

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2017

Public Authority: Borough Council of Wellingborough
Address: Swanspool House,
Doddington Road
Wellingborough
NN8 1BPX

Decision (including any steps ordered)

1. The complainant made four requests for information to the Borough Council of Wellingborough (the council) relating to Sywell Aerodrome Ltd (SAL). The council refused these requests under section 14(1) of the FOIA as it considered them to be vexatious.
2. The Commissioner's decision is that the council has correctly applied section 14(1) to the requests, and has therefore complied with the FOIA. She does not require the council to take any steps.

Request and response

3. The complainant made four requests to the council between 27 July and 17 August 2016. The focus of all four requests was on SAL and the council responded to all four on 14 September 2016 to refuse them as vexatious.
4. The Commissioner will set out each request and response timeline separately, but as the council ultimately refused all the requests in its letter of 14 September, she will consider them jointly in this decision notice. This decision notice therefore considers two cases, FS50659806 which includes the July requests, and FS50665479 which includes the August requests. The outcome of this notice applies to both cases.

Request 1 - 27 July 2016 – evidence of legal action and campaigns

5. The complainant made the following request for information to the council with reference to a letter from the council's solicitor to the ICO in November 2015 relating to a previous complaint to the ICO which resulted in the decision notice FS50591275¹.

"I request the following.

1) The evidence of the legal action against Sywell Aerodrome or [Managing Director of SAL].

2) The evidence of the legal action against the Borough Council of Wellingborough (BCW).

3) The evidence of the Freedom of Information requests (other than the one in March 2015).

4) The evidence that the writer campaigned against the All-weather covering to the existing 03/21 runway.

...

5) The evidence that the writer was associated in anyway with the campaign against the runway."

6. The council responded on 16 August 2016 providing a bundle of information and answers to the questions, referring to the information provided where relevant.
7. The complainant responded on 30 August 2016 expressing dissatisfaction at the council's response.
8. The council's internal review response is contained within its letter of 14 September 2016. It stated that in line with the ICO guidance on vexatious and repeated requests, it was not obliged to respond to the complainant further on these matters.

Request 2 - 28 July 2016 – actions regarding specific resolved items

9. The complainant made the following request for information to the council:

"I refer to the attached document, in particular Section 2 Confirmation of the Minutes of the Development Committee dated 10th July 2012

¹ https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1560504/fs_50591275.pdf

and Resolved by Council on 31st July 2012. It should be noted that the CE was in attendance at both meetings

I request copies of all correspondence and notes of meetings, consultation etc up until May 1st 2015 in relation to and required by the following Resolved Items:

1) Page 72 at the end of paragraph 3 that the words "re-route departing and arriving aircraft" be added;

2) Page 72 at the end of paragraph 5 the words "following consultation with the ward councillor" be added."

10. The council responded on 16 August 2016. It referred to minutes of specific meetings relevant to the request, and confirmed that no additional information was held relating to the points of clarity.
11. The complainant responded on 27 August 2016 expressing dissatisfaction with the response.
12. The council's internal review response is contained within its letter of 14 September 2016. It stated that in line with the ICO guidance on vexatious and repeated requests, it was not obliged to respond to the complainant further on these matters.

Request 3 - 17 August 2016 (09:04) – Documents presented to LGO 15/179/HJP

13. The complainant made the following request for information to the council:

"Please provide copies of all of the documents presented to LGO under their investigation as referenced above.

For clarity this is in relation to the request made by [named individual] of Sywell in respect of the Council's failure to enforce the Planning Conditions at Sywell Aerodrome (as determined by the Secretaries of State)."

14. The council's response is contained within its letter of 14 September 2016. It stated that in line with the ICO guidance on vexatious and repeated requests, it was not obliged to respond to the complainant further on these matters.

Request 4 - 17 August 2016 (09:34) – Correspondence to lawyers on the investigation into the Chief Executive

15. The complainant made the following request for information to the council:

"I request copies of all correspondences sent to [named stage one preliminary investigator] in the matter of the complaint by the writer into the conduct of the Chief Executive at BCW."

16. The council's response is contained within its letter of 14 September 2016. It stated that in line with the ICO guidance on vexatious and repeated requests, it was not obliged to respond to the complainant further on these matters.

