

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2021

Public Authority: Harrogate Borough Council
Address: PO Box 787
Harrogate
HG1 9RW

Decision (including any steps ordered)

1. The complainant requested information about applications for heavy goods and public service vehicle operators' licences and centres. The Council refused the requests under section 14(1) of the FOIA as it considered them to be vexatious.
2. The Commissioner's decision is that Harrogate Borough Council was entitled to rely on section 14(1) to refuse the requests.

Requests and response

3. On 4 June 2020 the complainant wrote to Harrogate Borough Council and requested information in the following terms

"Could you please under FOI provide a list of all operators licence centers in the Harrogate Borough Council district." (sic)

4. On 22 June 2020 the Council responded to say that it did not hold the information.

5. On 23 June 2020 the complainant made a further request:

"With reference to your email 22/6/20 at 12.23 20/21-0069. In light of your response Please could you provide all planning applications for operators centers in the Harrogate district. To reduce paperwork and council officers time on this request a list would be acceptably.

Also could you provide the attached planning applications applied for , for these centres." [sic]

6. The Council refused this request on the basis it had already responded to a similar request on 26 May 2020, where had provided a link to access some of the information and confirmed it did not hold the remainder.

7. On 30 June 2020, the complainant sent another request:

"Under FOI please provide all responses sent from Harrogate Borough council to traffic commissioner in response to applications for operators centers in the Harrogate district" (sic)

8. He then sent a follow-up email on 2 July 2020 stating:

"I thought I better clarify my request of the 30th so there is no confusion and so as you do not claim it is a repeated request.

This request is for all correspondence between the council and the Traffic Commissioner in relation to all other application for operators licence."

9. The Council responded on the same day. It refused to provide the requested information, citing section 14(1) of the FOIA as it considered the request to be vexatious.
10. Following an internal review the Council wrote to the complainant on 20 July 2020 with a response that appeared to cover several of the complainant's requests, maintaining its application of section 14(1). On 25 August 2020 the Council provided an internal review of the requests made on 4 June and 30 June 2020, and now stated it was citing section 14(1) in relation to both of these requests.

Scope of the case

11. The complainant contacted the Commissioner on 27 July 2020 to complain about the way his requests for information had been handled. He considered that by failing to comply with the requests, the Council was preventing him from validating the requirement for a planning application to secure an operator's licence. For context, the licences concerned are issued by the Traffic Commissioner for the operation of heavy goods and public services vehicles.
12. The scope of this case is whether the Council was entitled to rely on section 14(1) to refuse the requests.

Background

13. The Council has a long history of communication with the complainant going back a number of years and linked in some way to his concern about an alteration to one of the Council's planning files in connection with a complaint made about his property in 2007. The record of this was relevant some years later when the council took enforcement action which resulted in a Planning Inspector requiring the removal of a residential caravan from the complainant's land.
14. A server backing up the planning department's records experienced a failure in May 2014 and the Council subsequently replaced it. A decision was taken not to retrieve the data from the back-up files as there was no business need to do so. In the course of the planning dispute a council officer told the complainant that the 2007 record had been amended. In January 2015 the complainant wrote to the Council seeking information relating to electronic back-up data for previous versions of the enforcement file to demonstrate what alterations took

place. The Council believed that the back-up was not held due to the server failure. He then sought "a copy of the root cause analysis report, plus any emails and notes etc, in connection with the Council's server failure in May 2014."

