

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2016

Public Authority: Plymouth City Council
Address: Ballard House
West Hoe Road
Plymouth
PL1 3BJ

Decision (including any steps ordered)

1. The complainant has requested correspondence between Plymouth City Council ('PCC') and both The Events Services Association ('TESA') and the British Pyrotechnists Association ('BPA'). Having initially found that compliance with the request would exceed the cost limit at section 12 of the FOIA, PCC found that a refined request was vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the request is vexatious and that the PCC was correct to rely on the exclusion at section 14(1) of the FOIA. No steps are required.

Background

2. The request concerned can be followed on the 'What do they know?' ('WDTK') website¹.
3. PCC sponsors the annual British Fireworks Competition which is held in Plymouth every August. 2015 was the 19th anniversary of the event.
4. The Commissioner has previously issued a related decision notice which is referred to in the analysis below².

¹ https://www.whatdotheyknow.com/request/e_mail_correspondence_between_te

Request and response

5. On 26 August 2015, the complainant wrote to PCC and requested information in the following terms:

"I am requesting the full email correspondence between Plymouth City Council and The Events Services Association (TESA) in regards to the British Fireworks Competition and also any email correspondence between Plymouth City Council and the British Pyrotechnists Association (BPA) with regard to the British Fireworks Competition from its inception to the present".

6. On 14 September 2015 PCC responded. It advised that to comply with the request would exceed the appropriate limit at section 12 of the FOIA.

7. The complainant requested an internal review on 14 September 2015. PCC sent the outcome of its internal review on 15 September 2015 and maintained its position.

8. On 16 September 2015 the complainant submitted the following revised request:

"I would have preferred to have seen the earlier correspondence to assess the relationship that Plymouth City Council and TESA have where the British Fireworks Competition is concerned but your reluctance to furnish me with the records in their entirety will mean I will have to amend my request.

To simplify matters I will limit this request to the correspondence from the year 2012 through to 2015 (details as per original request) If you consider this is still too burdensome in a single request please let me know as I could file separate requests for each period you and your colleagues feel you can comfortably handle within the time constraint... if that would help".

9. On 30 September 2015 PCC wrote to the complainant and advised that it considered his request to be vexatious under section 14(1) of the FOIA.
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² https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1431780/fs_50574178.pdf

10. Following an internal review PCC wrote to the complainant on 14 October 2015 maintaining its position.

Scope of the case

11. The complainant contacted the Commissioner on 19 October 2015 to complain about the way his request for information had been handled. He asked him to consider whether or not the request is vexatious.

Reasons for decision

Section 14 – vexatious requests

12. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
13. The term “vexatious” is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*³. 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.
14. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
15. The Upper Tribunal did however also caution that these considerations were not meant to be 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

³ GIA/3037/2011

dealings, the lack of proportionality that typically characterise vexatious requests”(paragraph 45).

16. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
17. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests⁴. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
18. In determining that these requests are vexatious, PCC has considered the history and background prior to these requests being made. This included the complainant's previous requests and correspondence and allegations raised by the complainant against PCC. In respect of wider context and history, PCC has explained to the Commissioner that:

"Plymouth City Council (PCC) sponsors the annual British Fireworks Competition (BFC) which is held in Plymouth every August. The PCC does not have the knowledge, experience or expertise to hold such an event so a contract to organise and manage the event was put out to tender and won by a specialist event's organiser called TESA.

The event had been running successfully without dispute for a number of years, then in 2013 one of the competitors in conjunction with [the complainant] complained about the scoring. The PCC took no part in the scoring process but in response to the complaint discussed the matter with TESA. The PCC also referred the complainant to TESA for direct discussion.

Whilst we could see no evidence of wrong doing on behalf of TESA the PCC decided to invite itself on to the scoring panel as an observer so that if there were ever any further disputes we would be in a position to respond to them directly. We also suggested that TESA should hold discussions with all interested parties to discuss any issues regarding the BFC. The complaining competitor and [the

⁴ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

complainant] *were both invited to attend discussions but both declined. The meeting was held on September 2014.*

In October 2014 we received the first FoI from [the complainant] requesting raw data scores from the 2014 BFC which as members of the scoring panel we had access to and could supply. This was followed by a second request for the raw data scores from 2013. We did not have these so we asked TESA if they could supply them and TESA responded that they did not have them..."

19. As referred to in paragraph 4 above, the Commissioner made a decision regarding the raw data scores from 2013, concluding that they are not held by PCC.
20. In respect of this current request, PCC has concluded that it is vexatious on the following grounds:

- It is a scattergun approach attempting to find anything it can use against BFC.
- It shows unreasonable persistence and will achieve nothing of value.
- It is a futile and overlapping request concerning an issue which has already been dealt with.
- It has placed and continues to place an unreasonable burden on PCC resources.