Vexatious refusal letter - 14 September 2016

17. In this letter, the council referred to a previous ICO decision notice (FS50591275) which upheld the council's decision to apply section 14 FOIA and regulation 12(4)(b) of the EIR to requests regarding SAL and related matters. The letter also provided some comments regarding the council's previous responses to the requests and on the previous engagement between the parties regarding the topics raised in the requests.
18. The council concluded by confirming that the letter was to be treated as a refusal notice in relation to all recent FOI requests. It stated that no other notice would be given as the council considered that in all the circumstances it would be unreasonable to comply with the FOIA.

Scope of the case

19. The complainant contacted the Commissioner on 13 December 2016 to complain about the way his requests for information had been handled. He was concerned about the council's refusal notice of 14 September 2016 in response to his four requests for information, which refused the requests as vexatious.
20. These requests and complaints are set against the background of the previous decision notice which found that the council was correct to refuse the complainant's previous requests under section 14(1) of the FOIA and regulation 12(4)(b) of the EIR as vexatious. In his initial emails of complaint to the ICO in these cases, the complainant disputed the outcome of the previous decision notice and specifically requested that the ICO overturns the original decision (FS50591275) and agrees with him that the information requested be disclosed to him.
21. The Commissioner sought to understand whether the complainant had ever appealed the outcome of that notice. The complainant has made reference to submitting a complaint to the First Tier Tribunal in an email to the council on 26 April 2016, but there is no record of any appeal against the decision notice FS50591275 either at the ICO or on the

Tribunal's website listings of either pending or completed appeals. In addition to this, from conversations with the complainant, it appears that he considers these current complaints to be appeals against the outcome of the previous notice. This cannot be the case, and the Commissioner would have expected the complainant to appeal the previous decision through the appropriate channels, as set out at the end of every decision notice. She is clear that the outcome of this decision notice has no bearing on the outcome of the previous decision notice, and will not amend it in any way.

22. The scope of these cases and this decision notice therefore is to determine whether the council was correct to refuse the four requests subject to this notice under section 14(1) of the FOIA.

Reasons for decision

23. 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.
24. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield* (UKUT 440 (AAC) 28 January 2013), the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
25. 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 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.

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).

26. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
27. 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 requests². 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.

The council’s position

28. The council’s refusal notice of 14 September 2016 outlines its initial reasons for refusing the four requests as vexatious. It states that as a result of the ICO previously upholding the council’s application of section 14 and regulation 12(4)(b) to requests concerning SAL, and in view of ICO guidance on vexatious and repeated requests, it is under no obligation to respond to these requests.
29. In its responses to the Commissioner’s investigations, the council has explained that it has records of FOI requests from the complainant regarding SAL dating back to October 2010. It has also stated that the complainant has been engaged in correspondence with the council on the matter of SAL for some considerable time, both in his capacity as a borough councillor, and otherwise. The council has framed the complainant’s pursuit of matters relating to SAL in the terms “*He has been campaigning against Sywell Aerodrome for some years.*” The Commissioner understands that the complainant disputes that his actions are part of a campaign, and indeed his request 1 in this notice asks for evidence from the council that he has been campaigning against a runway.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

30. The Commissioner does not wish to enter into a deliberation as to whether the complainant's actions relating to SAL could be considered to be part of a campaign. There is clearly a dispute between the parties as to the use of the word, however it is clear to the Commissioner based on the evidence presented, that the complainant has persistently been in contact with the council regarding SAL on a number of inter-related matters. The council states that the complainant's continued and persistent correspondence with the council on the matter demonstrates that he has pursued council officers about SAL over the years, at times in a threatening tone, and when information or advice has been provided he has frequently challenged or disputed it. In addition, the council states that over the years, the complainant has behaved in an abusive or aggressive manner.
31. As evidence of this, the council provided as evidence some of the correspondence between the council and the complainant. In an email to the council in response to the circulation of notes from a meeting on the Sywell Working Party of 8 May 2015, the complainant makes the following comments which the Commissioner accepts that they certainly demonstrate that he frequently disputes and challenges the council's positions:

"But what really concerns me is the "editing/cleansing" going on"

***"If not an error then a massive deception"** [formatting as written by complainant]*

"There is no evidence to support this point it should be verified by an independent person. BCW "lost" all of the complaints for 2008!"

"If the Opinion on balance is correct then BCW are guilty of in failing to ensure the S106 was fit for purpose. That being the case they are open to a legal challenge"

"Nonsense a bad deal is invariably worse than no deal. This council has done nothing, despite all of the evidence, other than to kow tow to this company since 2005 and it continues today. But the Ombudsman looks favourite as well as other actions against the council."

