

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 December 2015

Public Authority: The London Borough of Brent
Address: Brent Civic Centre
Engineers Way
Wembley
HA9 0FJ

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Brent ("the Council") broadly relating to Tuberculosis ("TB").
2. The Commissioner's decision is that the Council has correctly applied section 14(1) of the FOIA to the request.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 25 March 2015 the complainant wrote to the Council and requested information in the following terms:

1: Please confirm, that Brent Council, will comply with ALL of the reccomendations, in the TB COLLABORATIVE STRATEGY, especially providing TB AWARENESS of symptoms, and curability, and free treatment, in libraries, citizens advice beauro, social settings, community venues, and provide, exact list of details of these places?

2: As an employer of new entrants, from countries of high incidence of TB, will the council encourage health checks, as advised in the TB STRATEGY, AND NOW SUPPLY THEIR EMPLOYEE'S WIYH SUITABLE TB AWARENESS INFORMATION?

3: Will Brent Council, pay compensation, to people who contracted TB, due to the councils refusal to supply PROPER TB AWARENESS, in Brent, especially to children and baby's?

4: Please provide full details, of the new measures, being taken to combat TB in Brent?

5: how many TB awareness officer's does the council employ what are their duties?

6: RE: BRENT AND KILBURN TIMES Oct.2012 expose` "Brent has highest rate of df TB in WESTERN EUROPE"

[redacted name] of Brent Council's response, to my previous FOI requests, stated, IT WAS NOT HIS DUTY TO WARN PEOPLE IN BRENT OF THE DANGERS OF TB, OR TOURIST'S OR VISITORS, OR, RESIDENT'S, OR HIS OWN EMPLOYEE'S.

Will you please confirm [redacted name] wheher this was appropriate, and what [redacted name] duties were?

7; [redacted name] CHIEF EXECUTIVE BRENT COUNCIL, Will you please confirm, that IT IS YOUR DUTY AND BRENT COUNCIL'S, to prevent people from becoming ill in Brent?

5. The Council responded on 10 April 2015 and applied section 14(1) to the request. Following an internal review, the Council maintained its position.

Scope of the case

6. The complainant contacted the Commissioner on 11 September 2015 to complain about the way his request for information had been handled.
7. Specifically, the complainant disputed the Council's application of section 14(1) to his request.
8. The Commissioner has therefore had to consider whether the Council was correct to refuse to comply with the request on the grounds that it is vexatious under section 14(1).

Reasons for decision

9. 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.
10. 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*¹. 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.
11. 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.
12. 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 dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
13. 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.
14. 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 requests.² The fact that a request

¹ GIA/3037/2011

²

http://ico.org.uk/for_organisations/guidance_index/~media/documents/libr

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.

The Council's position

15. When considering whether the request fell under section 14(1), the Council took into account the wider context and history of the request. The Council advised the Commissioner that the complainant has made a large number of comprehensive information requests, complaints and service requests to the Council over a number of years all broadly relating to TB. The Council explained that the complainant has exhausted the Council's complaints procedure on this issue. The Council further explained that the complainant appealed to the Local Government Ombudsman who ruled that they found no fault with the Council's actions.
16. The Council explained that the complainant has made 19 separate FOI requests since December 2011, all on the topic of the Council's plans to combat TB. The Council argued that the communications and requests have been unreasonable and disproportionate in terms of volume, frequency, overlap, the complainant's unwillingness or inability to accept the information provided, his persistence, the burden on Council time and resources, the demoralising and harassing effect on Council staff, the detrimental impact on the Council's ability to deliver its services and the fact that the requests have now exhausted their useful purpose.
17. The Council argued that the complainant is being an unreasonable burden on the Council. It explained that the complainant has sent over 200 emails to the Council on the topics of environmental health and TB prevention since 2011. In addition to this, he has also made three enquires via his MP. Many of the emails that the Council has received from the complainant are copied to over 20 different officers as well as to other agencies. This resulted in multiple teams and services attempting to communicate with the complainant and made responses extremely challenging to co-ordinate.
18. The Council advised the Commissioner that in December 2013, the Council's IT department had to restrict the complainant's email communication with the Council. Any incoming emails from the

complainant were diverted to the inbox of an officer and not distributed across the office.

19. In an attempt to address any concerns the complainant had, the Council informed the Commissioner that it had arranged two face-to-face meetings between the complainant and two successive directors of Public Health. The aim of this was to inform the complainant of the Council's strategies and in an attempt to respond to any concerns that the complaint had. However, the Council explained:

"...these meeting did nothing to stem the tide of information requests, complaints, member enquires and other correspondence. We believe that [redacted name] is in possession of all, or nearly all, the information the Council holds on the subject, and certainly everything that is in the public interest. The Council's Public Health service is a small service whose staff have been disproportionately diverted from their duties by [redacted name] campaign, which serves little public interest as he is already in possession of almost all the information the Council holds from the topic".

20. To support its position that the request was vexatious, the Council presented the Commissioner with examples of unfounded accusations that the complainant has made towards the Council.
21. The Council also advised the Commissioner that in its view it was obvious that the request was an improper use of the FOI process and, having regard to the information it had previously disclosed to the complainant as well as published generally concerning the public health risks of TB, there is no public interest in complying with the request. The Council stated that the request is *"without justification"*.
22. The Council further argued that the request is the complainant's latest manifestation of his unreasonable campaign which has been an obsession of his for years. It explained that the request and previous behaviour amounted to an excessive and disproportionate burden on the Council which can no longer be tolerated. It further considered that the complainant's previous behaviour forces it to believe that even if the request is complied with, there would be no let-up in the demand for more and more information.
23. The Council concluded that continuing to raise this matter with the Council through the FOIA is part of the complainant's intention to pursue an unreasonable and obsessive campaign into matters that have long since been resolved. It also argued that much of the request was not for recorded information and instead makes repeated allegations of misconduct by the Council and its staff. It further argued that the majority of the rest of the information requested is either in the public

domain or is already in the complainant's possession either through face-to-face meetings with Council staff and previous correspondence. In the wider context, the Council's view is that the request lacks serious purpose or value as defined by the Information Commissioner.³

24. The Council did appreciate that the topic is one that has great personal relevance to the complainant and it is something that he clearly deeply cares about through his own tragic experiences. However, it emphasised that it *"cannot permit the mis-use of the Freedom of Information Act in such a way that it detracts from the Council's ability to deliver its services, including its Public Health responsibilities"*.

The Commissioner's view

25. The Commissioner recognises that the complainant has had a long history of contact with the Council regarding his concerns about TB. The Commissioner further recognises that the Council has tried to respond to any concerns the complainant has by providing the information he seeks under the FOIA and also by arranging meetings with employees at the Council so they are able to address his concerns face to face.
26. The Commissioner does not dispute that the complainant has an interest in the requested information. However, he considers that this interest does not outweigh the burden and drain on the Council's resources that would occur if it complied with the request.
27. The Commissioner has also taken into account the background and history of the complainant's contact with the Council. He considers that it is reasonable to assume that if the Council were to comply with the request, it is unlikely to satisfy the complainant and there is potential for it to lead to further correspondence and requests on the matter.
28. On this basis, the Commissioner considers that the Council was correct to apply section 14(1) to the request.

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

Right of appeal

29. 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

30. 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.
31. 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

Rachael Cragg
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SK9 5AF