

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2019

Public Authority: London Borough of Hillingdon
Address: Civic Centre
High Street
Uxbridge UB8 1UW

Decision (including any steps ordered)

1. The complainant has requested information relating to the wording of Road Traffic Orders. The London Borough of Hillingdon (the "Council") refused to respond to the requests and cited section 14(1) (vexatious requests) as its basis for doing so. It waived the opportunity to conduct an internal review and directed the complainant to the Commissioner.
2. The Commissioner's decision is that the Council is entitled to rely on section 14(1) as its basis for refusing to respond to the request. However, it did contravene its obligations under sections 1, 10 and 17 of the FOIA in failing to respond in a timely manner in accordance with the legislation.
3. No steps are required.

Request and response

Request set 1

4. On 2 October 2018, an individual acting on behalf of the complainant requested information of the following description:

"For the period between January 1998* to March 2017 Hillingdon Council used the standard term of "intends to make" in relation to Road Traffic Orders in over 620 legally required notices. These notices were

all published in the 1501 section of the London Gazette and should reflect the on street notices put up in that period as well as reflecting the orders citing the relative act and sections that are eventually made relating to those notices.

From April 2017 more than 40 notices by the London Borough of Hillingdon have been published in the same 1501 section omitting the phrase "intends to make" and instead substituted it with the term "proposes to make". As this is clearly a required legal term, the change indicates a change of internal policy affecting these notices as no legislation changes have been made requiring the use of this term regarding proposal notices since 1996.

Therefore I would ask for the following information under the freedom of information act.

1. Which member or members of the executive and or political leadership made the decision to change the standard term from "Intends to make" to "Proposes to make"
2. As this is a significant change it would require a meeting that should include the input of at least the relative cabinet member, deputy CEO whose named on those notices and and Head of Legal/Borough Solicitor who is ultimately responsible for legal compliance. Did any such meeting take place and who attended. Please supply the minutes
3. If no policy meeting took place, there would have been internal consultation regarding this significant policy change, please supply the relative internal communications and or minutes of the associated meetings relating to this policy change."
5. On 3 October 2018, the individual acting on behalf of the complainant added the following to the request:

"I should ask one more question to be added to this request which is most important.

Why was the term "Intends to make" in the 1501 notices changed to "Proposes to make"

The following does need to be taken into account. The Borough Solicitors and Deputy CEO's written affirmation that the term was legally acceptable and compliant PRIOR TO that significant change and backed up by the Council Leader [named individual 1] in writing with the statement 'For the avoidance of doubt I have absolute faith in the professional ability of both [named individual 2] the Deputy Chief

Executive and [named individual 3] the Borough Solicitor”.

6. On 21 December 2018, the Council responded following the Commissioner’s intervention in respect of the delay.
7. It refused to provide a response on the grounds that, in its view, the request was vexatious (FOIA section 14). It directed the individual to the Commissioner if he wished to complain about this.

Request set 2

8. On 5 October 2018, the aforementioned individual requested information of the following description:
9. “What is the procedure for official combined complaint against the Deputy CEO, Borough Solicitor and Council Leader under the following circumstances.

For negligence and failure of duty and or failing to declare a conflict of interest in the handling a complaint to which they were the ultimate responsible subjects compounded by joint supported misleading actions with misleading statements made to a resident and registered elector's representative in relation the compliance of official legally required public notices published in the London Gazette for a period of no less than 20 years.

The negligence and misleading actions became evident after those cited made unambiguous statements in February 2017 to early March 2017 that the process and notices were fully complaint. Furthermore it is noted that the Deputy CEO's name is attached to notices with a significant change of wording in subsequent published notices that was made and has been in constant use since April 2017. This small but legally significant change was in contradiction of those previous statements in that the term "Intends to make" being no longer used and replaced with the standard use by all other local authorities of "Proposes to make" despite no recent change in legislation or directives warranting that change indicating that the previous term used was indeed erroneous and voiding said notices using that term prior to April 2017.

The fact that the majority of notices still fail to cite the relative 1984 act or appropriate acts and sections while a significant minority do compounds the lack of legitimacy of those erroneous notices as does the aforementioned action in changing the wording policy. These actions were not in the interest of the Borough, Residents and or the Electorate. I can go into further details but this makes the point and gives a good basis for the procedure to deal with such a complaint

The following has to be taken into consideration prior to response.

The LG Ombudsman only acts if there is a direct out of pocket issue to the resident or it is to do with social care. As there is no direct financial loss incurred at this stage, pursuance through the LG Ombudsman is negated at this stage.

That other local authorities have a procedure in place for complaints against the Borough Solicitor in which they are referred to another Borough's Solicitor for action, otherwise an independent chair of the standards committee can be appointed in order to review the complaint."