32. In addition to this, the Commissioner has been provided with copies of the emails exchanged between the complainant and the council in relation to the previous ICO case (FS50591275) and notes that in some of the emails there is an overriding aggressive and threatening tone. In particular emails on 29 November 2015 and 30 December 2015 contain the following comments:

"The obduracy of BCW appears to have no boundaries."

"It has always been my wish to have a proper dialogue on this subject but the belligerence and obfuscation of the CE has prevented this from happening, under his now totally mistaken belief that I was part of the problem."

"The matter of the dialogue is also important irrespective of the appalling conduct of the CE."

"I continue to view your correspondence with incredulity."

"...nevertheless it showed the most appalling weakness by the CE..."

"He now knows that SAL will not comply with his weak and inept "constructive dialogue". "

"The reality is that he is so weak as to be ineffectual in enforcing these Planning Conditions."

33. The Commissioner notes the particularly aggressive and abusive tone that is taken with the Chief Executive at the council. The Commissioner would expect individuals in high profile public facing roles to have a reasonable expectation of some degree of criticism of their actions. However, she does not accept that the insults levelled at the Chief Executive by the complainant are of the nature to be reasonably expected.
34. In addition to these more contemporary examples, the council has provided copies of correspondence it has had with the complainant on the matter. These demonstrate the long standing nature of the issues with the complainant, SAL and the council, and the council also argues that it demonstrates that significant effort has been made to address the complainant's concerns. They also show that the complainant is rarely satisfied with the first answer provided to him and seeks to either question or dispute.
35. The council has argued that the high level of disruption and the disproportionate amount of time spent caused by the complainant's ongoing correspondence on various SAL matters has a detrimental impact upon the council. It considers that this detrimental impact is not mitigated by any inherent purpose or value to the requests. It therefore finds the requests to be disproportionate and unjustified.
36. The council has explained that there is a substantial history of acrimony between the Managing Director of SAL and the complainant. The council states that relationships had become so bad that a meaningful dialogue between the council and SAL has not been possible since 2010. The council has advised the Commissioner that since May 2015, when the complainant was not re-elected as a councillor, attempts have been

made to re-establish a working relationship with SAL. The council intends to continue building bridges in the hope that a joint consultative committee (JCC) can meet again in the future.

37. The council has provided some background to the complainant's interactions regarding SAL. It explained that he alleges that SAL is in breach of its planning obligations with regard to consultation arrangements, and that the council should take enforcement action. The council's solicitor advised that SAL was required to make reasonable endeavours to establish a JCC, to hold an inaugural meeting and inform the council of steps taken, and there is no doubt that it took these steps.
38. The council then consulted counsel on the matter in April 2012. The opinion supported the view of the council's solicitor that the section 106 obligations relating to a JCC have been discharged, and there is no ongoing breach of the section 106 Agreement that can be enforced.
39. Following on from this, a report was submitted to the council's development committee on 29 May 2012 where it was resolved that no further action would be taken on relation to the all-weather runway surface, or the "as built" surface water drainage system, which there had also been complaints about.
40. The complainant's second request seeks information relating to the steps the council has taken to consult on matters relating to SAL, which appears to be an extension of the complaints regarding the JCC. The council has provided the information it holds in respect of this request, and the Commissioner can see the Chief Executive's frustration at this request in the internal review response as the complainant was in attendance at the majority of meetings concerning SAL.
41. The Commissioner also notes from the background evidence provided that the complainant submitted a number of complaints to the council, either on his own behalf, or on the behalf of constituents. These included noise concerns from both aeroplanes and racing cars, issues with the flight paths of some aeroplanes, and overweight aeroplanes landing.
42. In highlighting the complainant's persistence on the matter the council has indicated that the complainant has submitted a number of complaints to various bodies, either directly relating to his concerns regarding SAL, or about individuals who have had ancillary dealings with either him or SAL.
43. He informed the council's solicitor that he was reporting him to the Solicitors Regulation Authority in April 2016 in relation to a letter sent to

the Commissioner in respect of the complainant's previous section 14 decision notice case (FS50591275).

44. He also made complaints to the council about the conduct of Chief Executive and the leader and deputy leaders of the council in their handling of the SAL matters and their treatment of him. An independent consultant conducted a stage one investigation into the allegations. The Standards Assessment Sub-Committee considered the investigation report and concluded that no further action was required. Despite this, the complainant has continued to demonstrate unreasonable persistence both in submitting requests seemingly designed to prove wrong doing by various individuals at the council. In addition, the council has provided the Commissioner with a copy of an email from the complainant to the current leader of the council dated 27 June 2017 (just weeks after the Commissioner wrote to the complainant regarding this case). The email contains a number of personal insults levelled at the previous leader of the council;

"...but I am not surprised, you took over from an idiot and a liar otherwise called Judas."

