

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 September 2021

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant has requested information about expenses claimed by Royal Borough of Greenwich's head of its Legal Department. The Royal Borough of Greenwich relied on section 14 (vexatious request) not to provide the requested information to the complainant.
2. The Commissioner's decision is that Royal Borough of Greenwich has not persuaded her that it correctly relied on section 14 to withhold requested information from the complainant.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide a fresh response to the complainant which does not rely on section 14.
4. 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

5. On 17 February 2020, the complainant requested information from the public authority by saying as follows.
 - Please supply me under the Freedom of Information Act all expenses claimed by your head of legal Department for the last five years.
6. The public authority provided some of the requested information, but ultimately on 20 June 2020, it relied on section 14 (vexatious) not to provide any further information.
7. Following an internal review the public authority wrote to the complainant on 14 July 2020. It stated that it upheld its position.

Scope of the case

8. The complainant contacted the Commissioner 18 July 2020 to complain about the way his request for information had been handled.
9. The Commissioner considers she has to determine whether the public authority correctly relied on section 14 not to provide requested information to the complainant.

Reasons for decision

10. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request for information if the request is vexatious.
11. The term “vexatious” is not defined in the FOIA. The Upper Tribunal (UT) considered the issue of vexatious requests in the Information Commissioner v Devon CC & Dransfield (UKUT 440 (AAC), 28 January 2013). The UT commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The UT’s definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. The Commissioner considers the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
13. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her

published guidance on vexatious requests¹ (the guidance). The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is, or is not, vexatious.

14. The public authority considers compliance with the request would create a significant burden in terms of expense and distraction.
15. The public authority has considered the background and history of this request and has provided the Commissioner with some context to this request.
16. The complainant has two broad groups of issues with the public authority which are being conducted using the Freedom of Information Act and through a body of correspondence with the public authority. The public authority has responded to all of the complainant's correspondence, but he does not seem to take account of any of the explanations provided.
17. The issues are:-
 - 1) The treatment of a close relative following her leaving hospital in 2016. This went to the Local Government Ombudsman (LGO) who issued a decision in 2018. Despite the LGO's determination of the complaint, effectively closing the case, he has continued to pursue this case.
 - 2) A property he owns (but does not appear to live at) adjoins a Greenwich Builds site. The property had a garage built exiting onto a public authority car park but did not have permission or a right of way to drive over the site. The construction on the Greenwich Builds site has blocked his garage and prevents the garage door from opening.
18. Arising from these complaints are numerous other allegations and conspiracy theories relating to officers and Councillors. The complainant has accused the public authority's Director of Legal Services, of pursuing a personal vendetta against him and of being corrupt (this appears to relate to a previous FOI about claim forms which omitted a signature on one claim), as well as various other allegations of incompetence against

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

numerous other officers, including the Chief Executive and other of the public authority's officers.

19. The complainant resurrects similar complaints periodically which include personal accusations and unfounded allegations against officers of the public authority.
20. Despite being subject to contact restrictions within the public authority, the complainant has actively chosen to ignore them and has written to confirm he will not follow them and has set up numerous Twitter accounts to send abusive tweets to the public authority and individual Councillors.
21. The complainant has also made several legal cases against the public authority (he currently has two money claims against the public authority) and on one occasion, tried to give back money it had paid for one of the claims to try and continue the legal action in court.
22. The complainant's recent claim is for money that the public authority had voluntarily agreed to pay in response to a crack in a wall in his property.
23. The complainant has also threatened legal action for adverse possession and for breach of data protection and has made further FOI requests on the same matter.
24. The complainant has demanded that the public authority reimburse him for the cost of a solicitor he instructed for advice on a subject access request he submitted to the public authority.

Why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value.

25. The public authority provided the Commissioner with an Excel spreadsheet which exemplified the level and volume of correspondence received by the public authority from the complainant.
26. The public authority is of the view that this level of correspondence represents the pursuit of issues beyond the point a fair minded member of the public would consider reasonable. The public authority is of the view that this level of correspondence on the same/similar subject matter can readily be characterised as obsessive.
27. The public authority considers that this level of correspondence has had the effect of harassing the public authority and its officers and diverting officers from its primary duties. This is demonstrated by the public authority arranging numerous meetings with senior officers and other

officers from various directorates to consider the issues raised by the complainant.

