

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 September 2016

**Public Authority:** London Borough of Richmond upon Thames  
**Address:** 44 York Street  
Twickenham  
TW1 3BZ

### Decision (including any steps ordered)

---

1. The complainant has requested information from the London Borough of Richmond upon Thames (the 'Council') relating to the Council's Highway Workers.
2. The Commissioner's decision is that the Council is entitled to rely on section 14(1) of the FOIA to refuse this request. Therefore, she does not require the Council to take any further steps.

### Request and response

---

3. On 2 April 2015 the complainant wrote to the Council and requested information in the following terms:

*"1. Attached please find my request for 7 items of Richmond Borough Council information. As you will see, these do not relate to specific cases and, in the light of [name redacted] response to my original application, I feel they are worded in a form sufficiently general to be admissible here. If that is not so, please advise where and how they need to be amended.*

*2. It seems likely that [name redacted] will wish to make an SAR application on his own behalf. To assist him in doing so, it will be helpful if you can let me know what form of ID he needs to include with his application.*

FOI Request (1)

*Precisely what investigative procedures are followed by management when a member of the public makes an allegation of wrongdoing against a Council highways operative?*

FOI Request (2)

*What formal minimum quality standards for the letters, documents and reports prepared by its managers and other employees does the Council specify? Are the Minutes of Disciplinary Hearing meetings circulated for approval by the participants? If not, why is this?*

FOI Request (3)

*When the Council's Disciplinary Hearing panels are advised by a qualified HR person, what minimum (named) professional qualification must such advisor possess?*

FOI Request (4)

*During the year 2013, or any part of it, did the Council possess authority granted by the Office of Surveillance Commissioners to conduct covert surveillance of all or any of its highway operatives; or a more general authority including also other staff? If so, for what period?*

FOI Request (5)

*How, if at all, and when has the Council defined the scope of:*

- (a) 'Find & Fix' highway repairs;*
- (b) Highway repairs that are classified as 'illegal' or 'unauthorised' unless explicitly ordered by a manager?*
- (c) How, if at all, are 'private works' defined and how, if at all, could these be conducted on the public highway?  
If so defined, when and how was each of these definitions (a,b,c) communicated to the highway operatives?*

*Copies of these definitions, if any, are requested. If they do not exist, how are operatives protected, if at all, from inadvertently taking on repairs that do not qualify as 'Find & Fix'?*

FOI Request (6)

*What, if any, policies, procedures and/or regulations does the Council operate to protect its highway operatives from:*

- i. Being drawn into disputes between residents or being unfairly accused by them of wrongdoing?*

FOI Request (7)

*Does the Council conduct its HR / personnel practices in accordance with the ACAS 'Code of Practice'?"*

4. On 7 April 2015 the Council acknowledged the request for information.
5. On 22 April 2015 the Council provided its response which included the Council's guidelines on conducting disciplinary investigations and its Disciplinary Procedure.
6. On 1 May 2015 the complainant requested four further documents and submitted follow up queries.
7. On 21 May 2015 the Council provided the complainant with the following information; the Council's Disciplinary Appeal Guidance, its Find and Fix Guidelines, Guidelines for Conducting Investigations and the Corporate Induction checklist.
8. On 29 May 2015 the complainant wrote to the Council regarding a query seeking clarification of the Council's response to his follow up query. On the same day, the Council clarified its response to the complainant's follow up query 1.
9. On 3 September 2015 the complainant requested a further request for information under the FOIA of the following description:

*"(a) Are newly-recruited Highway Workers given written instructions on how to conduct themselves in contacts with members of the public during the course of their work? If so, may I please have a copy of the same?*

*(b) What written instructions, if any, do managers receive regarding how they should respond to complaints from members of the public about its Highway Workers? If there such instructions, may I please have a copy?*

*(c) Why did the Council conduct covert photographic and video surveillance of a Highway Worker or workers in 2013 while not in possession of the required licence or authority from the OSC?"*
10. On 25 September 2015 the Council responded. It refused to provide the information requested under section 14(1) of the FOIA as it considered his request as vexatious.
11. On 30 October 2015 the complainant appealed against the Council's decision to treat the request as vexatious.

12. On 27 November 2015 the Council wrote to the complainant with its internal review decision of his request of 3 September 2015.

### Scope of the case

---

13. The complainant contacted the Commissioner on 2 May 2016 to complain about the Council's refusal to provide the final items of information which he requested.
14. The Commissioner considers the scope of the case is to determine whether the request is vexatious and if the Council is entitled to rely on its application of section 14.

### Reasons for decision

---

#### Section 14 – vexatious requests

15. 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.

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*.<sup>[1]</sup> 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.

16. 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.
17. 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).*

18. 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.
19. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests.<sup>[2]</sup> 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.
20. In this case the Upper Tribunal defined a vexatious request as one that is *“manifestly unjustified, inappropriate or improper use of a formal procedure.”* The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
21. In order to reach a decision on whether the request is vexatious, the Commissioner has obtained submissions from both the complainant and the Council to understand the circumstances surrounding the request.

---

<sup>[1]</sup>GIA/3037/2011

<sup>[2]</sup>

[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom of Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

### **The Council's position**

22. The Council stated that following the consideration of the history and nature of the complainant's requests that the requests all stem from a disciplinary matter involving a Council employee in 2013.
23. The Council disputed the complainant's view that the requests should be considered from March 2015. It considered the first FOI request was in December 2013 when the complainant asked about information relating to surveillance of employees. The Council added that two years later the complainant is continuing to make requests about the same matter. It said that this decision is based on the requests logged by the Council's FOIA team.