15. The Council maintained that it did not hold information falling within the scope of the request as action regarding the failure had taken the form of face to face meetings and focussed on getting the system working again rather than recording what had happened. A complaint was made to the Information Commissioner who issued a decision notice on the matter – FS50608263¹. The decision notice concluded that the Council had undertaken reasonable and adequate searches to ascertain if any information was held, and that on the balance of probability the Council was correct in its assertion that no information was held.
16. The complainant appealed to the First Tier tribunal as he considered the Council's responses to be untrustworthy. The tribunal concluded that it was not persuaded this was the case, but it did hold that the request was broad in nature and therefore two emails flagged by the complainant were in scope of the request and held at the time it was made. The Council was therefore ordered to respond on this basis.
17. At the same time as the information request, the complainant also pursued a complaint about the matter through the Council's complaints procedure. The Council gave explanations about the contents of the record, the poor quality of record keeping and other matters of concern. The complainant remained dissatisfied with the responses, and escalated it to the Local Government Ombudsman (LGO), which was unsuccessful - LGO decided not to investigate since the issues of complaint about the 2007 record had been a matter for the Planning Inspector and were therefore outside the LGO's jurisdiction.
18. As a result of the tribunal decision the Council carried out further searches and supplied information to the complainant on 7 March 2017. Further explanations were provided to him and he met with the Council's ICT manager.
19. The complainant also complained to the police about the Council's conduct, and two Council lawyers and two members of the ICT

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624660/fs_50608263.pdf

department attended a meeting with the Police in August 2017 as part of this investigation. Following the meeting, the Council was able to ascertain that there had been a slight modification to some text in the 2007 record – from “usable as a dwelling” to “usable as dwelling” – so missing the “a” in the later version.

20. The recovered information, together with an explanation of how it was retrieved, was sent to the complainant on 20 November 2017.
21. Following this the complainant contacted a member of staff in the IT department on several occasions with further questions. On 21 August 2018 a member of staff responsible for dealing with FOIA requests wrote asking the complainant not to contact the IT staff member directly.
22. On 24 August 2018 the complainant submitted a new request to the Council, asking for more information about the retrieval process. The Council responded on 7 September 2018, explaining that either the information had already been provided, or that it was not held.
23. The complainant contacted the Information Commissioner as he did not agree with the Council’s position. She determined in decision notice FS50819323² that on the balance of probability, no information was held.
24. The complainant appealed the decision to the First-Tier tribunal, which was awaiting hearing at the time the requests that are the subject of the this decision notice were made. As part of the Council’s defence of its position to the tribunal, it submitted a witness statement from an employee totalling 1682 pages.
25. The Council provided this witness statement to the Commissioner. Aside from blank pages and some repeat emails, the statement contained a comprehensive and lengthy history of communications with the complainant, including responses to SARs and both the FOI requests that the complainant appealed to the tribunal. It also included extensive ongoing communications between the Council and the complainant on the same planning issue, made subsequent to the 24 August 2018 request.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616529/fs50819323.pdf>

26. The Council has applied section 14(1) to five of the complainant's previous requests as a result of the frequent and overlapping nature of these, as well as continued allegations and criticisms that have been levelled at staff. Due to the unrelenting nature of these, on 27 November 2019 the Council applied restrictions on the complainant's contact with it under its 'Unacceptable Behaviours Policy'. It explained that continually questioning the integrity of staff when there was no basis in his allegations, and that repeated contact about the same issue which has already been adequately responded to, but which he persistently disagrees with, was not acceptable behaviour. It also provided a single point of contact for the complainant, advising that communications from him would be reviewed fortnightly but that correspondence concerning issues that had already been investigated would not be responded to. These restrictions followed a letter sent by the Council to the complainant on 7 August 2019, which also outlined concerns about the serious allegations he was making against staff, the repetitive nature of correspondence and refusal to accept responses given. This was placing an unreasonable demand on officers' time.
27. Senior officers at the Council have met with the complainant on several occasions to address his concerns and agree actions, including those relating to his own personal data. However despite the Council's attempts to explain and address matters in person and in writing, the complainant continues to accuse the Council of wrongdoing and intending to report the matter to the police.
28. In its letter of 27 November 2019, the Council confirmed that it will still consider FOI and subject access requests under the relevant legislation and that the restrictions will be reviewed annually.
29. The Council wrote to the complainant on 2 July 2020 refusing the request dated 24 June 2020 as it considered it to be vexatious, and again on July 3 2020 after the complainant had requested a review of the refusal. The letter dated July 3 was sent prior to the formal review response, but provided detailed grounds for the refusal.
30. In this letter the Council explained that that it had taken into account the context and history of the request, including previous contact, and this included a long series of requests and correspondence. The Council maintained that it had fully answered the complainant's requests and correspondence where required and appropriate, and considered that going into these issues again at length would cause an unjustifiable and disproportionate level of disruption to the Council, particularly when the complainant continues to make allegations against officers questioning their professional integrity. In the review letter relating to requests

made on 4 and 22 June 2020, which the Council sent on 25 August 2020, it stated that it had considered 15 FOIA and SAR requests made since November 2019 and could see no real public interest / benefit, and that they merely repeated the substance of previous requests.

