

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 March 2014

Public Authority: Wandsworth Council
Address: Town Hall
Wandsworth High Street
London
SW18 2PU

Decision (including any steps ordered)

1. The complainant requested information relating to a long-running dispute with Wandsworth Council (the Council) over the leasing of a strip of land. The Council refused the request under section 14(1) of the FOIA on the grounds that it was vexatious.
2. The Commissioner's decision is that this request was vexatious and so the Council was not obliged to comply with it.

Background

3. The Council provided the following background description of its dealings with the complainant:

"During 2009 [the complainant] and the Council were involved in trying to finalise terms under which he would continue to lease, from the Council, a strip of land as a parking space...the relationship between the [Council and the complainant] deteriorated to the point where the Council eventually decided to withdraw the offer of a new lease."

Request and response

4. On 9 July 2013 the complainant wrote to the Council and requested information in the following terms:

"I assume that you have sought written confirmation from your employer, whether signed by [name redacted] or someone else, purporting to disentangle you from responsibility. If so, please send me a copy of that document or anything like it. Please also send me a copy of [name redacted]'s instructions to officers, mentioned in his letter, not to acknowledge any further related correspondence from me but to forward it to him, a list of the officers to whom it was sent, and copies of any decision records made in this respect."

5. The Council responded on 15 July 2013. The request was refused on the basis that it was vexatious under section 14(1) of the FOIA. The Council also stated specifically in this response that it would not carry out an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 16 July 2013 to complain about the refusal of his information request. The complainant indicated at this stage that he did not agree with the reasoning given by the Council for the refusal of his request.

Reasons for decision

Section 14

7. Section 14(1) of the FOIA provides that a request may be refused if it is vexatious. The approach of the Commissioner, as set out in his guidance on this provision¹, is that the key question to ask when considering whether a request can be accurately characterised as vexatious is

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

8. Where it is relevant to do so, a public authority may take into account the context and history preceding the request. This means that a request may be vexatious when made by one person and not vexatious when made by another person.
9. In this case the Council has relied on the history of its dealings with the complainant when justifying its refusal of this request. The reasoning of the Council and the Commissioner's analysis of this is as follows.
10. The primary concern of the Council was that the complainant was pursuing the issue of the parking space, and an associated issue about whether VAT was payable, with unreasonable persistence. The Council explained that its dealings with the complainant in relation to that issue had been the subject of an internal investigation, and also that the actions of the Council in relation to this issue had twice been reviewed by the Local Government Ombudsman (LGO). The Council argued that in light of these reviews having already taken place, the complainant's continued pursuit of this issue had gone beyond the point where this was reasonable and that he was utilising the FOIA as a means to continue that pursuit.
11. The Council also argued that the complainant had indicated in the correspondence in which he made his request, and in other earlier correspondence, that his aim when making requests was to force the Council to change its position on the parking space issue. It also argued that some of the wording used by the complainant indicated that he held a grudge against an individual Council employee.
12. The Commissioner's guidance lists a number of indicators of vexatious requests. Whilst the grounds upon which a request may be considered vexatious are not limited to these indicators, the Commissioner has used these as a framework for his analysis here. As the Council's case is that the complainant is seeking to use the FOIA to pursue a wider issue rather than genuine interest in the information requested, amongst the factors from this guidance that are relevant here are:
 - Disproportionate effort
 - No obvious intent to obtain information
 - Futile requests
13. As to whether complying with the request would require disproportionate effort on the part of the Council, the issue here is whether the matter being pursued by the complainant is of

proportionate significance to the effort expended by the Council. It is relevant to take into account here the effort expended by the Council on dealing with previous requests and on any further work that may result through compliance with the request in question.

