

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2021

Public Authority: Hampshire County Council

Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested information in relation to the Hampshire Police and Crime Panel. The council refused some of the request on the basis that the request was vexatious and applied section 14. It also said that it did not hold any information in relation to the other parts of the request.
2. The Commissioner's decision is that the council was correct to apply section 14 to withhold information in relation to parts 1-3 of the request. She has also decided it was correct to state that it had no information falling within parts 4 and 5 of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 16 March 2020 the complainant requested the following information:
 1. *The names of all the members who attended the Complaints Sub-Committee meeting and their employers*
 2. *The date of the above meeting*
 3. *A hard copy of the minutes of the above meeting.*
 4. *Provide evidence that the administrative authority reviewed and approved the 12 March 2020 letter and the 6 March 2020 letter.*
 5. *Provide a copy of all correspondence between [name redacted], [name redacted] and the Chief Constable in respect of this matter.*
5. The council responded on 27 April 2020. It refused to respond to parts 1-3 of the request on the grounds that the request was vexatious under section 14 of FOIA. It said that it would respond to parts 4 and 5 of the request in due course. It subsequently sent a further response to the complainant stating that it held no further information in respect of parts 4 and 5.
6. The complainant requested that the council review its decision on 30 April 2020.
7. Following an internal review, the council wrote to the complainant on 23 April 2021. It maintained its position that section 14 applies, and that it did not hold information in respect of parts 4 and 5 of the request.

Scope of the case

8. The complainant contacted the Commissioner 14 May 2020 to complain about the way his request for information had been handled.
9. The complainant believes that his requests for information are not vexatious, and that the council should respond to his request. He also considers that the council would hold the information which falls within the scope of parts 4 and 5 of his request.

Reasons for decision

Section 14(1) – vexatious requests

10. 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. There is no public interest test.
11. The term “vexatious” is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹ (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering 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.
13. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed 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).
14. In the Commissioner’s guidance, she suggests that 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.

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

15. 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 requests². In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.
16. 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 vexatious.
17. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.

18. In that respect, 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".

19. The task for the Commissioner is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal. In doing so she has taken into account the representations of the council and the evidence that is available to her. She will also refer to her published guidance on defining and dealing with vexatious requests.

The complainant's position

20. The complainant argues that the council has refused his request as vexatious because it does not wish to respond to the request. He states that:

² <https://ico.org.uk/media/for-organisations/documents/1198/dealingwith-vexatious-requests.pdf>

"It is common place amongst public authorities to rely upon accusations of "vexatious, frivolous, irresponsible behaviour" when refusing to respond to legitimate RFI's that are a matter of public concern. Moreover, such glib rejections and assertions are delivered, without actually and specifically demonstrating the justification and legal reasons for doing so. Such is the case here...."

21. He believes that he has refuted the council's argument that acting as Lead Authority does not give it any powers of scrutiny or supervision over the Hampshire Police and Crime Panel. He further argues that this issue he raises relates to the root cause of his request for information and others surrounding the same issue. He provided his arguments for this view to the Commissioner to demonstrate why he considers that the council is incorrect in its assertion that it does not have powers of scrutiny or supervision over the panel.

The council's position

22. The council states that its decision to refuse this request for publicly available information as vexatious was based on the substantial number of requests received from the complainant for information already in the public domain, compounded by the antagonistic approach adopted by the complainant when making his information requests.
23. The council recognises that this particular request is not overly burdensome upon it in its own right. As a county council, it has sufficient resources to make it unlikely that that would prove to be the case. However, it argues that within the broader picture of the complainant's contact with the County Council, this was one of many other requests and cases that he had submitted.
24. It argues that, since 2018, the complainant has submitted sixteen Freedom of Information requests, and seven Internal Reviews requests. It says that six cases have been escalated to the Information Commissioner's Office, and three cases have been to First Tier Tribunal. In its internal review response, it highlighted that many of the requests it had received previously were overlapping requests.
25. It also highlighted that the complainant was already on a restricted means of contact list given his previous correspondence with the council. It also pointed out that he had chosen to ignore the process which the council had asked him to follow to make further requests under the FOIA in making this request.

