

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 4 October 2019

Public Authority: Llanelidan Community Council

Address: Clerk@LlanelidanCC.Wales

Decision (including any steps ordered)

1. The complainant requested various pieces of information relating to Llanelidan Village Green ('the Village Green'). Llanelidan Community Council ('the Council') refused the request under section 14(1) as it considered it to be vexatious. The Commissioner's decision is that the Council failed to provide sufficient evidence to support the decision to refuse the request for information and is not entitled to rely on section 14(1) of the FOIA with regard to the request.
2. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the request for information of 22 September 2018 that does not rely on section 14(1) of the FOIA.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 22 September 2018, the complainant wrote to the Council and requested information in the following terms:

"I am making a Freedom of Information request for the following items listed below and should like all copies of these documents sent to me or I can collect them when informed:

- 1. All documents and electronic forms of communication supplied by Llanelidan Community Council to Swayne Johnson Solicitors in connection with Llanelidan Village Green and Nantclwyd Estate. This to include communication via individual councillors.*
 - 2. All records of phone calls and e-mails in respect of the commissioning of the "Report" on Llanelidan Village Green, referred to in Item 50 (a) of draft minutes including copy of letter from Council to Swayne Johnson dated 5th June 2018.*
 - 3. Copy of the Report on Llanelidan Village Green supplied by Swayne Johnson Solicitors referred to in Item 50 of draft minutes and in previous minutes, together with the advice given in a letter dated 4th Sept.*
 - 4. Copies of any letters, e-mails, faxes or notes sent to or from Nantclwyd Estate office, Belfour's with Berrington, William Shuttleworth and Sir Philip Naylor Leyland in connection with Llanelidan Village Green since 1st January 2015 to present day. Including the "all previous correspondence and information" referred to in Item 50 of the draft minutes.*
 - 5. A copy of the Public Liability Insurance held by the Community Council for Llanelidan Village Green.*
 - 6. Copies of all e-mails, notes, letters and any other notes made to or from Councillors and Clerk in connection with Llanelidan Village Green or me from January 2016 to the present day.*
 - 7. A copy of the "Motions" record".*
5. The Council acknowledged the request on 6 October 2018 and advised that the correspondence would be *"dealt with in due course when either, I have work time available or, I am instructed otherwise by the Council"*.
 6. On 25 October 2018 the Council issued a refusal notice confirming that it was applying section 14 of the FOIA to the request of 22 September 2018 as it considered the request to be vexatious. The Council also confirmed that it did not have an internal review procedure.

Scope of the case

7. The complainant contacted the Commissioner on 29 October 2018 to complain about the way her request for information had been handled.
8. The scope of the Commissioner's investigation into this complaint is to determine whether the Council correctly refused to comply with the request under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) - Vexatious requests

9. 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.
10. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC)*. It commented that "vexatious" could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
11. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. The Dransfield case considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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).

13. The Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
14. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

15. However, the Commissioner is also keen to stress that, in every case, it is the request itself that is vexatious and not the person making it. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."

Background to the case

16. The subject matter associated with the request in this case relates to the Village Green and specifically ownership matters relating to the Village Green. Based on the evidence available to her, the Commissioner understands that the Council was given the Village Green for the benefit of the community by virtue of an Inclosure Award. In May 2010 Nantclwyd Estate ('the Estate') registered a possessory title over the Village Green.
17. The complainant is of the view that the Council has been negligent in its management of the Village Green by allowing the Estate to register a possessory title over it. She considers that the Council has failed to take

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

appropriate action to reclaim ownership of the Village Green for the benefit of the local community.

18. At a Council meeting in December 2017 it decided to instruct solicitors to provide advice on the legal rights and ownership of the Village Green. Following the legal advice received, at its meeting on 6 September 2018, the Council resolved not to challenge the registration of possessory title of the Village Green. It also resolved to seek a discussion with the Estate to notify the land agents of the community's expectations concerning maintenance of the Village Green and ground rules for the use and management of the Village Green.
19. As a result of further discussions with the Estate, at a meeting on 8 November 2018 the Council agreed to consult with the local community in terms of the options available in respect of the Village Green. The consultation exercise took place in January /February 2019. The outcome of the consultation exercise was debated at a Council meeting on 2 May 2019. Based on the responses received to the consultation the Council proposed to move forward with the most popular option for a land exchange with the Estate. This option required the submission of a proposal to the Secretary of State to de-register Penybryn Common (the current Village Green) and an offer to register replacement land.

The Council's position

20. The Council provided very limited arguments to support its position that the request in this case is vexatious. In its initial response to the request the Council confirmed that it considered section 14 to apply to the request. The Council also stated that there was no requirement on it to explain why it reached its decision that the request is vexatious. The Council also confirmed that it did not have an internal review procedure through which the complainant could appeal the decision. It also warned the complainant that it would *"not respond to any further vexatious requests on the same or similar topics"*.
21. In her correspondence to the Council the Commissioner explained her approach to investigating the application of section 14(1) and asked the Council to provide detailed, comprehensive representations in support of its view that the request in this case was vexatious. When the Council responded to the Commissioner's investigation, it provided a number of supporting documents as evidence. However, there was an issue with receipt of one of the attachments that the Council deemed relevant. The Council advised the Commissioner that it had re-sent the document on a number of occasions, but the Commissioner still did not receive it. The Commissioner asked the Council on a number of occasions to re-send the document by alternative means, for example by post or other removable media, but nothing was received. As a result, the

Commissioner wrote to the Council urging it to send her the document by alternative means or to contact a member of her staff by telephone to discuss the matter further. The Commissioner confirmed that if she did not receive the document in question or any further contact from the Council she would have no option but to make her decision based on the evidence available to her to date. No further contact was received from the Council and as such the Commissioner has made a decision in this case based on the evidence available to her.