31. The requests to which the Council has applied section 14(1) concern applications for operators' licences, which are issued by the Traffic Commissioner for the legal operation of heavy goods and public service vehicles. This initially appeared to be unrelated to the previous planning matter and altered record. However, having discussed this with the Council, it has confirmed that geographically both concern the same land and two separate breaches of planning control as operation of vehicles on the land would contravene the current planning permission. On 3 April 2020 the Council objected to the Traffic Commissioner regarding the complainant's licence application on this basis.

Reasons for decision

32. Section 14(1) of FOIA states that:

'Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious'

33. Despite the complainant's history with the Council, it is important to remember that for the purposes of FOIA, it is the request that may be deemed vexatious, and that requests are motive and applicant blind. The FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
34. Whilst there is no definition of the term vexatious in the FOIA, Tribunal decisions have provided insight and guidance in determining a request as vexatious. In *'IC v Devon County Council & Dransfield'*, the Upper Tribunal took the view that the ordinary dictionary definition of vexatious is of limited use, as deciding whether a request is vexatious depends on the circumstances surrounding that request. The Tribunal commented that vexatious could be defined as the *'manifestly unjustified, inappropriate or improper use of a formal procedure'*. This definition clearly establishes that the concepts of proportionality and justification are relevant considerations in deciding whether a request is vexatious.
35. In the Dransfield case, the Tribunal also found it instructive to assess whether a request is truly vexatious by considering four broad issues:

(1) the burden imposed by the request (on the public 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. However consideration of a request as vexatious is not a tick box exercise and the Tribunal noted *'there is, however, no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.'*

36. The Commissioner has issued guidance on dealing with vexatious requests³. The guidance includes a number of indicators that may help to identify a request as vexatious. However, these indicators are neither exhaustive nor definitive, and all the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious. Congruous with the Tribunal comments in the Dransfield case regarding circumstantial consideration, the Commissioner's guidance states: *'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.'*
37. The Commissioner has viewed significant correspondence between the complainant and the Council relating to the altered record and subsequent server failure. She understands the concern of the complainant regarding record keeping and practice, and why he pursued these matters. However, she has also seen that the Council has made many attempts to resolve the matter for the complainant and this has involved a huge amount of staff time. She notes that despite the Council's invocation of its Unacceptable Behaviour Policy the complainant persists in contacting members of the Council directly which is causing an unnecessary burden on resources and the continued communication is causing disruption, irritation and distress to employees.

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

38. She has seen that the Council has gone to significant effort to meet with the complainant in person on a number of occasions to resolve SAR and FOI issues emanating from the original matter - alteration of a record - and that this request, whilst not directly related to the record, is futile and lacking in any meaningful public interest as it driven by his dissatisfaction concerning the Council's objection to another planning breach. She therefore sees no real value or purpose to the request outside of the complainant's own pursuit to engage the Council in another protracted communication, inappropriately using the FOIA as a means of doing so.

39. Whilst the requests are not directly related to that of the altered record, the Commissioner's guidance states:

'A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden.'

40. The Commissioner considers this to be the case here. When the complainant failed to get the response he sought he submitted further requests on the same issue. The cumulative burden on the Council of considering and responding to these requests, and the continued disruption and difficulty this causes staff is not in the public interest and serves to divert resources to the Council's detriment. The Commissioner therefore concludes that the Council is entitled to rely on section 14(1) of the FOIA to refuse the requests as vexatious.

Right of appeal

41. 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

42. 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.
43. 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
Group Manager

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