

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 June 2019

Public Authority: Thanet District Council
Address: Cecil Street
Margate
Kent
CT9 1XZ

Decision (including any steps ordered)

1. The complainant submitted ten information requests to Thanet District Council over a one month period. The public authority categorised all ten requests as vexatious and refused them under Section 14(1) of the FOIA. The Commissioner's decision is that the ten requests are vexatious and that the public authority is not obliged to comply with the same. The Commissioner found that the public authority breached section 17(5) as it did not give the complainant an adequate refusal notice within 20 working days.

Requests and response

2. On 3 October 2017, the complainant wrote to Thanet District Council (the Council) and requested the following information:
'Can you tell me why it has gone out to press that the DNA project was shelved due to a low take up. What were the data protection issues that TDC have experienced with this project and why has it not affected Barking and Dagenham in the same way with their project?'
3. On 9 October 2017, the complainant wrote to the Council and requested the following information:
'Can I have copies of the quotes for replacing the steps at Minnis Bay in Birchington with an inclusive slope please?'

4. On the same date the complainant requested the following further information:

'Can you tell me how much it cost TDC to remove the steps at Minnis Bay in Birchington and the cost of the quote to repair or install an inclusive verge. Were these quotes compared to see firstly if the project was viable and secondly, best value for money. I am told the officer is looking at suitable alternatives as the residents of Birchington were told this would remain an access point. What options are being currently considered by the Council?'

5. On 11 October 2017, the complainant requested the following information:

'What is being done with the Section 106 money for Broadstairs please. When is the cut off date please?'

6. On 15 October 2017, the complainant requested the following information:

'Can you tell me please, why, despite repeated conversations and emails over a year down the line, the installation of a new bin in Brills car park in Birchington has still not been done?'

7. On the same date the complainant requested the following further information:

'How many days over the last month have we had an operative out sweeping the pavements of Birchington. I would like to know the information for the dates 15/09/17 – 15/10/17. As [named individual] is currently off sick, can you confirm who his replacement is please and how many days per week he/she will be sweeping and emptying the bins in Birchington?'

8. On 16 October 2017, the complainant requested the following information:

'While Cabinet Member I requested a review of the whole of Operational Services. The CEO had stated that she would only allow a review of enforcement and once the review was carried out the report would be available for Cabinet to view. She subsequently has refused to allow anyone to view this document, which I find concerning, given that she had given the Cabinet assurances it would be available for them to see. I am requesting a copy under the FOI process please?'

9. On 23 October 2017, the complainant requested the following information:

'What manual sweeper do we have in Birchington today as this is Dog Acre this morning. How many hours will the manual sweeper be on duty sweeping the roads and litter picking? I have noticed, due to the season, lots of leaves on our footpaths and given that 33.3% of our population in Birchington are over retirement age, when the leaves get wet this will pose a hazard. It is therefore important that Birchington has an operative on a daily full time basis'.

10. Finally, on 2 November 2017, the complainant requested the following information:

'Can you confirm that we will not be losing our human sweeping operative in Birchington anytime soon'.

11. The Council belatedly responded to the requests on 6 December 2017 and advised the complainant that they were refusing all ten requests under section 14(1)(vexatious) of the FOIA. The Council emphasised that they were not issuing a blanket refusal, but rather the justification for refusal was applicable to all ten requests *which 'share the same inextricable grounds for refusal'*. The response confirmed that no other requests were caught by the refusal notice, and that *'there is nothing within this response which looks to prevent you from employing the Freedom of Information Act 2000 in future'*. The refusal notice correctly offered the complainant an internal review of the decision but this was not taken up by the complainant as there was a delay in her having sight of the notice for the reason noted below.

Scope of the case

12. The complainant contacted the Commissioner on 28 June 2018 to complain about the way her request for information had been handled. The Commissioner accepted the complaint despite the (otherwise undue) delay because the complainant advised that she had only recently had sight of the Council's response after having re-gained access to her local government email account (which had been temporarily suspended by the Council).
13. The Commissioner's investigation has focussed upon whether the complainant's requests can be correctly categorised as vexatious under Section 14(1) of the FOIA.

Reasons for decision

Section 14: vexatious request(s)

14. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term vexatious is not itself defined in the legislation, but in *Information Commissioner v Devon County Council & Dransfield*¹ the Upper Tribunal commented that:

'The purpose of section 14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA'.

15. The Upper Tribunal concluded that 'vexatious' could be defined as the:

'Manifestly unjustified, inappropriate or improper use of a formal procedure'.

