

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2018

Public Authority: Nottingham City Council

Address: Loxley House
Station House
Nottingham
NG2 3NG

Decision (including any steps ordered)

1. The complainant has submitted two information requests seeking various policies, procedures, work instructions and information of a similar nature held by Nottingham City Council ("the Council"). The Council refused to comply with these requests under section 14(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the Council has correctly applied section 14(1) in respect of the two requests. However, in applying section 14(1) outside the time for compliance, the Council has breached section 17(1).
3. The Commissioner does not require the Council to take any steps.

Request and response

Request 1

4. On 15 June 2017, the complainant wrote to the Council and requested information in the following terms:

Under the terms of the Freedom of Information Act 2000, I hereby request NCC's policies, procedures, work instructions and information of a similar nature relating to:

- *Dealing with complaints and providing redress;*
 - *Care assessments under the terms of the Care Act 2014;*
 - *Financial assessments under the terms of the Care Act 2014;*
 - *Care Assessments of individuals due to be discharged from hospital, including liaison arrangements with the NHS and NCC's own duties;*
 - *Provision of emergency or urgent social care.*
5. The Council issued a response on 19 July 2017. In this it disclosed information; namely four documents relating to how the Council delivers adult social care.
6. The request, and the Council's handling of it, was considered by the Commissioner in decision notice FS50705685¹, which was issued on 20 June 2018. In this the Commissioner found that the Council, by its own admission, had failed to properly consider the parameters of request, and as such, required the Council to issue a fresh response under the terms of the FOIA.
7. The Council issued a fresh response on 19 July 2018. In this it sought clarification under section 1(3) about what information was sought by the terms 'work instructions' and 'information of a similar nature'.
8. The complainant wrote to the Council on 1 August 2018 to provide clarification. As the Council did not provide a further response within

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2259283/fs50705685.pdf>

twenty working days, the complainant submitted a complaint to the ICO, which was accepted under ICO case reference FS50782585.

Request 2

9. On 16 October 2017, the complainant wrote to the Council and requested information in the following terms:

For the avoidance of doubt, as a formal request under the terms of the FoIA, please provide me with a list of all policy and procedure documents published by NCC under the Council's FoIA publication scheme and for each document listed provide details of how I can obtain a copy. For documents that are available on the web, please provide the URL.

10. The Council issued a response on 1 February 2018. In this it confirmed that the requested 'list' was not held, and provided advice and assistance about how to use the Council's website to access published information.
11. The complainant wrote to the Council on 7 August 2018 to ask for an internal review of its response. As the Council did not provide an internal review outcome within twenty working days, the complainant submitted a complaint to the ICO, which was accepted under ICO case reference FS50721202.

The Council's revised response to request 1 and request 2

12. Following the actions outlined above, the Council provided a revised response to both requests on 18 September 2018. In this is advised that it had reconsidered both requests, and sought to refuse both under section 14(1).

Scope of the case

13. The complainant contacted the ICO on 18 September 2018 to complain about the Council's application of section 14(1) to both requests.
14. The Commissioner considers the scope of the case to be the determination of whether the Council is entitled to rely upon section 14(1).
15. The Commissioner emphasises that this determination will consider whether the requests were vexatious on the date of receipt, or otherwise found to be vexatious during the time for compliance. Whilst the Council has previously provided different responses to the requests,

these responses must be treated as having been superseded by the Council's application of section 14(1).

Reasons for decision

Section 14(1) – Vexatious requests

16. 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.

17. The Commissioner has published guidance on vexatious requests². As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requestor when this is relevant.

The complainant's position

18. The Commissioner understands that the requests have been made following a concern held by the complainant about the provision of adult social care (by the Council) to persons known to the complainant. The complainant has also explained to the Commissioner that request 2 was made following the Council's failure to provide a satisfactory response to request 1, and due to its perceived failure to generally publish information in accordance with its FOIA publication scheme.

19. The complainant argues that the requests have been made in pursuit of a legitimate concern about the standard of adult social care provided by the Council; which may impact on the health and safety of anyone in Nottingham who requires social care following discharge from hospital. The complainant considers that the potential harm to individuals and

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

associated costs to the Council that could be caused by the Council's failings in this area greatly exceed the burden imposed by the requests.