28. The request is designed to caused disruption or annoyance due to the ongoing complaints he has with the public authority and using the FOIA regime to reopen issues already raised.
29. The complainant is clearly dissatisfied with the public authority and this present request is in its view a continuation of that dissatisfaction.
30. Finally, as can be seen from the Excel spread sheet the public authority has continued to consider further requests on the same matters as set out at points 1 and 2 and other related correspondence.
31. In summary the volume and pattern of the request made by the complainant has placed such a significant burden on the public authority and it is clear that he has no intention of letting matters lie to the point that he is pursuing the public authority on the same topics to an unreasonable level.
32. On the 15 June 2021, the Commissioner asked the public authority to provide her with any (further) documentary evidence that supported its above allegations and submissions. In reply, the public authority on 21 July 2021, provided the Commissioner with a bundle of documents which it said met the Commissioner's request.

Complainant's submissions

33. The public authority is correct that a complaint was registered with the Ombudsman and was investigated and found in his family's favour. Whilst this process and a preceding complaint did generate a significant amount of correspondence the amount was justified in the circumstances.
34. The public authority's solicitors wrote to him stating that he had no planning permission on his garage, and he was to infill his garage door. This then resulted in a county court claim being issued against the public authority. They then spent the next 18 months defending the claim before trying to settle before it went to court. He returned their payment as they had not provided him with the correct amount.
35. The public authority alleged that he had had no planning permission for his garage. As a result he engaged a solicitor who confirmed that planning permission had been granted by the public authority and that they had no legal rights to force him to infill the garage door. The cost for this advice was £600.00. He wrote to the public authority and requested that they refunded his legal fees due to them writing to him with factually incorrect information. Unfortunately they refused. This

resulted in many letters and emails being sent to the public authority. He sees no reason why he should be at a financial disadvantage due to their (alleged) incompetence.

Commissioner's considerations

36. The Excel sheet provided to the Commissioner by the public authority, which highlights the number of contacts or issues with the complainant, does not particularly help in establishing whether the complainant's request of 17 February 2020 was vexatious. This is because most of the said contacts or issues are listed as been generated after the 17 February 2020, this being the date of the information request.
37. Similarly the bundle of documents supplied to the Commissioner by the public authority as referred to in paragraph 32 above, exclusively consists of acts and events that allegedly occurred between the complainant and the public authority, after his information request dated of 17 February 2020.
38. The Commissioner usually only considers matters that pre existed or were contemporaneous at the time of the request. These are the factors which would (or should have been) considered, to determine that the request was vexatious. That is, unknown future events of course, could not have been used to determine that the then present request (being considered) was vexatious.
39. Regarding the interaction arising between the two parties, concerning the treatment of the complainant's close relative both concur that this generated a significant amount of correspondence. The complainant says that the volume and type of correspondence was reasonable in the circumstances. The public authority disagrees and says that the volume and type of correspondence was unreasonable. However the public authority, which bears the burden of proof for its assertion that the complainant's request was vexatious has not provided the Commissioner with evidence (as to volume and type) that supports its contention that the correspondence was unreasonable as it suggests.
40. Similarly both parties agree that there was a property dispute between the two which resulted in litigation at least being commenced. It appears that the public authority initiated the dispute when it alleged that the complainant had contravened building regulations. Again, the complainant states that the correspondence generated by this dispute was reasonable in the circumstances and his desire to recover his legal costs was likewise reasonable. Though the public authority says the opposite (about the volume and type of correspondence) it again has not provided the Commissioner with sufficient evidence to support its

contention notwithstanding that it bears the burden of proof when it seeks to rely on section 14.

41. As stated above the public authority bears the burden of proof in this matter but it has not provided sufficient evidence to support its assertions. Such evidence is needed by the Commissioner for her to be satisfied that the complainant's behaviour is such to warrant the public authority not to meet his request for information under the FOIA. Accordingly the Commissioner has not been persuaded that the public authority's reliance on section 14 was correct . The Commissioner therefore requires the public authority to provide a fresh response to the complainant which does not rely on section 14.

Right of appeal

42. 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

43. 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.
44. 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

Gerrard Tracey
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