The Council's position

16. In their refusal notice of 6 December 2017, the Council advised the complainant that whilst her requests *'in isolation might be considered with merit'*, the submission of ten requests within such a short period of time (1 month) seemed to evidence a motivation to disrupt Council business by way of distraction and irritation.
17. The Council advised the complainant that *'employing freedom of information with such relentlessness, even as a Member of this Council, is evidence of a campaign against TDC. The submissions have often been addressed in a scatter-gun approach directed in instances to several senior officers, including the Chief Executive'*. The Council noted that the manner in which the requests for information were made, appeared to show that the complainant looked *'to disrupt and intrude those you hold in contempt'*.
18. The Council stated that they believed the purpose of the ten information requests, *'with others too'* was to *'maintain a dialogue of unqualified grievance, perhaps in perpetuity'*. The Council contended that the complainant's campaign was one which could, *'in all reasonableness, be described as obsessive'*. Referring to the complainant's public Facebook page, the Council was satisfied that the requests formed part of a campaign by the complainant against the Council.
19. The Council questioned the legitimate purpose and seriousness of the ten requests, noting that the volume of requests, and the disparity in

¹ UKUT 440 (AAC), 28 January 2013

topics, suggested *'a scatter-gun approach to irritate the Council across several departments, across numerous fronts, at the same time'*. The Council also questioned the value of the requests, stating that it seemed reasonable to assume that a request of a significant and serious nature would be received in isolation as opposed to forming a batch of ten requests within the collective space of just one month. The Council noted that *'from a cursory glance'*, the information requested had been otherwise placed in the public domain, had been disclosed to other requesters under the FOIA or was intended for future publication. The Council therefore maintained that there was little, if any, detriment to wider transparency obligations in the short term.

20. The Council advised the complainant that they had only rarely relied upon section 14(1) to refuse an information request since the Act came into force, and noted that the refusal notice had not been issued lightly. However, the Council stated that *'an applicant who seeks to abuse the freedom of information regime as a means to attack an authority held, by you, in contempt, cannot be permitted'*. More broadly, the Council advised that they had a statutory duty to respond to other requesters promptly and within 20 working days. The Council contended that the complainant's requests, *'driven by grievance and personal manifesto'*, would impact upon the response times to those *'with legitimate and, in cases, far more serious public value'*.
21. The Council noted that their FOIA process and procedure obligated information asset owners to assist the FOI officers in compliance with the Act and that in doing so, the officer(s) concerned is withdrawn from core public function duties to confirm whether information is held and, in turn, to relay that information to the Information Governance Department. The Council advised the complainant that the relentlessness of her requests was *'morphing the role and expectations of Officer diaries'*. The refusal notice concluded by stating that the complainant's requests, in this instance, were damaging to the Council and the effective conduct of its core public functions.
22. In submissions to the Commissioner, the Council provided details as to the background to the requests submitted by the complainant and her grievances against the Council. Most of the information provided by the Council is detailed in this notice, with some information contained in a Confidential Annex.
23. The Council informed the Commissioner that in August 2017, the complainant was removed from her role as portfolio holder for Operational Services by the Leader of the Council. On 15 August 2017 the Council advised that a complaint was received regarding comments which the complainant had put on her Facebook page. In the comments the complainant called for the Director of Operational Services to be

sacked and posted his photograph with an offensive wording superimposed on it. On 16 August 2017 a letter was sent to the complainant by the Monitoring Officer, making clear that complaining about an officer in public is unacceptable. A complaint against the complainant was also made under the Councillor's Code of Conduct by the Chief Executive. The Council's Standards Hearings Sub Committee subsequently determined in February 2018 that the complainant had breached the Code of Conduct and recommended a number of sanctions, including a vote of censure by the Full Council.

24. The Council advised that in August 2017 the Council's Information Governance Manager raised a concern that the complainant may have breached section 77 of the FOIA (offence of altering etc records with intent to prevent disclosure). This concern was reported to the Commissioner and subsequently led to an unsuccessful criminal prosecution of the complainant.
25. On 6 September 2017 the complainant again posted comments on her Facebook page, calling for the Director of Operational Services to be sacked and challenging the Chief Executive to report her to the Council's Standards Hearing Sub Committee.
26. The Council advised that on 1 October 2017, the complainant began a campaign about a link between a contractor who installed fire alarms in Grenfell Tower and who undertook bathroom/kitchen works in Thanet. This campaign involved substantial correspondence between the complainant and various Council officers over many months. This included a number of additional FOI requests which had previously been considered by the Commissioner in a separate complaint from the complainant.
27. The Council informed the Commissioner that on 21 October 2017 the complainant published the Chief Executive's private home telephone number on her (the complainant's) Facebook page and invited people to call her. A formal letter of action was sent to the complainant by the Council with respect to this incident in addition to a complaint under the Councillor's Code of Conduct. This ultimately led to a second formal notice of censure of the complainant in July 2018.
28. The Council advised the Commissioner that it was the complainant's history of personal grievances against the Council and against individual Council officers which prompted the section 14(1) refusal of her ten requests in December 2017. The Council stated that the complainant had a particular vendetta against the Director of Operational Services and the ten information requests in question fell within his areas of responsibility.