26. The council further argues that the vast majority of these requests have been regarding data related to the Hampshire Police and Crime Panel. It argues that they appear to be motivated by his frustration with the handling of a complaint which he made to the Hampshire Constabulary regarding the alleged use of a police vehicle for personal shopping. It argues that this allegation was fully investigated by the police at that time.
27. It said that the complainant then complained about the Chief Constable, and this was investigated by the Office of the Police and Crime Commissioner. The complainant then complained about the Police and Crime Commissioner, which was reviewed by the Police and Crime Panel. He is now seeking further investigation by the council in its role as the administrative authority for the panel.
28. It therefore considered that the request was futile given that the matter which the complainant was seeking to address had already been fully resolved through other, more appropriate processes.
29. The council considers that as the complainant remains unsatisfied with the outcome, he has continued to pursue the matter with the council as it acts as the administrative authority for the Police and Crime Panel. The council has previously told him that the panel is a completely separate legal entity to the council, and that it only provides administrative support. Additionally, in the case of EA/2019/0351/P the First-tier Tribunal found that the Hampshire Police and Crime Panel is a separate legal entity in its own right.
30. The council also demonstrated that the same requests had been made by the complainant in respect of parts 1 – 3 of the request in 2019, and that this had been responded to in full by the council on 8 April 2019. In its response to that request the council provided the complainant with links to the relevant records online. At that time, it applied section 21 to the requests given that the information was reasonably accessible to him.
31. It argues that the complainant also continues to make unfounded accusations and comments about council officers. It provided evidence of statements which he had made previously regarding officers who had responded to his requests for information.
32. The council also noted that the complainant has refused to accept responses to requests for information in electronic format. It says that he initially corresponded with the council via email, however in a request made by him on 11 December 2018 he said to the council that he would not be accepting any future communication from it via email, and wanted all responses to be provided in hard copy.

33. It quotes his email as stating: *"For future reference, and following on from the [name redacted]'s letter, you are not permitted to communicate with me by email under any circumstances. I have spoken to [name redacted] today and told her I require written responses to my letters to you. As a precaution, I have blocked all HCC emails."*
34. It said that in a later request the complainant stated to the council: *"Please note I do not have online facilities available for your benefit"*. It interpreted this to mean that the complainant was choosing not to use his online facilities to access the information he is requesting, preferring to receive this in hardcopy.
35. It says that seven of the eight further requests submitted by the complainant requested copies of documents that were publicly available. For three of these, hardcopies of documents were provided at the council's expense, despite previous evidence that the complainant had access to the internet and no other explanation being offered by him regarding whether he could access these documents online.
36. It said that the council has also provided advice regarding accessing information from publicly available facilities at his local library in Winchester.
37. As regards this specific request, the council recognised that the timing and the response to the request coincided with the national lockdown as a result of the Covid-19 pandemic. It acknowledged that during this time the libraries were closed and therefore the information requested may not be considered "reasonably accessible" if the public services were not available. However, it argues that the complainant had been provided with a link to the relevant area of the council website in April 2019, a year prior to the submission of this request. He was therefore fully aware of how to access the information he had requested. He did not therefore need to submit this request in order to access to the information.
38. In correspondence prior to the Covid-19 pandemic, the council argues that the complainant had given no indication that he was unable to access public internet facilities at his local library, and therefore the information was considered reasonably accessible. He subsequently advised that he will not use the library facilities as he alleges these are "corrupt and insecure", but the County Council does not consider the complainant's assertion to be a "special circumstance" under the FOI Act.

The Commissioner's analysis

39. The Commissioner has carefully examined the submissions of both parties and the arguments put forward. In considering the guidance from the Dransfield case, she has also taken into account a holistic viewpoint to the background to this case.
40. Firstly, the Commissioner notes that there are many different reasons why a request may be considered vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are certain characteristics and circumstances that assist in making a judgment about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them.
41. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong doing on the part of the authority.
42. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.
43. Whilst the request in this instance may not impose a significant burden in order to comply with it, the Commissioner recognises that the aggregated burden of dealing with the complainant's overall contact with the council will have placed a burden on its resources. Consequently, this limits the time that staff are able to spend on responding to other information requests and performing other duties. The prior restriction of the complainant's means of making a request to the council is evidence of the issues which it had had previously with the complainant's frequent requests.
44. The Commissioner also notes the history of the request. The complainant's central concerns have been considered by independent bodies on numerous occasions as he took his issue further up the oversight and supervisory ladder. The council has also made very clear to the complainant that it has no powers to oversee the panel's decisions or actions. It simply provides administrative assistance to the panel.