"[He] was so weak he totally capitulated"

"As Mayor, [his] position is clearly untenable if it is proven he has supported dishonest statements being made to the ICO, LGO both regulatory authorities and a paid external investigator."

45. The Commissioner recognises that this evidence post-dates the requests; however she considers that it has a place in this notice to demonstrate the complainant's continued strength of feeling, and also the aggressive and threatening tone he uses in correspondence. It also shows his unwillingness to accept outcomes, such as the Commissioner's previous decision notice, the Ombudsman's decision, and the standards investigation.
46. The council makes reference to a complaint to the Local Government Ombudsman (LGO) made by a third party regarding the council's handling of alleged planning breaches by SAL. Although this was not made by the complainant, the Commissioner understands that he is aware that the decision was in the council's favour.
47. The council has said that although it does not wish to rely on the previous ICO outcome in its entirety, it does consider that what has followed has been of the same tone and nature.

Complainant's position

48. The complainant has provided the Commissioner with his views regarding the council's application of section 14 to his four requests. He explained that he considered it was clear and obvious that the solicitor responding on behalf of the council to the ICO on the previous case had provided incorrect information and that the previous decision notice is therefore incorrect.
49. He maintains that he cannot be vexatious because the council was required to consult with him on matters relating to SAL as he was the ward councillor. He explained his view that minute 8 of the July 2012 minutes of the Development Committee referred to in the request 28 July 2017 compels the council to consult with him on SAL matters.
50. He refers back to the council's submission to the Commissioner in the previous case and states that he does not agree with the language used. He states that he has been in touch with one of the council officers (who no longer works for the council) referred to in the council's response of 16 August 2016 to request 1 (see para 6 of this notice), whom he says does not agree with the terms used, rather he would describe the complainant as enthusiastic, energetic and considered.
51. The complainant does not agree with the Chief Executive's comments at 4(a) of 14 September 2016 refusal notice, which stated that he recalled that the complainant had chaired a meeting concerning SAL and that he did not object to or vote against the council's position. He has informed the Commissioner that as the mayor he was the chairman and was therefore not allowed to debate or vote unless a split vote arose.
52. The complainant has placed great weight on his assertion that the amendments agreed on 31 July 2012 to the minutes of the Report of the Development Committee 29 May 2012 placed the council under an obligation to consult with him and to maintain a dialogue with SAL. He maintains that if the council has not further emended or revoked this minute, then he should have been consulted on SAL matters, and his requests therefore cannot be considered vexatious.
53. The Chief Executive in part five of the refusal notice of 14 September 2016, stated that:

"In relation to email D, then I am saddened by your apparent fantasy that everyone at the Council is somehow lying, colluding or pulling the wool over the eyes of respected external professionals such as, the ICO, the LGO and external solicitors. Just because people take a different view from you does not mean they are lying or engaged in any deception. If you feel you need to involve the Police in any of this then please go ahead. I look forward to being asked to give my view of all matters including your apparent attempts to libel, harass, victimise and abuse myself and many others here at BCW."

The complainant maintains that he has not accused the council, as a corporate body, of lying. However, he did confirm that he considers that the chief executive and others have been untruthful.

54. The complainant also made representations to the Commissioner on why he considered that the council's submissions to the Commissioner in respect of the previous case were incorrect and untruthful. However, as explained above, the proper avenue for resolving these concerns would have been to appeal the decision notice to the First Tier Tribunal, something which the complainant did mention to the council that he would do, but in actual fact, has not.

The Commissioner's position

55. The Commissioner has explained to the complainant that if he did not agree with the outcome of the decision notice he had, at the time, the right to appeal it to the First Tier Tribunal. The Commissioner is clear that there were more appropriate avenues open to the complainant to address his concerns about the decision notice and the information the council supplied in respect of it. For whatever reason, the complainant chose not to pursue that course of action, and request one appears to seek information which the complainant hopes will prove that inaccurate information was sent to the Commissioner in support of its submission. It is not clear what he intends to do with the information given that he is well outside the time to appeal.
56. With regard to the serious purpose of request three, the Commissioner understands that the LGO complaint in questions was submitted by another individual on the matter of the council's handling issues relating to SAL. The LGO has issued its finding's to the council and the individual who submitted the complaint, but she did not publish the findings. However, the Commissioner has assumed that the complainant's knows the outcome, and certainly that he knows that the investigation has been concluded as he offered to obtain a copy of the outcome from the complainer to pass on to the Commissioner. In these circumstances, it is not clear to the Commissioner what purpose his request regarding LGO submissions would serve.
57. The Commissioner has considered whether the requests and the complainant's related interactions with the council could be considered to cause unwarranted harassment or distress to individuals at the council. The Commissioner finds, based on the evidence supplied by the council, that the majority of the complainant's interactions were expressed in measured and reasonable language. However, there are examples of where the language and tone used crosses a line to the point where it could reasonably be considered harassing or even distressing. On this point the Commissioner also notes that the Chief