10. On 21 December 2018, the Council responded following the Commissioner's intervention in respect of the delay.
11. It refused to provide a response on the grounds that, in its view, the request was vexatious (FOIA section 14). It directed the complainant to the Commissioner if he wished to complain about this.

Scope of the case

12. The complainant's representative contacted the Commissioner on 7 January 2019, following an exchange of correspondence and telephone calls with the Commissioner, to complain about the way his two sets of requests for information had been handled.
13. The Commissioner has considered whether the Council is entitled to rely on section 14(1) in respect of both requests detailed above.

Reasons for decision

Background

14. There are two complaint cases covered in this decision notice. The Commissioner has considered them individually but not separately. The complaints about how the Council dealt with the requests in question arrived separately at the Commissioner's office. Initially, they were set up as two separate cases with two separate reference numbers as shown in the header section of this notice. However, the Commissioner is dealing with both complaints in one decision notice in the circumstances of this matter. They clearly cover the same general subject despite being submitted separately, although only within a few days of each other and the Council has responded to each request in the same way.

Section 14(1) – vexatious requests

15. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
16. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
17. The public authority said that there was no serious purpose to the request and referred to paragraph 54 of the Commissioner's guidance on the application of section 14 which sets out a table of conflicting factors to balance against each other. On one side, these are: Serious purpose; requester's aims and legitimate motivation; wider public interest and objective value. On the other side, these are: Detrimental impact on the public authority; evidence that the requester is abusing the right of access to information.¹
18. It drew attention to the fact that the complainant had not submitted a formal legal challenge to the notices referred to in the request sets. He had, instead, submitted several FOI requests and a Cease and Desist Order. It referred to a previous decision of the Commissioner on broadly the same subject - that is parking enforcement in a specific area, to indicate that its handling of such requests had already been considered.²
19. It said that "Any person who wishes to challenge the validity of an Order is able to do so pursuant to Paragraph 35 of Schedule 9 to the Road Traffic Regulation Act 1984 by making an application to the High Court".
20. It also set out its view that "proposes" and "intends" were synonyms and reproduced an extract from the dictionary it referred to in its work.

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

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614801/fs50770146.pdf>

21. The complainant set out his strongly held views about certain officials at the Council and his firm concerns about the changes in wording that had been made.

The Commissioner's conclusion

22. The Commissioner recognises that the complainant has strongly held views about the officials in question. The Commissioner also acknowledges that there is some merit in seeking information about parking enforcement via information access legislation in advance of deciding whether or not to submit a formal legal challenge. Nevertheless, the Commissioner recognises that the complainant does not appear to have taken the appropriate legal route required for challenging the parking regulations in question. The Commissioner is therefore sceptical as to the serious purpose of the request – to find out whether proper processes have been followed.
23. Moreover, while the Commissioner recognises that it could be argued that there is legal nuance to differentiate “proposes” and “intends”, the Council has gone on record to say that they are synonymous and it sees one as having entirely the same meaning as the other in this context. If the Council changes its position on this, it would seem reasonable that it could be subject to legal challenge on this point although clearly it would be for a court to determine the merits of such a challenge.
24. The Commissioner notes the Oxford English dictionary online has the following definition of “propose”:³

“Intend to do something”.
25. The complainant's repeated use of FOIA requests and a Cease and Desist order despite there being an obvious legal route for challenge do not strengthen his position.
26. In conclusion, the Commissioner is satisfied there is no serious purpose to these requests and that therefore the Council is entitled to rely on section 14(1). In reaching this view, the Commissioner has taken into account that the complainant has not sought to challenge the validity of the Order by the appropriate legal route. The Commissioner has also taken into account that the complainant's focus in communication with the Commissioner has been his concerns about certain officials at the Council rather than concerns about parking enforcement. While his

³ <https://www.lexico.com/en/definition/propose>

concerns remain unassuaged, the Commissioner does not consider in the circumstances of this case, that these concerns are sufficiently evidenced such that the Council is not entitled to rely on section 14(1). The Commissioner has therefore concluded that the Council is entitled to refuse the requests on the basis of section 14(1) of FOIA.

Procedural matters

27. Sections 1 and 10 of the FOIA require a public authority to respond to a request and to do so within 20 working days. The Council did not do so in this case. In failing to do so, it contravened the requirements of sections 1 and 10.
28. Section 17 (5) states that:

"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."
29. The Council failed to do so in this in accordance with its timeliness obligations. It therefore also contravened the requirements of section 17(5).

Right of appeal

30. 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 123 4504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. 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

Alexander Ganotis
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