

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 December 2019

**Public Authority:** Great Wyrley Parish Council  
**Address:** South Staffs Council  
Wolverhampton Road  
Codsall  
South Staffordshire  
WV8 1PX

### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of the "tree report" for trees bordering his property. Great Wyrley Parish Council (the Council) relied on section 14(1) (vexatious requests) of the FOIA to refuse the request, arguing that the complainant had already received responses in relation to similar matters, and continuing to discuss these matters would divert staff from their usual duties. The complainant believed that he was entitled to a copy of the tree report, due to the debris deposited by the trees on his property.
2. The Commissioner's decision is that the Council has correctly relied upon section 14(1) of the FOIA in relation to the complainant's request.
3. The Commissioner does not require the Council to take any further steps.

## Request and response

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4. On November 30 2018, the complainant wrote to Great Wyrley Parish Council and requested information in the following terms:

*"Can I please have a copy of the tree report."*

5. The Council did not respond.
6. The complainant contacted the Commissioner on 11 January 2019 to complain about the way his request for information had been handled.
7. The Commissioner contacted the Council on 24 January 2019, requesting a response be sent to the complainant.
8. The Council responded on 21 February 2019 stating that it was refusing to respond under section 14(1) (vexatious requests) of the FOIA.
9. In the refusal notice the Parish Council gave the following grounds for refusing the request:

*"The reasons why the Parish Council believes this request to be vexatious are outlined below:*

- The nature of the requests appears to be reopening issues that have been disputed several times before.*
- To carry on responding to these requests would divert or distract staff from their usual duties"*

10. The complainant requested an internal review of the response on 27 February 2019.
11. On 6 March 2019, the Council wrote to the complainant stating that the internal review had been concluded. It maintained that section 14(1) still applied.

## Scope of the case

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12. The complainant contacted the Commissioner on 12 March 2019 to request an investigation into how his request had been handled.
13. The complainant had received a copy of a tree report from the Council previously in 2010, and believed that the Council should disclose the current one.

14. Great Wyrley Parish Council maintained that it was correct to refuse the request quoting section 14(1) of the FOIA, stating that it would not enter into any further discourse with the complainant regarding the trees. It further went on to explain that the complainant was in breach of a community order issued by the police.
15. The following analysis covers whether the Council was correct to implement a refusal under section 14(1) of the FOIA.

## **Reasons for decision**

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16. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
17. The term "vexatious" is not defined in 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 (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.
18. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly 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.
19. 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).
20. 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 requests. 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.

21. 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.
22. Where relevant to do so, a public authority may take into account the context and history preceding the request. This means that a request made by one person may be perceived as vexatious and not vexatious when made by another person.
23. In this case, the Parish Council relied on the history of its dealings with the complainant when justifying the refusal of this request.

### **The Council's position**

24. The Commissioner contacted the Council on 26 June 2019 to ask it to set out its arguments as to why section 14(1) was engaged.
25. In its evidence, the Council submitted a letter addressed to the complainant dated 13 January 2017 (prior to the request in this case being made) in which it had already stated that it would not engage in any further correspondence with the complainant in relation to the topic of the trees, as well as other matters he has continuously contacted the Council about.
26. In the Council's response to the complainant of 21 February 2019, it stated that responding to the request would distract staff from their usual duties. Furthermore, the request was deemed by the Council to be the complainant reopening issues that have been covered several times before.
27. In its letter outlining its reasons for refusing the request, the Council stated that the complainant had undertaken a campaign of abuse towards its members, both verbally and written, leading to a community protection order being served on the complainant by the police.
28. The Council provided to the Commissioner a copy of the police community protection order served on the complainant.
29. The Council also stated that it believed the complainant was using the FOIA as a tool to re-open issues that the Council considers to be closed.
30. The Council argued that to find in favour of the complainant would weaken its position on the matter of the trees.

### **The complainant's position**

31. In his letter to the ICO dated 12 March 2019, the complainant believes he cannot be vexatious as they claim he has *"only asked for the copy of the tree report once and it is the new tree report 2018"*.
32. The complainant acknowledges that he has received a copy of a tree report from the Council before, but this was in 2010.
33. The complainant states that *"because the trees are so high, there is a health and safety risk to myself and my family"*.

### **The Commissioner's position**

34. The Commissioner has carefully considered both the complainant's and the Council's arguments. She has relied on relevant information and evidence presented to her by both parties, in order to reach her decision.
35. Whilst the evidence supplied by the Council was limited, what was provided does suggest that the complainant has pursued the issue of the trees beyond reason. The letter of 13 January 2017 shows that the Council was already concerned at that point with the level of correspondence submitted by the complainant.
36. The January 2017 letter included detail about the steps that the Council had taken to ensure the safety of the trees that the complainant was concerned about. It also noted that the complainant had gone beyond what the Council considered reasonable persistence in relation to various other issues and warned him at that stage that it would not be entering into any further correspondence about those matters.
37. Subsequently, a Community Protection Notice Warning was served on the complainant in 2018. This placed various conditions on the complainant's conduct that he was required to comply with in order to avoid the issuing of a Community Protection Notice. Included in this was reference to abusive behaviour by the complainant towards the Council.
38. The Commissioner takes the issuing of that warning as evidence that the complainant's behaviour in his dealings with the Council has strayed beyond the acceptable. The Commissioner also takes this warning and the letter dating from January 2017 as evidence that the complainant has pursued his issues with the Council for a very lengthy period.
39. Whilst this evidence suggests that the complainant may have gone beyond reasonable persistence in his dealings with the Council and that some of his conduct when doing so has been unacceptable, the issue what value the request held remains relevant.

40. On this point, the Commissioner notes that the materials available to her suggest that the complainant's property adjoins a cemetery that contains the offending trees. She also notes that, whilst the Council has acted on concerns relating to these trees previously and has disclosed related information to the complainant, he has not been supplied with the specific information in question here. The Commissioner accepts that the complainant does have a legitimate interest in the information sought and so his request does carry some value.
41. The Commissioner has also considered whether compliance with the request in question in this case would be likely to resolve matters between the complainant and the Council. If it could be reasonably expected to, then this may increase the value of complying with the request and move the balance towards it not being vexatious.
42. On the basis of the evidence available to her, however, the Commissioner's view is that it is unlikely that compliance with this request would bring resolution. On the contrary, the complainant's previous conduct suggests to the Commissioner that a more likely outcome would be further information requests and contact with the Council based upon the content of the information disclosed.

## **Conclusion**

43. On balance, whilst the Commissioner recognises that the request is of some value to the complainant, her view is that the previous conduct by the complainant and the likelihood of compliance with this request prolonging his contact with the Council tips the balance towards vexatiousness.
44. Therefore, having considered both the arguments and the supporting evidence provided, the Commissioner finds that the request was vexatious and therefore the Parish Council were right to rely on section 14(1) of the FOIA.

## Right of appeal

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45. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. 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.
47. 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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**