### **Burden on the authority**

24. The Council reported that its records show that the complainant had made six requests from December 2013 to date concerning this issue. The Council said that all of his FOIA requests had taken its staff approximately six hours to date to complete and it considered that responding to this FOIA request is an unnecessary diversion from the Council's key tasks.
25. The Council considered the frequency of the requests and the repetitive nature of some of the complainant's enquiries relating to surveillance it used, imposed a burden on the Council. It added that this is especially the case where a response leads to a further request. The Council noted that four of the complainant's requests comment on or ask for additional analysis relating to previous responses.
26. The Council argued that the complainant had submitted frequent correspondence about the same issues and that his latest requests are considered to be a continuation of a pattern of behaviour. The Council therefore views the complainant's contact with the Council to be a significant burden.

### **Unreasonable persistence / obsessive requests**

27. The Council considers that the requests are all part of an ongoing campaign against the Council's decision to terminate a certain individual's employment. The Council said that the complainant had acknowledged this in his letter of March 2015 in which he stated: *"The request arises from serious concern about the apparent unfair dismissal, on [date redacted], of the Council's then highways operative"*.

28. The Council argued that there is lack of public interest in the nature of the requests as they focus on the perceived injustice to one dismissed member of staff rather than asking for information with a wider public focus. The Council said that following its initial FOIA response, it does not consider that engaging in continual correspondence with the complainant is a productive use of its staff time.
29. The Council disputed the complainant's statement that the requests of 3 September 2015 were his final requests under the FOIA. The Council said that it was not convinced by the complainant's pattern of behaviour that this would be the case. It continued by stating there had been frequent or overlapping requests and argued that question (a) and (b) (request of 3 September 2015) could in its view, been asked at the time of earlier requests.
30. The Council reported that the complainant had stated the purpose of his requests is to seek justice on behalf of the named individual, following their dismissal. The complainant had argued that he is only interested in *"righting a serious injustice"* and that he wishes to see *"the issue settled amicable"* although *"If that does not change I shall continue the campaign for justice..."* The Council interpreted this as suggestions of further FOIA requests.
31. The Council is of the view that the complainant is attempting to reopen an issue that should have been submitted to the Tribunal, and in a timely manner, if the named individual was dissatisfied. The Council added that the complainant is also attempting to reopen an issue which had already been comprehensively addressed by the Council or otherwise subjected to some form of independent scrutiny.
32. The Council expanded on this and said that there had been a disciplinary hearing in relation to the dismissal. It said that the next stage in the employment process was to make a claim to the Employment Tribunal if the named individual was dissatisfied with the decision or with the Council procedures.
33. The Council said the complainant believed that this was not pursued due to the high cost of making a claim to the Employment Tribunal. The Council argued that *"the FOIA is not an alternative route to litigating matters governed by statutory procedures laid down by Parliament."*
34. The Council considers that the most appropriate method to challenge the decision is to refer to an Employment Tribunal. It said that it does not think the FOIA to be an appropriate or useful mechanism to further the complainant's dispute with the Council's decision to terminate another individual's employment.



35. Therefore, the Council considers the complainant's latest requests can be seen as obsessive and persistent. It added that it is not in the public interest for the Council's resources to be used to continually respond to similar FOIA requests from the complainant in connection with an issue which should be considered as closed.

### **The Commissioner's conclusion**

36. The Commissioner accepts the Council's representations in regards to the history and the nature of the complainant's requests. It is clear that this request is one of a series of continued requests for information relating to the same subject. From December 2013, the complainant made six requests to the Council for information concerning the issue.
37. The Commissioner has considered the burden of the requests on the Council, and she has done so in terms of the disruption, irritation and level of stress which the request would generate. The Commissioner recognises that the Council had spent an inappropriate amount of time responding to the requests and that at times a response would lead to a further request. In particular, the complainant asking for additional analysis in relation to previous responses by the Council which the Commissioner views as an unnecessary diversion from the Council's daily duties.
38. The Commissioner has considered whether the requested information has serious purpose and value to the complainant. She understands that the information relates to the Council's Highway Workers and to one dismissed Council staff member. It appears that the complainant is of the view that there has been injustice to that individual and he seeks justice on their behalf. However, although the complainant believes the information to have a serious purpose and is of value to him personally, the Commissioner does not consider this to be the case for the wider public.
39. The Commissioner considers the requests as obsessive and persistent. She is satisfied that the continuing requests are a means by which the complainant is trying to reopen a matter that had already been addressed or subjected to some form of independent scrutiny. She is of the view that the complainant is using the FOIA to sustain dialogue with the Council about this matter and that this is a clear misuse of the FOIA and its purpose. The FOIA provides fundamental rights to the public to request access to recorded information held by public authorities. It should not be used to vent dissatisfaction with issues which have already been dealt with, independently scrutinised and are considered as closed.



40. The Commissioner notes the merits of the complainant's request. However, on balance, she has decided that to comply with the request it would continue to cause a disproportionate and unjustified level of disruption, irritation and distress to the Council. The Commissioner is aware that the Council had spent an overwhelming amount of time and resources in dealing with the complainant's continued requests, complaints and correspondence. She considers this to be a misuse of already strained public resources and an improper use of the FOIA.
41. Therefore, the Commissioner has determined that the Council is entitled to characterise the request as vexatious under section 14(1) of the FOIA.

## Right of appeal

---

42. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. 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 .....**

**Chris Hogan**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**