

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2019

Public Authority: Lancaster City Council
Address: Town Hall
Dalton Square
Lancaster
LA1 1PJ

Decision (including any steps ordered)

1. The complainant submitted 17 requests which were all connected with a grievance which the complainant has with the Council. The Council did not respond to all the requests in question. When it did respond, it drew the complainant's attention to the position it had taken in response to previous information requests made by the complainant, which was that those requests were vexatious and hence had been refused under section 14(1) of the FOIA.
2. The Commissioner's decision is that the requests were all vexatious and that it would have been unreasonable to have expected Lancaster City Council ("the Council") to have issued refusal notices in each case. The Council was therefore entitled to rely on Section 17(6) of the FOIA in each case.
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. This decision notice covers a total of 17 requests which were submitted during 2018 and which were refused as vexatious. The Commissioner considers that it would serve no useful purpose to reproduce each request in full (as some are lengthy), but the Council helpfully provided a table summarising the requests which the Commissioner will supply to both parties as a confidential annex to this notice.

5. The Council did not respond to all the requests in question. When it did respond, it drew the complainant's attention to its previous position that it felt the requests were vexatious.
6. In the circumstances, the Council felt that it would be unreasonable to carry out an internal review.

Scope of the case

7. The complainant first contacted the Commissioner on 3 April 2018 to complain about the way requests he had made, for information, had been handled. In particular he felt that the Council were failing to take his allegations of wrongdoing seriously.
8. The complainant subsequently made several more complaints about requests which he said had either been ignored or blocked by the Council. Given the common thread and the exemption applied, the Commissioner considers it appropriate to deal with these complaints together.
9. The Commissioner considers that it would defeat the purpose of Section 17(6) to expect the Council to carry out internal reviews and she has therefore accepted the complaint without requiring an internal review.
10. The scope of this decision notice is therefore to determine whether the requests were vexatious and, if they were, whether it would therefore have been unreasonable for the Council to have issued fresh refusal notices in each case.

Reasons for decision

11. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. Section 14 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."

13. Section 17 of the FOIA states that:

"(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

14. On 19 December 2018, the Commissioner issued Decision Notice FS50724912¹ which dealt with five requests, from the complainant, which the Council had refused as vexatious. Each of those requests was linked to a recurring theme of the Luneside East development.

15. The Commissioner's analysis as to why those requests were vexatious went as follows:

103. Here, the Commissioner is clearly able to find that the complainant's requests are part of a continuing pattern of behaviour which has persisted over a long period of time. As such, when considered in their entirety, those requests point to a real and significant burden to the Council.

104. The Commissioner acknowledges that the complainant feels that he has been unjustly treated by the Council in respect of its purchase of the Luneside East site. Nevertheless, she must also acknowledge the words of Lord Justice Briggs, at paragraph 45 above.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2614057/fs50724912.pdf>

105. The Judge's statement that there is no real prospect that the complainant will be able to demonstrate fraud in this case, suggests to the Commissioner that ultimately the complainant's requests lack true value.

106. The Commissioner considers that a point has now been reached where requiring the Council to comply with the complainant's requests about Luneside East only serves to add to the already significant burden on this public authority.

107. The Commissioner does not find any untoward motive behind the complainant's requests. She accepts that they have been made in good faith in an attempt to substantiate the complainant's belief that the Council has committed wrongdoing.

108. The complainant's purpose may or may not be justified. However, the Commissioner cannot allow the complainant to continue to place an unwarranted burden on the Council as a result of his tenacious requesting behaviour.

109. Adopting the Tribunal's holistic and broad approach to this complaint, and in consideration of the combined effects of the complainant's requests, the Commissioner considers that the requests have become significantly burdensome to the Council. Their lack of true value and their disproportionate effects has resulted in the complainant's requests becoming vexatious.

16. The Commissioner's view is that the further requests which the complainant has submitted – and which form the basis of this decision notice – are clearly linked, either directly to the development of Luneside East or to the complainant's ongoing campaign to expose what he alleges to be wrongdoing by the Council.
17. Whilst the Commissioner appreciates that the complainant would not have had the benefit of considering any of her analysis in Decision Notice FS50724912 before making these further requests, she nevertheless considers that her analysis in that notice is equally applicable to the requests now under consideration.
18. Put simply, whilst the Commissioner is prepared to accept that the complainant's early requests may have had a purpose and value to them, his ongoing behaviour since then and the frequency and the volume of the requests that he has continued to submit has led to a burden upon the Council which is now wholly disproportionate.
19. The effect of these ongoing requests (even if not the intent) is to cause nuisance and disruption to the Council, diverting it from its core

functions. The Commissioner's view is that the time has now come for the Council to be able to protect its resource more robustly.

20. The Council has advised the complainant on multiple occasions that it considers requests about Luneside East and the complainant's ongoing campaign to be vexatious and that it would no longer respond to such requests. The requests therefore meet the tests set out in subsections a) and b) of Section 17(6).
21. The Commissioner is therefore required to consider whether it would be unreasonable to expect the Council to continue to issue fresh refusal notices to each new request.
22. The complainant has been in protracted correspondence with the Council over a number of years. The complainant has been informed of why the Council considers his requests to be vexatious. He may well dispute those reasons, but he knows what they are and it would therefore serve no useful purpose for the Council to continue to provide them in response to each request he makes.
23. Section 17(6) is not intended to be a "blanket ban" on an individual making information requests and the Commissioner notes that the Council has responded to requests which the complainant has made which are either unrelated or only loosely related to Luneside East.
24. The Commissioner therefore considers that the time has come to draw a line. She finds that the requests were vexatious and that the Council was entitled to rely on Section 17(6) to refuse these requests without issuing fresh refusal notices.

Right of appeal

25. 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

26. 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.
27. 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

Ben Tomes
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