20. The complainant has referred his concern about adult social care to the Local Government & Social Care Ombudsman ("the LGSCO"), which has since (on 18 September 2018) issued a final decision in which it found maladministration causing injustice to the complainant on a number of counts. In particular, the LGSCO recommended that, among other things, *'the Council reviews its practices and procedures to see what changes, if any, are required to ensure patients discharged from hospital receive appropriate reablement care'*. The complainant argues that there was therefore an appropriate and proper justification for the requests at the time each was made, and that the review recommended by the LGSCO is a matter of serious public interest that he now wishes to comment upon by now accessing the information he has requested.

The Council's position

21. The Council has explained to the Commissioner that it recognises, and accepts, the delay in determining its final position in respect of both requests. The Council has elaborated that it has only sought to rely upon section 14(1) on rare occasions over recent years, and in the circumstances of this matter the Council has sought to engage with both requests to attempt to resolve them in mutually satisfactory way. Having now re-considered both requests in context, the Council considers it necessary to rely upon section 14(1).

Request 1

22. In respect of request 1, the Council has explained that this partly seeks information relating to adult social care delivery, and that those documents considered to be relevant were previously disclosed in response (namely the *'Complaints Regulations 2009'*, *'Care and Support Policy'*, *'Charging for Care and Support Policy (Adults)'*, and *'Complaints Procedure – Adult Services'*). The Council has clarified that the request was submitted within a larger piece of correspondence titled *'Formal complaint on behalf of [a third party]'*. The Council has explained that the third party is a person known to the complainant, and that the complainant is acting on behalf of the third party to complain about decisions made by the adult social care department.
23. The Council considers that, whilst the complainant holds a serious concern about adult social care that has been escalated through the proper processes, the parameters of request 1 indicates that it has been made to deliberately cause disruption or confusion. For example, as part of request 1, the complainant has requested all recorded information

relating to how complaints and redress are dealt with by all departments within the Council, and not just adult social care.

Request 2

24. In respect of request 2, the Council has explained that this seeks a list of all policy and procedure documents published by the Council under its FOIA publication scheme. Whilst no such central list is held, the Council advised the complainant how to access and search its website.
25. The Council considers that request 2 was made to emphasise the complainant's dissatisfaction with the amount of recorded information that was disclosed in response to request 1, and in particular, to highlight what the complainant considers to be deficiencies in the amount of recorded information that the Council holds in respect of how it delivers adult social care.

The purpose and value of the requests

26. The Council has explained to the Commissioner that the amount of information held about how the Council operates its adult social care department is likely to be significantly less than expected by the complainant, as the nature of adult social care delivery means that case related decisions do not depend on set written procedures, but rather, the experience, training, and education of officers. Whilst the Council considers that the complainant is likely to be dissatisfied with the amount of documents that the adult social care department relies upon to operate (and which has previously been disclosed in response to request 1), this is not a matter that can be addressed under the FOIA.
27. The Council also considers that the requests must be seen in the context of the adult social care complaint that the complainant has submitted to the Council, and consequently the LGSCO. These processes are the appropriate routes for the concern about adult social care to be addressed. The requests under the FOIA are intrinsically connected to that concern, as illustrated by forming part of the same correspondence, including that which has continued since the date of the requests.

The burden upon the Council

28. The Council considers that attempted compliance with the requests has already consumed a disproportionate and significant amount of time, and has diverted officers from their other duties.

The Commissioner's conclusion

29. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the

Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

30. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the requests

31. The Commissioner recognises that the requests have been made on the basis of real concerns held by the complainant about a) adult social care delivery by the Council, and b) the Council's operation of a publication scheme under section 19 of the FOIA. It is understood that concern b) has arisen due to the circumstances of concern a), and specifically due to the complainant wishing to ensure that he has access to all Council guidance relating to adult social care, and more widely, all policies and procedures held by the Council that he has a right to view under the FOIA publication scheme.
32. However, the Commissioner notes that, as of the date of both requests, any such concerns held by the complainant could be referred to public authorities with the remit to consider and address such concerns; and since the date of both requests, this has been done. The adult social care concern has been considered by the LGSCO, which found various faults in how the Council had handled a social care matter, and consequently required the Council to take specific steps. The publication scheme concern has been considered by the ICO (under ICO case reference FS50698788) which identified that the Council had adopted a model publication scheme (as required under the FOIA), but referred the Council to some deficiencies within its website search functionality. It is therefore evident that on the date of both requests there existed appropriate processes for the complainant to have his concerns addressed.