21. It further added that it believes the request is:

"... futile and is set to run on and on and I do not believe we should commit such significant public resources to something which will have no value to [the complainant], the PCC or the Public at Large".

22. And:

"We believe we have gone the extra mile on this and [the complainant] having found no evidence to discredit the BFC judging has embarked on a fishing expedition which is futile. We have no information which will discredit the BFC judging process and using this scattergun approach shows unreasonable persistence".

Is the request the request likely to cause a disproportionate or unjustified level of disruption, irritation or distress

23. The Commissioner believes that public authorities must bear in mind that meeting their responsibilities under the FOIA may involve absorbing a certain level of disruption and annoyance. However, if a request is likely to cause a disproportionate or unjustified level of disruption,

irritation or distress then this will be a strong indicator that it is vexatious.

24. In *Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013), Judge Wikeley recognised that the Upper Tribunal in *Wise v The Information Commissioner* (GIA/1871/2011) had identified proportionality as the common theme underpinning section 14(1) and he made particular reference to its comment that;

"Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it".

25. In the Commissioner's view a useful first step for an authority to take when assessing whether a request, or the impact of dealing with it, is justified and proportionate, is to consider any evidence about the serious purpose or value of that request.
26. In this particular case it is difficult to find any actual 'purpose' behind the request as it simply seeks **all** emails between PCC and TESA. It does not mention any particular subject matter with which the requester has an interest or even the names of any individuals. The only indication as to the purpose of his request is included in the wording of the request for an internal review namely:

"... this latest request is asking for information not covered by the previous requests and is required for an investigation into alleged malpractice regarding the British Fireworks competition judging and subsequent award of monies as prizes of which the Council appear to finance in it's [sic] entirety".

27. It therefore seems apparent to the Commissioner that the complainant is 'fishing' for any information which he may be able to use against PCC and/or TESA without any specific evidence of what he is looking for.
28. The Commissioner notes that PCC has already afforded some considerable resources in an effort to assist the complainant. It has changed its practices by including an officer on the scoring panel at the BFC events to ensure that things are run fairly and scores are also now published online. It has met with the complainant in an effort to resolve any issues that he has. It has instigated discussions between TESA and all interested parties to discuss any issues regarding the BFC - which the complainant did not choose to attend.

29. The Commissioner notes that in giving advice to the complainant after explaining that to comply with his original request would exceed the cost limit, PCC suggested: *"If you could make your request more specific, time limited and state the reason why you need the information then we would be happy to review the new request"*. In his response the complainant narrows the date parameters but does not give any indication as to what he is specifically trying to locate, other than the hope that he will find something he can use against PCC and its association with TESA. Furthermore, when refining his request he indicates to PCC that if consideration of the reduced time frame is still too burdensome he could: *"file separate requests for each period you and your colleagues feel you can comfortably handle within the time constraint"*. This behaviour indicates to the Commissioner that, had PCC chosen not to find that the request was vexatious, it would have been expected to deal with the large open ended request made by the complainant in a series of smaller requests. This again adds to the evidence that the complainant is 'fishing' for information. As the event is some 19 years old there is a considerable time frame in which to search for information and the piecemeal approach suggested by the complainant would be very onerous.
30. PCC has advised the Commissioner that it receives an average of 18 requests a month under the FOIA. There are 4 members of staff who deal with logging the requests received, one member of staff deals with internal reviews and: *"... we typically have 8 staff writing responses, these are part time roles which have to be fitted into staff's day jobs"*. In dealing with the complainant's three requests to date PCC has estimated that it has already spent in excess of 55 hours. It is PCC's belief that any further time spent will be futile as nothing will be achieved. It believes this on the basis that there is no wrong-doing by either itself or TESA in respect of the BFC and that searching and locating all the emails requested by the complainant will not achieve anything; rather it will place an unreasonable burden on its limited resources.
31. The Commissioner understands that the complainant is unhappy with the way that TESA has scored competitors at the BFC and it seems clear to the Commissioner that this request seeks to uncover any information that can be used against PCC and its association with TESA. From the correspondence which the Commissioner has read it is apparent that the complainant believes that there were errors in the scoring of the BFC events and he has tried to have his concerns addressed. PCC has gone to some length to address his concerns as shown above and has no evidence to suggest that TESA has acted improperly. Whilst the complainant's concerns may be genuine, it must be understood that the FOIA is not a tool to be used for dealing with complaints about such matters. The Commissioner's guidance on vexatious requests states that such action can evidence unreasonable persistence, in that the

requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny. Where, as here, this is the situation, the Commissioner considers that a public authority is entitled to say 'enough is enough'.

32. For the reasons set out above the Commissioner concludes that the complainant's request was vexatious. Accordingly the Commissioner finds that section 14(1) is engaged, and PCC was not obliged to comply with the request.

Right of appeal

33. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Signed

Carolyn Howes
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