22. In its response to the Commissioner the Council explained that the complainant in this case was a former councillor. The Council advised that it considered the complainant had been waging a personal vendetta against Council Members and the owner of the Estate, which had been ongoing and escalating in intensity since September 2017.
23. The Council explained that its Clerk was contracted to work 7.5 hours a month. However, the Clerk worked 16.5 hours in September 2018 and 8.5 hours in October 2018. The Council advised that the additional hours was largely due to the burden involved in dealing with contact from the complainant. By the end of the financial year on 31 March 2019, the Clerk had worked in excess of 60 hours over and above their contracted hours.
24. The Council contend that the complainant has harassed the Council through a number of channels including *"public participation sessions of meetings, but also via multiple e-mail and letter requests, via social media, via rejected complaints to the Public Services Ombudsman and via the press with a famously inaccurate story in the Daily Post"*. The Council considers that the complainant has tried to "grind down" the Council by persistent and over-burdening requests. The Council also allege that the facts the complainant has quoted in communications about the subject matter are *"inaccurate or, at best, misleading"*.
25. As well as its response to the Commissioner's enquiries, the Council provided her with a copy of a letter it received from the complainant dated 5 December 2017 in which she raised a number of concerns and questions about the ownership of the Village Green, together with the Council's response to the questions/concerns.

The complainant's position

26. The complainant has not submitted any specific representations in support of her view that the request of 22 September 2018 is not vexatious.
27. Whilst not addressing the issue of vexatiousness specifically, in the supporting evidence provided by the complainant to the Commissioner,

it is clear that she considers her requests stem from what she perceives as a failure on the part of the Council to manage matters relating to the Village Green appropriately. She considers that the Council's actions in failing to take appropriate steps to regain ownership of the Village Green has resulted in a detriment to the local community. Based on the wording of the request it is apparent the complainant is seeking to obtain information to understand the rationale for the Council's actions and decisions relating to the Village Green.

The Commissioner's position

28. As referred to earlier in this notice, the Council's representations in support of section 14(1) in this case are extremely limited. For example, the Council contends that the complaint has been waging a personal vendetta against its members and the owner of the Estate, but it has not provided any evidence to support this assertion, or any details of specific incidents/actions. Similarly, the Council has alleged the complainant's actions and contacts has placed a considerable burden on its limited resources, but again, it has not provided any further details, for example, details of the numbers of requests/contacts from the complainant.
29. The Council alleges that the complainant has harassed the Council through various means, however, it has again failed to provide any evidence or explanation as to the exact nature and/or frequency of the harassment it contends has taken place.
30. The Council has referred to complaints which the complainant has made to the Public Services Ombudsman for Wales ('PSOW') which have been rejected. Although the Council did not provide any detail of these complaints, the Commissioner understands that a number of complaints have been submitted by the complainant to the PSOW about the Council itself and code of conduct complaints against individual councillors for failing to make declarations of interests when discussing matters relating to the Village Green. The Commissioner notes that the PSOW decided not to investigate the complaints in question. However, the complaints to the PSOW were not submitted until December 2018, nearly two months after the request was submitted to the Council. As the Commissioner considers the position at the time a request is received, she has not taken these complaints into consideration in her assessment in this case.
31. The supporting evidence submitted by the Council with its response to the Commissioner comprise a letter containing a series of questions raised by the complainant about the Village Green and the Council's response to the questions. As far as the Commissioner can see, there is no evidence within the supporting evidence to support the Council's

contention in terms of the burden imposed by dealing with contact from the complainant, nor any evidence she is harassing the Council or that she has a personal vendetta against the Council and the Estate.

32. In terms of the purpose and value of the request, the Commissioner notes that the complainant does not appear to have a solely 'personal' interest in the subject matter. Rather, the complainant appears to have genuine concerns about the loss of the Village Green as community asset. The Commissioner does not consider that there is any deliberate intention to cause annoyance to the Council; rather, she considers that that the complainant is frustrated with what she considers an important issue and is seeking information. Public authorities are not in a position to punish genuine requestors simply because they do not want to deal with the matter at hand – the legislation places a specific requirement on public authorities to deal with requests for information in a specific way, regardless of their size. It is not for the authority to pick and choose elements that suit, but to give appropriate consideration to the rights of the individual as well as the limits that the legislation provides for. The Commissioner is therefore not satisfied that the complainant's request is a manifestly unjustified, inappropriate, or an improper use of the provisions of the FOIA.
33. For the reasons set out above and taking into consideration the findings of the Upper Tribunal that a holistic and broad approach should be taken in respect of section 14(1), she has concluded that the Council has failed to provide sufficient evidence or arguments to support its assertion that the request in this case was vexatious. The Commissioner's decision is that the Council was not entitled to rely upon section 14(1) of the FOIA to refuse to comply with this request. As at paragraph 2 above, the Council is now required to issue a fresh response to this request

Other matters

Internal reviews

34. Although not forming part of the formal decision notice the Commissioner uses 'Others Matters' to address issues that have become apparent as a result of a complaint or her investigation of that complaint and which are causes for concern.
35. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one the code of practice issued under

section 45 of the FOIA sets out, in general terms, the procedure that should be followed.

36. In this case, the Council has confirmed that it does not have an internal review process. The Commissioner would like to draw the Council's attention to the section 45 code and recommends that the Council considers introducing a freedom of information complaints procedure in the future.

Right of appeal

37. 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

38. 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.
39. 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

Joanne Edwards
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