29. The Council noted that whilst the multiple requests might not create a significant burden in isolation, they are part of a wider picture of multiple requests, for example the several other requests made about the contractor above. The Council advised that this wider pattern of requests represents a significant burden to the Council in terms of expense and distraction. The Council contended that ten information requests within a one month period was excessive, especially when seen in context of the other requests made by the complainant at around the same time, concerning her contractor campaign.
30. The Council noted that the complainant's persistent service based information requests are apparently a response to her having been advised not to involve herself personally in service matters. The complainant had also launched a public campaign against the Director of Operational Services where she questioned his competence and capability. The Council stated that it was apparent that the subsequent action taken by the Council against the complainant in response to her actions, had caused her to widen her attacks to include the Chief Executive.
31. The Council contended to the Commissioner that the '*petty*' ten requests refused as vexatious by the Council in December 2017, should be seen within this wider context. The Council noted that as an elected councillor at the time, the complainant could have obtained the information sought directly, rather than employing the resource intensive FOIA route. The Council stated that the requests themselves '*were of a low value and minor service issues in general*'. The Council contended that '*the whole pattern of behaviour and the many headed approach, shows that [the complainant] was acting obsessively and acting wholly unreasonably*'.
32. The Council confirmed to the Commissioner that there was no record of a warning having been given to the complainant about her requests risking being treated as vexatious. The Council's Information Governance Manager at the time has since left the Council, but the Council contended that they were justified in moving to refuse the complainant's requests on vexatious grounds since previous written warnings to the complainant about the other matters described above had had no effect. The Council confirmed that they could find no evidence to support the previous statement that the information requested by the complainant was already (or largely) in the public domain.

The Complainant's position

33. In submissions to the Commissioner the complainant strongly denied that her requests (or indeed she herself) were vexatious and stated her

belief that they were in the public interest and that she is of good character.

34. The complainant advised the Commissioner that she had reported the Council's Monitoring Officer to the police for harassment because *'he was once again, wrongly accusing me of something, which was a civil matter'*. The complainant contended that the Council had labelled her requests as vexatious *'because I have highlighted bullying at the Council to other councillors and he (the Monitoring Officer) was intent on making my life difficult from that moment on'*.
35. The complainant advised the Commissioner that she had invited the CEO of WhistleblowersUK² to meet with the Council to mediate on her behalf but the Monitoring Officer had *'refused at every opportunity to make an appointment with the CEO'*. The complainant advised that she had then sent a document highlighting bullying to every elected member of the Council and the Monitoring Officer responded by removing her access to local government email and *'had all of my emails deleted so that I could not access information that would have helped me when the ICO were taking me to court'*.
36. In submissions to the Commissioner, the Council stated that they did not delete any of the complainant's emails and the Monitoring Officer confirmed that no body or person had contacted him about any allegations of harassment of the complainant.
37. The Council provided the Commissioner with email correspondence dated 6 March 2018 between the Monitoring Officer and the CEO of WhistleblowersUK, in which the Monitoring Officer advised that the Council had a duty of care to its staff to protect them from harassment. The email explained that, for a temporary period, the complainant had been assigned a single point of contact with the Council and her email account had been suspended. The Council advised that they had endeavoured to attempt to explain to the complainant both her poor behaviour and what change was needed to remedy it. Once that was agreed the Council advised that they would review how they could work more effectively with the complainant and would provide her with access to the email account. The Commissioner notes that the correspondence clearly shows that the Monitoring Officer was not refusing to meet with WhistleblowersUK, but had asked for details of the alleged whistleblowing prior to arranging such a meeting.

² A not for profit company that provides help, support and information to whistleblowers.

38. In her submissions to the Commissioner, the complainant suggested that, *'I think what needs to be taken into consideration is that I was also under a lot of pressure and stress as the Council at that time were pushing for my prosecution via the ICO'*. The Commissioner would note in this respect that it is her remit and responsibility³ as to whether to bring prosecution proceedings against a public authority or any person employed by, or subject to, the direction of the public authority, for an alleged offence(s) under section 77 of the FOIA.

