

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2019

Public Authority: Essex Fire and Rescue Service

Address: Kelvedon Park
London Road
Rivenhall
Essex
CM8 3HB

Decision (including any steps ordered)

1. The complainant has requested technical information about fire hoses. Essex Fire and Rescue Service ("the Service") refused the request as vexatious.
2. The Commissioner's decision is that the request was not vexatious and therefore the Service was not entitled to rely on section 14(1) of the FOIA to refuse it.
3. The Commissioner requires the Service to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, under the FOIA, to the request, which does not rely on section 14(1).
4. The Service 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

5. On 25 September 2019 the complainant requested information of the following description:

"1. Does your fire service have 51mm hoses available as part of its arsenal to fight fires?"

"2. *If not, why?*"

6. On 1 October 2019, the Service responded. It refused to provide the requested information as it considered the request to be vexatious.
7. The complainant requested an internal review on 2 October 2019. The Service sent the outcome of its internal review on 9 October 2019. It maintained that it was entitled to rely on section 14(1) of the FOIA to refuse the request.

Scope of the case

8. The complainant contacted the Commissioner on 10 October 2019 to complain about the way his request for information had been handled.
9. The Commissioner considers that the scope of the investigation is determine whether or not the request, when considered in context, was vexatious.

Reasons for decision

Section 14 - Vexatious

10. 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.*

11. 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.

12. 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.

13. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
14. *Dransfield* also 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).
15. 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.
16. 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*".
17. 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.
18. 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."

The complainant's position

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

19. The complainant expressed to the Commissioner his surprise that the Service had suddenly and apparently without warning, characterised his request as vexatious.
20. He pointed out that a previous government report had identified the type of hose specified in the request as being the optimal type of hose for dealing with fires in high rise buildings. He therefore argued that there was a significant public interest in understanding whether or not the Service was using equipment of the recommended standard.
21. Finally, the complainant noted that the request which had been refused would appear to be relatively straightforward to answer. He also noted that he had made similar requests to other Fire and Rescue Services which had been successful.

The Service's position

22. At the outset of her investigation, the Commissioner asked the Service to set out why it considered the request to be vexatious and to supply appropriate evidence to support its conclusions.
23. In its submission to the Commissioner, the Service relied on two grounds to justify its decision: the burden on its staff; as well as the frequent and overlapping nature of the requests which the complainant had made.
24. The Service did not appear to argue that the request which it had refused was particularly burdensome in its own right, rather that, in the context of other requests which the complainant had made, this particular request represented a tipping point.
25. The request in question was submitted on 25 September 2019. The Service contended that this was the ninth request the complainant had submitted during a three week period.²
26. The Service argued that the requests had been spread across various departments and created a considerable burden in responding. It informed the Commissioner that, according to its calculations, the five requests which had been dealt with by the Human Resources section had taken "approximately 20 hours" to respond to – although it did not

² The complainant argues that it was the eighth – the Commissioner will deal with this point later on.

provide any further evidence to demonstrate how it had calculated this figure.

27. Finally, the Service noted that the complainant had submitted fresh requests for information before the previous requests had been answered. It argued that this added to the vexatious character of the request.

The Commissioner's view

28. Having reviewed the arguments of both parties, the Commissioner does not consider that the request was vexatious.
29. Section 14(1) of the FOIA relieves a public authority of its duty to provide information, consider the balance of the public interest in disclosure or even to establish what information it might hold. Therefore the bar for applying section 14(1) is necessarily high and the public authority must be able to both demonstrate why it needs to rely on the exemption and supply appropriate evidence to support its conclusion.
30. Having considered the documentation provided to her, it is clear to the Commissioner that the "two" requests which the Service received from the complainant on 9 September 2019 were in fact a request, followed by a clarification of that same request. The complainant, having learnt from the experience of making the same request to other Fire and Rescue Services, had proactively contacted the Service to clarify the terms of his request. The Service did not need to comply with the "first" request of that date, only the clarified request. Therefore the Service was only required to respond to eight requests from the complainant, not nine.
31. That being said, the Commissioner still accepts that eight requests, submitted in short space of time, will create a significant burden – especially on a relatively small public authority such as the Service. It should have been reasonably obvious to the complainant that submitting so many requests so close together risked not having them all answered within 20 working days – or indeed at all.
32. The Commissioner also notes from the wording of the earlier requests that they were not sufficiently similar for the Service to have aggregated them for the purpose of considering the section 12 cost limit.
33. The Commissioner finds it disappointing that the Service did not supply her with any substantive evidence to support its claims about burden, beyond noting the number of requests it had received and providing an estimate without any underlying calculations.

34. However, the Commissioner is also mindful that the Service gave the complainant no warning that the burden of his requests was approaching a level which it considered intolerable. Whilst there is no requirement for a public authority to issue a warning that it is considering relying on section 14(1) to refuse future requests, the Commissioner's guidance encourages public authorities to consider informal approaches before resorting to the exemption.
35. The Commissioner notes that the Service appears to have dealt with the previous seven requests in both a considered and timely fashion. From an Information Rights perspective, this is clearly a high level of service. Unfortunately it also appears to have given the complainant the impression that his requests could be dealt with easily.
36. The Service has not provided any evidence to the Commissioner which would suggest that it had provided the complainant with any sort of informal warning about the burden his requests were apparently creating.
37. Given that the complainant does not seem to have been pursuing any form of grudge or campaign and that his requests were made in courteous language, the Commissioner considers that there was no reason to suggest that the complainant would not have been amenable to such an approach.
38. Had such a warning been issued, but the complainant had chosen to make and pursue his request anyway, it would have provided strong evidence that he *was* pursuing his requests in an unreasonable manner.
39. The eighth request appears to have been the final request of the batch and the Service has not provided any evidence to suggest that further requests would have been forthcoming, had section 14(1) not been applied.
40. The Commissioner also agrees that the information which the complainant has sought is of public value. Thus the Service was required to meet an even higher bar in demonstrating that the burden in responding would undermine that value.
41. Given the lack of any other indicators that the request was vexatious, the fact that the request itself does not appear burdensome and the lack of supporting evidence to demonstrate why responding to the previous requests imposed such a burden, the Commissioner is not convinced that the high bar of vexatiousness has been reached in respect of this request.

Other matters

42. Notwithstanding the matters outlined above, the Commissioner does note that the complainant should be mindful of the burden any future requests may have on the relevant public authority – especially when submitting multiple requests within a short space of time.

Right of appeal

43. 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

44. 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.
45. 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

Phillip Angell
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