14. The Council supplied to the Commissioner copies of previous correspondence with the complainant, showing that the complainant had made information requests on a number of previous occasions. The Council states that the complainant made 14 information requests between 7 July 2009 and 10 November 2011. The documentation supplied to the Commissioner also shows that the complainant continued to make requests to the Council relating to this issue post-November 2011.
15. Whilst it is unlikely that compliance with the individual request quoted above would require a great effort on the part of the Council, the Commissioner notes that the complainant has made many previous information requests to the Council, all stemming from the same issue. The Commissioner has also taken into account that the pattern of the complainant's behaviour suggests that providing a response to this request would be unlikely to result in a cessation of his requesting. Instead, it is likely that the complainant will continue to make requests in future. The burden of dealing with these likely future requests has also been taken into account here.
16. The burden of dealing with the complainant's previous requests, combined with the burden of the likely future requests, is considerable. The Commissioner has also considered what value the request in question here could be said to have, and similarly whether the wider issue being pursued by the complainant could be said to be of importance.
17. On the issue of what value this request has first, the view of the Commissioner is that it is of limited value. Whatever importance his issue with the Council could be said to hold, the wording of this request suggests that the complainant has strayed from that issue; any information that the Council does hold that falls within the scope of this request would relate only tangentially to that issue.
18. As to whether the wider issue is of importance, the Commissioner's view from a position of neutrality is that the issue of leasing a very small piece of land, and the related VAT matter, is trivial and not a matter to which it would be appropriate for the Council to devote considerable resource.
19. The Commissioner has taken into account the previous and likely future requests made by the complainant, and that the matter being pursued

by the complainant from which all of these requests stem is trivial. Having done so, his view is that compliance with the request in question would require disproportionate effort on the part of the Council.

20. Turning to whether there was no obvious intent to obtain information through these requests, this factor is relevant here is that the complainant appears to be using the FOIA as a means to pursue his wider issue with the Council. In the correspondence making the request in question, the complainant indicates in the final paragraph that he will only cease writing to the Council if it reconsiders its position on the parking space. The Council has also referred to other occasions where the complainant has indicated that his intention is to perpetuate the parking space issue, rather than a genuine interest in the information he requests.
21. Whilst it may not be the case that the complainant lacked *any* intention to obtain information in this case, the Commissioner is of the view that the complainant is certainly more interested in the reconsideration of the parking space issue in his favour than he is in the information requested in this case. The Commissioner furthermore believes that at least part of the aim of the complainant in making this request and his many other related requests was to harass and pressure the Council with the intention of changing the Council's position on the parking space and the related VAT issue.
22. As to whether the requests could be accurately characterised as futile, the question here is whether the wider matter being pursued by the complainant has already been conclusively resolved. On this point the Council has referred to the complainant having exhausted its internal complaints procedure and having made two complaints to the LGO. At no stage, either by the Council or by the LGO, were these complaints upheld.
23. The issue of whether this land would continue to be leased to the complainant has been, in the view of the Council, conclusively resolved. The offer to lease this land to the complainant was withdrawn and this land put to alternative use. As a result of having reviewed its own actions, and having had its actions reviewed by the LGO, the Council also believes that any issues relating to the negotiations for the lease, including the VAT issue, have also been resolved.
24. The Commissioner accepts that these issues have been conclusively resolved. The VAT issue has been addressed by the LGO and not upheld. On the issue of the refusal to lease the land to the complainant, this is land owned by the Council and it is for the Council to state when it considers the matter of the lease to be resolved, which it has done. Against this background and in light of the evidence that the intention of

the complainant is to reopen the issue of the lease, the Commissioner finds that this request was futile.

25. As well as these specific factors, the Commissioner's overall view is that the complainant has pursued the issue of the parking space beyond the point that could be considered reasonable. This issue has been ongoing for a number of years and the complainant is seeking to prolong it, despite the position of the Council being, as covered above, that this matter is conclusively resolved. As also commented on above, the view of the Commissioner is that it is unlikely that a response to this request would resolve anything, rather than leading to further correspondence and information requests.
26. The manner in which the complainant has conducted his correspondence with the Council adds to the argument that this request was vexatious. He has at times used intemperate language and there is evidence of the complainant pursuing a personal grudge against a Council employee.
27. The conclusion of the Commissioner is that this request was vexatious. This conclusion is based on the request, in the Commissioner's view, requiring disproportionate effort on the part of the Council, not being for the main or sole intent to obtain information and being futile. This is in addition to the general point that the matter that the complainant is seeking to perpetuate has already been resolved and the unlikelihood that a response to this request would result in the cessation of the complainant's contact with the Council, as well as the content of some of the complainant's correspondence to the Council being inappropriate.
28. Section 14(1) does therefore apply and the Council was not obliged to comply with this request.

Right of appeal

29. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

30. 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.
31. 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

Jon Manners
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