Commissioner's decision

39. The Commissioner would emphasise at the outset that in reaching her decision, she has restricted her consideration to those events and circumstances which pre-dated the Council's section 14(1) refusal of the ten aforementioned requests. That refusal notice was provided on 6 December 2017 and the court case to which the complainant has referred did not take place until later the following year.
40. It is also important to emphasise that section 14(1) can only be applied to the request(s) itself, and not the individual who submits it. A public authority cannot, therefore, refuse a request(s) on the grounds that the requester is herself vexatious. The exemption is concerned with the nature of the request(s) rather than the consequences of releasing the requested information. There is no public interest test but the purpose and value of the request(s) must be weighed against the impact on the public authority in responding to the same.
41. The context and history in which a request(s) is made will often be a major factor in determining whether the request(s) is vexatious, and the Commissioner considers that the context and history of the complainant's requests in this case have a key bearing on whether or not the requests can reasonably and objectively be said to be vexatious in nature.
42. As the Council have noted, the complainant's requests all concern the area of operation of the Director of Operational Services, and were made within several weeks of the complainant having been removed from her Cabinet post as portfolio holder for Operational Services, following her public attacks on the Director and breach of the Code of Conduct. Indeed, three of the requests were about street sweeping, an issue which the complainant had inappropriately directly raised with street sweepers in June 2017.

³ Shared, in England and Wales, by the Director of Public Prosecutions.

43. Whilst the Commissioner does not discount the possibility that the complainant's requests may have been motivated in some respects by a genuine public interest in the issues highlighted, the timing and frequency of the requests, and their scattergun nature, are sufficient to satisfy the Commissioner that the complainant's primary purpose and motivation was to continue her campaign against the Director of Operational Services via the FOIA, this personal grievance extending to the Chief Executive of the Council and overlapping with the requests.
44. The Commissioner considers the submission of ten requests within a period of one month to be excessive in itself. However, although the Council did not specifically reference them in their refusal notice, in submissions to the Commissioner the Council noted that these ten requests were made at around the same time that the complainant was engaged in a chain of email correspondence with the Council (mainly the Monitoring Officer), concerning the contractor issue which was of concern to the complainant (para 26). The Commissioner has had sight of this correspondence, and notes that it contains at least four information requests, these being made on 13 August, 4 September, 9 September and 11 October 2017.
45. The Commissioner has previously found that the Council failed to respond to the above four requests about the contractor issue which was unsatisfactory and unacceptable. However, the Commissioner recognised that those requests were submitted amidst a detailed chain of email correspondence and they were inadvertantly overlooked in the process of the Council providing the complainant with considerable background and contextual information to address her concerns.
46. The relevance of these four information requests and the associated correspondence from the complainant, to the current matter is that it is clear that in late 2017 the Council was being subjected to a considerable and ongoing burden by the complainant's information requests and associated correspondence. The Commissioner considers that the cumulative impact and effect of that burden had become manifestly unreasonable and disproportionate by the time that the Council decided to issue the refusal notice of 6 December 2017.
47. The Commissioner also considers that it is clear from the wording of most of the ten requests refused under section 14(1), that the complainant was less intent on obtaining recorded information held by the Council, and more on venting her frustration and disagreement with Council decisions and actions (or inactions). Taken together with the complainant's clear personal grievance and campaign against the Director of Operational Services, the Monitoring Officer and the Chief Executive, the Commissioner considers that the complainant was abusing the right of access to information afforded by the FOIA.

48. Seen in the full context and history as explained by the Council, the Commissioner considers that any wider public interest and objective value in the complainant's ten requests was clearly outweighed by the detrimental impact on the Council's services and operations and the disruption and distraction caused to the same⁴. Indeed, the Commissioner considers that it would not have been either appropriate or fair (particularly to other FOI requesters) for the Council to have disproportionately expended limited resources on responding to the complainant's requests, especially given that such responses would have been unlikely to have brought closure to the grievances and campaigns pursued by the complainant.
49. For the reasons set out above, the Commissioner is satisfied that the Council was correct to refuse the complainant's ten requests as vexatious and that section 14(1) applies to the same.

Section 17 – refusal of request

50. Section 17(5) of the FOIA states that a public authority which, in relation to any request for information, is relying on a claim that section 14 applies, must, within the time for complying with section 1(1), give the applicant a notice stating that fact. The time for complying with section 1(1) is 20 working days following the date of receipt of the request.
51. In this case, the complainant submitted her requests between 3 October and 2 November 2017, but the Council did not provide the refusal notice until 6 December 2017. The Commissioner therefore finds that the Council breached section 17(5) of the Act.

⁴ It should be noted that whilst commendably detailed, the Council's refusal notice of 6 December 2017 was incorrect in one respect, the Council having subsequently confirmed to the Commissioner that they can find no evidence to support the previous contention that the information requested by the complainant in the ten requests was otherwise in the public domain.

Right of appeal

52. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

53. 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.
54. 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

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