The burden upon the Council

33. The Commissioner recognises that both requests appear to seek a significantly wide variety of information, regardless of its relevance to what is understood to be the complainant's principal concern regarding adult social care. For example, in request 1, the complainant has requested all information about complaints and redress held by all departments within the Council, whilst in request 2, the complainant has requested a list of all policy and procedure documents published by all departments within the Council that are available under the FOIA publication scheme.
34. The Commissioner is aware that the Council is a public authority at local government level, and as such, will hold a wide variety of statutory roles and responsibilities that are likely to require it to hold a significant volume of recorded information about how it undertakes those statutory roles and responsibilities.
35. In respect of request 1, the Commissioner notes that compliance with section 1(1) would be particularly challenging due to the seemingly wide parameters of the request. In particular, the Commissioner notes that in providing clarification to the request on 1 August 2018, the complainant advised that the request also sought all standing instructions (in any form) relevant to the subject matters, and all training materials relating to the Care Act 2014.
36. In respect of request 2, the Commissioner considers that whilst the Council is likely to be correct in stating that no centrally updated list is held (due to there being no requirement to create such a list for the FOIA publication scheme), the request can equally be read as seeking copies of all policies and procedures available under the FOIA publication scheme (or direction to where each can be publicly accessed).
37. The Commissioner therefore accepts that compliance with both requests in their current form, would, of necessity, require the Council to devote significant resources to issue responses that comply with the FOIA, and particularly with section 1(1), under which the Council must provide all held recorded information that would fall within the parameters of the requests.

Conclusion

38. In the circumstances of this case, the Commissioner considers that the Council has demonstrated a poor handling of the requests. In particular, the Commissioner notes that the Council originally failed to grasp the extent of the information sought by request 1 (and seemingly still fails to grasp this, despite the content of the complainant's clarification of 1

August 2018). The Council's handling has clearly lead to significant frustration on the part of the complainant, who has repeatedly had to refer matters to the ICO to have them addressed.

39. The Commissioner further considers that the Council has demonstrated a limited understanding of section 14(1), and has referred in its submission to matters that are not directly relevant to a determination under section 14(1) (despite being referred to the guidance about this by the ICO). In particular, the Council has referred to the perceived ongoing burden of this matter under the FOIA; despite this being largely a result of the Council's poor handling of request 1.
40. The Commissioner is mindful that the complainant has submitted the requests in connection to a real, and since substantiated, concern about the provision of adult social care to persons known to the complainant. However, it is also evident that both requests seek a considerable amount of information, including much which appears to be unrelated to the complainant's principal concern about adult social care. Compliance with the requests would, of necessity, require the Council to expend public resources in order to provide responses that complied with the FOIA.
41. The Commissioner is further mindful that, as of the date of both requests, there existed appropriate routes for the complainant to have his concerns considered by the relevant ombudsman or regulator. Whilst the LGSCO has since found in favour of the complainant in respect of his adult social care concern, this cannot be taken as providing an overriding (and retrospective) public interest for any request under the FOIA that the complainant may have made in connection to the matter.
42. When making a determination under section 14(1), the Commissioner must have regard to the wider public value applicable to a request, particularly where compliance with requests may incur a significant public cost, or disrupt a public authority's ability to manage other information requests. In the circumstances of this case, it is recognised that whilst the complainant is unlikely to have purposely submitted the requests in an attempt to disrupt or otherwise impose burden upon the Council, the wide parameters of the requests mean that this would be the consequence. Having considered the options open to the complainant to have his concerns addressed by the proper ombudsman or regulator, the Commissioner does not find there to be sufficient wider public value to justify the burden that compliance with the requests is likely to cause.
43. The Commissioner therefore finds that section 14(1) is engaged in respect of the requests.

Section 17(1) – refusal of request

44. Section 17(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
45. In this case the Council issued a refusal notice (in the form of its revised response of 18 September 2018) significantly outside of 20 working days, and therefore breached section 17(1).

Other matters

46. The Commissioner's decision relates only to the two specific requests under consideration, and the Commissioner reminds both the Council and the complainant that any future request must be considered afresh.
47. The Commissioner considers that the Council's poor handling of this matter ultimately stems from its failure to properly consider the potential parameters of request 1 and take appropriate steps under the FOIA. The Commissioner refers the Council to her guidance '*Interpreting and clarifying requests*'. This is available at:
<https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>
48. The Commissioner further considers that the Council has demonstrated a limited understanding about the application of section 14(1), despite being referred to the Commissioner's guidance on this by the ICO. The Commissioner reminds the Council of the importance of referring to her guidance for public authorities when handling matters that it is not familiar with. The Commissioner's public guidance for all FOIA matters is available at:
<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>
49. In the event of wishing to make a future request, the complainant may wish to refer to the Commissioner's advice to requestors at:
<https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

50. 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

51. 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.
52. 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