45. The Commissioner also considers that there is little value and purpose to the request given the past oversight and scrutiny of the actions of the individual involved. At this point in this chain, the complainant has reached the end of this process, and it appears unlikely to the Commissioner that compliance with this request will have the effect of satisfying the complainant and resolving this matter.
46. The Commissioner also sees little wider value and purpose in a disclosure of the information requested. The complainant's persistence over the issue of a police officer allegedly using a works vehicle for personal shopping has been taken to a point where the requests and appeals are now disproportionate to the issue which was initially raised, particularly given the oversight which has already occurred on a number of occasions. She has also taken into account the fact that the complainant made the same request and received online links to that information previously.
47. The Commissioner also notes the nature of the correspondence in the complainant's dealings with council officers. Whilst council officers will be robust enough not to be overly disturbed by such correspondence, nevertheless she accepts that the receipt of derogatory comments and asides would irritate and annoy officers dealing with the requests. They would also be annoyed and irritated at the complainant's continued request for information which is already available online given that the complainant's refusal to accept electronic correspondence appears to be a personal decision rather than a necessity.
48. That said, under section 11 of FOIA, requesters do have the right to specify a preferred form and format to receive information which they are requesting, and public authorities are required to comply with such requests unless they can show that it is not reasonably practicable for them to do so under the circumstances.
49. The Commissioner notes the council's arguments that although library facilities were closed during the course of the request due to the pandemic, the complainant had previously been informed where the information was available. In relation to the request of 16 March 2020 however, library facilities were closed by the date of its response on 27 April 2020, and the council cannot be absolutely sure that the complainant does have access to the internet to access the information he was requesting.

50. Although this point weakens the council's argument somewhat, it does not overwhelm the central argument that the purpose and value of the requests is insignificant given the prior oversight, and that the complainant's continued persistence has become disproportionate, burdensome, and an irritation to council officers.
51. The council's argument in this case is not that it was correct to refuse to provide the information in the format concerned, and therefore section 11 or section 21 applies. It is that the request is vexatious and therefore, under section 14, it was not under a duty to respond to the request further.
52. The Commissioner has given consideration to the findings of the Upper Tribunal in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1) of the FOIA. Taking into account all the above factors, and having viewed the evidence and arguments provided by both parties, the Commissioner's decision is that the request was vexatious. Her decision is therefore that the council correctly relied on section 14(1) in this case. The council was not obliged to comply with the complainant's information request.

Section 1 – General right of access to information

53. 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.*
54. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
 55. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

56. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

57. The complainant argues that the council, by stating that the information is not held, is seeking to avoid answering the question posed by his request.

The council's position

58. The council argues that it does not hold any information in respect of parts 4 and 5 of the complainant's request.
59. The council noted that the First-tier Tribunal have previously found that Hampshire Police and Crime Panel is a separate public authority to the council. It argued that the request was made to the leader of the council, rather than to the Panel, and the leader does not have authority over the Panel. It therefore responded on the basis of the information which is held by the council in its administrative role, not by the Panel.
60. The council noted that in respect of part 4 of the request, no information is held as this does not form part of the process which is undertaken by the council. It clarified that it would not be appropriate for the council, or its leader, to review and approve the Panel's letters; they are drafted and approved by the Chairman of the Complaint Sub-Committee, with legal advice from the legal advisor and procedural advice from the administrative officer as appropriate.
61. For question 5 the council argued that the administrative officer had confirmed that no information is held because the complaint in question was not recorded. There was no correspondence between the council, the Chief Constable or the individual concerned as this was not required as the complaint was not recorded.
62. The council said that it had carried out searches for relevant information despite the fact that it considered that that information would not be held.
63. It confirmed that the relevant officer was consulted and confirmed his opinion that no information would be held as there was no requirement for this under the process concerned.

64. It described the search terms which it had used when seeking to locate the information. These included using the dates given to identify any email trails or other documentation, as well as relevant terms. It said, however, that as the complaint was not recorded there was no reference number provided which could be used to search for relevant material.
65. It said that it had searched the shared inbox, and the officer's own inbox within the only email client used by the council. Searches were also undertaken for any records within the council's document management system, and it confirmed that no electronic records were located for either question 4 or 5.
66. It said that any documents held in hard copy would have been duplicated and held in electronic form also. The searches described above would therefore have located these documents.
67. It confirmed that no records were ever held which have been deleted or destroyed. It said that the type of correspondence requested is not created as part of its processes.
68. It said that complaints records are normally held for 12 months after relevant staff members have left their post.
69. Finally, it confirmed that there is no business purpose for holding the requested information as the steps are not part of the established process for handling complaints. It said that there is a statutory requirement to hold information about complaints correspondence, but the requested information does not fall within this description.

The Commissioner's conclusion

70. The Commissioner has considered the Council's position.
71. The Commissioner notes that the council is a different authority to the Panel, and that it differentiated between itself and the panel in that the request was made to the council leader, not to the panel in this instance.
72. Whilst it is recognised by the Commissioner that the complainant believes information is held, the council has confirmed that he is incorrect in this belief.

73. The council has confirmed to the Commissioner that the information requested would not fall within the process it has for complaints. It has confirmed that the complaints were not recorded by it as a result of this, and that as this is the case, it does not hold the information. It has confirmed that it does not have a business reason to hold the requested information.
74. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
75. On this basis, the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Right of appeal

76. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

77. 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.
78. 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

Ian Walley
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