Executive specifically stated in his letter of 14 September 2016 that he and others at the council felt libelled, harassed, victimised and abused by the complainant. It is clear from the tone of the Chief Executive's letter that the relationship between him and the complainant was fraught, to say the least, and the complainant has made it clear to the Commissioner that he considers the Chief Executive to be dishonest. The Commissioner considers that this demonstrates that the requests and particularly the correspondence associated with the background to the requests could be construed as harassing or even distressing.

58. When considering whether the requests are unreasonably persistent, the Commissioner has considered the extent to which the complainant has sought to address his concerns about the way the council has handled various issues relating to SAL. He disputes that he is part of a campaign group against SAL, however, it is clear to the Commissioner that he has grave concerns about the safety of some operating practices at SAL and has refused to accept the council's chosen way forward in dealing with any SAL issues that have arisen. As a councillor he was a member of the working party for SAL and also had ward responsibility for the local area, and in this regard, he had a legitimate interest in SAL matters. However, it is clear from the correspondence between him and the council that his concerns go beyond councillor responsibility, and indeed his pressure on the council over SAL and related matters has continued since he ceased to be a councillor. He has submitted standards complaints about two councillors and the Chief Executive, these have been investigated by an independent consultant who found no breaches of the code of conduct in either case. Further to this he has threatened a complaint to the SRA about the council's solicitor, although it is not clear if he has followed through with this.
59. In view of the evidence supplied by the council, it is the Commissioner's opinion that the complainant's requests are unreasonably persistent. The council has clearly outlined its final position with regard to its handling of SAL issues and this has been tested by the LGO (albeit at the behest of another individual). The council has then had to deal with complaints from the complainant about the way individuals at the council have handled the issues, and the council's solicitor has been threatened with a complaint to the SRA in respect of the information he provided to both the Commissioner and the Ombudsman. This demonstrates that despite being presented with formal outcomes, he is not satisfied, and has then made requests to the council for information relating to these outcomes, seemingly to prove wrongdoing by the council, or by specific individuals. In the case of the ICO decision notice at least, the complainant has chosen not to pursue his concerns through the correct channels, but has instead submitted further requests for information.

60. On the matter of the motive of the requester, the Commissioner understands it to be one of safety. He is concerned that SAL does not operate in accordance with its planning conditions, and accordingly is not safe. He has stated in many of his emails to the council that he and the community will hold it (or various individuals) responsible in the event of a fatal accident. However, in the Commissioner's view and in light of the nature of the requests here, these concerns appear now to be superseded by a desire to investigate the information supplied by the council to various independent bodies concerning either him or SAL.
61. The council has stated that it did not wish to rely on the previous decision notice in its entirety when refusing the requests in this notice as vexatious. However, the Commissioner notes that she upheld the council's decision to refuse the request in question as vexatious on the basis that it had little value and was designed to cause disruption. The decision also commented that it was evident that the complainant had not been satisfied with the various investigations into the runway at SAL. It is clear that this pattern has continued, and whilst the Commissioner is not convinced in this case that the request is designed to cause disruption, she is satisfied that it follows on from the previous requests and is linked to the wider topic of SAL and his dissatisfaction with the way the council has handled issues.
62. She finds that the complainant is not likely to be satisfied with the information and answers that the council could provide in response to the requests, and indeed she notes that the complainant has continued to question the information that he was initially provided with in respect of requests one and two. He has cross referenced the responses of 16 August 2016 and 14 September 2016 in most of his correspondence with the Commissioner, pointing out areas where he perceives there to be flawed arguments, incorrect statements, or lies.
63. In view of all the evidence presented to her, both by the council and the complainant, the Commissioner is satisfied that the council was entitled to refuse the requests as vexatious.

Right of appeal

64. 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

65. 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.
66. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF