

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2024

Public Authority: Dover District Council
Address: Council Offices
White Cliffs Business Park
Dover
CT16 3PF

Decision (including any steps ordered)

1. The complainant requested various information in respect of electric bikes and regarding Brachers solicitors from Dover District Council (the Council). The Council refused the request on the basis that it was vexatious, citing section 14(1) of the FOIA. The Commissioner's decision is that the Council was entitled to refuse the request on the basis of section 14(1) of the FOIA. The Commissioner does not require any steps.

Request and response

2. On 16 March 2024, the complainant wrote to the Council and requested the following information:

"Please could you tell us the whereabouts of the electric bikes bought by the Council?

How are they being used?

Why, after the potential problems did not materialise were they not sold?

How much in total has Brachers solicitors received from DDC over the last ten years?"

What company was used prior to Brachers?

When did DDC start using Brachers?

What other companies were compared and provided estimates/quotations for work on each occasion where Brachers were instructed?"

3. The Council responded on 26 March 2024. It refused to provide the information on the basis that the request was vexatious citing section 14(1) of the FOIA and section 17(5) in respect of all outstanding requests.
4. Following an internal review, the Council wrote to the complainant on 25 April 2024 upholding its original decision and responding to the complainant's comments in their request for an internal review.

Scope of the case

5. The complainant contacted the Commissioner on 26 April 2024 to complain about the way their request for information had been handled. The complainant does not accept that their request is vexatious. They provided detailed arguments against this in their request for an internal review and directly to the Commissioner. These are included later in this notice.
6. The scope of the Commissioner's investigation is to consider whether the Council was entitled to refuse the request on the basis of section 14(1) of the FOIA.

Reasons for decision

Section 14 – vexatious requests

7. 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.
8. The word "vexatious" is not defined in FOIA. However, as the Commissioner's guidance on section 14(1)¹ states, section 14(1) is

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

designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

9. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
10. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
11. 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. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
12. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
13. The four broad themes considered by the Upper Tribunal 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).
14. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is

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

vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

The Council's position

15. The Council's original response accepted that there is some purpose and value to the request, however alleged that the catalyst for their request was their previous employment with the Council. It further stated that for the following reasons, the purpose and value of the request and the public interest were diminished.
16. The Council referred to the volume of requests over a relatively short period of time, combined with a higher number of related items of correspondence. It stated that to date, the complainant had submitted 25 FOIA requests in a four month period. The Council further referred to the Upper Tribunal's decision in the Dransfield case (referred to in paragraph 11) where he wrote some 40 letters to Devon Council which included several FOIA requests over a period of four years. It added that the judgement considered that this placed an unreasonable burden on Devon Council. The Council added that the complainant's requests, and associated correspondence number much more than this over a significantly shorter time period.
17. The Council further stated that its responses to the voluminous FOIA requests and other correspondence have often generated further FOIA requests in quick succession, increasing the burden on the Council's limited resources.
18. Although the Council accepted that the requests do not generally contain abusive language, it referred to numerous unsubstantiated allegations of wrongdoing and corruption against specific Council officers. It confirmed that it has already investigated some of these and found them unfounded. It informed the complainant that although this has already been explained to them, they continue to persist with their allegations.
19. The Council further informed the complainant that their requests appear to be a continuation of their dissatisfaction stemming from their employment with the Council and many demonstrate an apparent grudge against the Council and specific officers. The Council considers that this is particularly true if the complainant's requests are considered alongside other correspondence and posts made on the Dover District Council Watch (DDCW) Facebook page. The Council confirmed that the complainant had expressly confirmed to the Council that they are part of the group who administer and post on this page. It added that many posts on the Facebook page are closely related to the content of the complainant's requests.

20. The Council further stated that many of these posts are causing harassment and distress to the officers concerned, and added that distress has also been caused to other Council officers.
21. Finally, the Council argued that there is every indication from the complainant's request pattern to date, that responding to their requests will result in multiple further requests being made, placing an additional burden upon its resources, its ability to effectively deliver services, administer the FOIA regime, and cause distress to officers.

The complainant's view

22. The complainant does not accept that their request is vexatious for the following reasons:
23. In their request for an internal review, the complainant disputed the Council's view that their FOIA requests were linked to their previous employment at the Council and argued that linking their previous employment with their FOIA requests represented an unfounded slur.
24. The complainant also disputes that they individually, or as part of DDCW have made a single allegation of corruption or wrongdoing. They further stated that questions have been asked that should be being asked by their elected officials. The complainant added that the questions are legitimate and sent to DDCW by a senior employee of the Council. The complainant also asked the Council to provide evidence that the allegations to which it refers have been thoroughly investigated and by whom.
25. The complainant also stated that the Facebook posts causing distress are in the minority and that causing distress is not a reason not to publish. They further stated that highlighting or asking questions around publicly funded management behaviour is not 'harassment' and nor does it prove any grudge. The complainant informed the Council that DDCW had received many more allegations that had not been posted because it did not feel they were supported with enough evidence, or because they had come from an anonymous source.
26. In respect of the volume of requests submitted, the complainant argued that the answers to their FOIA requests had been elusive, necessitating further requests within tighter parameters. The complainant further stated that the same applies to 'bounce back questions' arguing that they have needed to ask more questions because the answers received had been unsatisfactory.
27. The complainant added that they had never been given any indication that their requests were placing a burden on resources and had the Council done so, they would have gone back to members of the public asking these questions and told they must submit their own request.

The complainant also pointed out that this would not have alleviated the Council's workload. The complainant expressed concern that the Council was simply trying to silence the legitimate concerns posted on the DDCW Facebook page.

28. The complainant also stated that had they been told that their FOIA requests were draining valuable resources, they could have limited their questions or collated them into one single FOIA. They further confirmed that they would be happy to work within the present parameters while completing their investigations.
29. In their complaint to the Commissioner, the complainant confirmed that they had been part of a group of citizen journalists called DDCW which was sent lots of allegations by the public, retired councillors, employees and ex-employees that they tried to investigate. The complainant added that they submitted FOIA requests on all of the subjects brought to their attention. Where the answers were unclear or contradicted the information they had, they tightened the parameters of their request and have now been labelled vexatious. The complainant further added that they are particularly interested in their last set of questions as this is when the Council decided to involve solicitors. The complainant also considers their questions to be in the public interest.

The Commissioner's investigation

30. The Commissioner asked the Council to comment on the complainant's statements outlined above.
31. The Council does not accept that the FOIA requests, other correspondence and posts on the DDCW Facebook page are not linked to the complainant's previous employment. The Council has stated (and provided evidence) that the complainant made various complaints after their employment ended with the Council. It confirmed that following an investigation, none of the complaints were upheld. It added that the serious allegations started shortly after a COT3 settlement (a form of settlement agreement with a conciliation officer employed by Acas) had been agreed.
32. The Council has further stated that the complainant was given various options in relation to their complaints, including an invitation to meet with the Council's leader, which they did not take up.
33. The Council also informed the Commissioner (and provided evidence), that details of its whistleblowing procedures were provided to the complainant in February 2024 following their allegations against certain of its officers. Yet the Council has confirmed that the complainant did not submit their Whistleblowing complaint until May 2024. The Council added that once the complaint had been made, it was investigated by the Head of East Kent Audit who found no evidence of wrongdoing.

34. The Council disputes that the responses to the requests were elusive and has stated that the complainant appeared to disbelieve the responses. By way of an example, it referred to a request dated 12 February 2024 in which the complainant had asked for various information in relation to Brachers Solicitors, including whether these contracts were noted on the Register of Interests of the Council's Strategic Director (who is married to a partner at Brachers Solicitors).
35. The Council confirmed in its response to the request that an entry had been made on the Register of Interests of the Strategic Director in accordance with the obligations under the staff Code of Conduct and also the requirements of Section 117 of the Local Government Act 1972. Yet despite this, a post appeared on the DDCW Facebook page (12 March 2024) alleging that inappropriate contracts had been awarded to Brachers after the complainant would have received the Council's response.
36. The Council added that two further posts appeared on 16 and 17 March which referred to the Strategic Director specifically alleging that her and her husband were 'lining their pockets' at the Council's expense.
37. The Council also disputes the complainant's comments that there are many former and existing employees and members of the public who have raised concerns on the DDCW Facebook page. It stated that following the allegations via the Whistleblowing procedure and on the DDCW Facebook page, the Council held wider meetings and briefings as part of its investigation into the allegations. The Chief Executive also sent an all staff email, making sure officers were aware of the various avenues via which they could make a complaint. The Council stated that there is also a process in place for any members of the public who wish to complain.
38. The Council further informed the Commissioner that it has subsequently sent two 'Cease and Desist' letters to the complainant, one dated 18 April 2024 and the other 3 May 2024. The Commissioner notes that the Council issued both of these after receipt of the request. However, the first one was issued in between the Council's refusal notice and internal review. As the Commissioner considers the situation at the time of the request, he cannot take either of these into consideration.

The Commissioner's comments

39. In terms of the volume of requests, the Commissioner accepts that 25 FOIA requests over a period of four months placed a considerable burden on the Council's resources, and agrees that this appears to be over a significantly shorter time period than in the Dransfield case discussed earlier in this notice. When combined with the correspondence in the relation to the complainant's complaint, whistleblowing allegations

and the correspondence in respect of the DDCW Facebook page, this will have placed a high burden on the Council's resources.

40. The Commissioner has considered the complainant's argument that they have been labelled vexatious as a result of trying to obtain answers to legitimate concerns raised by members of the public, retired Councillors, employees and former employees. The Commissioner would point out that the Council has refused the request as vexatious and not the requester. The Commissioner is also mindful that some public authorities may apply the vexatious provision in these circumstances. However, he has also considered the nature of the requests themselves, in conjunction with other correspondence regarding complaints against the Council, and the posts on the DDCW Facebook page, and agrees they are very similar.
41. Additionally, based on the evidence provided, the Council has investigated the complainant's own complaint regarding their employment and provided evidence that none of those complaints were upheld. Similarly, in terms of the Whistleblowing complaint, the Council has confirmed that the investigation concluded that there was no evidence of wrongdoing.
42. In terms of the Council's comments that the requests are causing distress to staff, the Commissioner has seen evidence that the requests, Facebook posts and other correspondence to the Council has caused considerable distress to some officers, particularly those mentioned by name in the requests and on the DDCW Facebook page. Having considered the nature of some of the posts, alongside the evidence provided by the Council, the Commissioner agrees that those individuals would feel targeted and harassed as a result.
43. The Commissioner also accepts the Council's comments that there is every indication from the complainant's request pattern to date, that responding to their requests will result in multiple further requests being made, placing an additional burden upon its resources.
44. Based on the evidence provided, the Commissioner has therefore concluded that the request was vexatious and that the Council was therefore entitled to refuse the request in reliance on section 14(1) of the FOIA.

Right of appeal

45. 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

46. 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.
47. 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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