interest in how the Council deals with odour complaints, and its governance arrangements, he is satisfied that the burden on the Council of complying with the request in this case is disproportionate to the value the request has at this point.

35. In the circumstances of this case, and based on the evidence provided, the Commissioner believes that the request was vexatious. Therefore, the Council was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

36. 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

37. 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.
38. 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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