

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 29 September 2009

**Public Authority:** Wakefield Metropolitan District Council  
**Address:** Wood Street  
Wakefield  
West Yorkshire  
WF1 2HQ

#### Summary

---

The complainant has, over a period of three years, made a series of requests stemming from Wakefield Metropolitan District Council's application of its high-hedges policy. Given the extent of its communications with the complainant about this issue, the Council deemed the latest of the requests as vexatious pursuant to section 14(1) of the Freedom of Information Act 2000. Whilst the Commissioner believes that this matter was finely balanced, he has found that section 14(1) does apply and therefore has not upheld the complaint.

#### The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

#### Background

---

2. The complainant has made a number of requests to Wakefield Metropolitan District Council ('the Council'), originally concerning the Council's implementation of a high-hedges fee. Part 8 of the Anti-social Behaviour Act 2003, which gives local authorities powers to deal with complaints about high hedges, came into operation in England on 1 June 2005. The role of the local authority is to adjudicate on whether a hedge is adversely affecting an individual's reasonable enjoyment of their property.

3. Although authorities were given greater powers to resolve such problems, it was left to their own discretion to consider what charge, if any, should be charged for the adjudication process. Consequently, there has arisen a wide discrepancy between the fees being levied, with the Council settling on £300.
4. The Commissioner recognises that issues around a high-hedges fee may, in theory, be subject to the Environmental Information Regulations 2004 ('EIR') and not the Act. However, the request that forms the basis of this notice only relates to information about a specific post within the Council. As this would fall under the provisions of the Act, the Commissioner has not gone on to consider whether the EIR would have been the appropriate access-regime for the complainant's other requests.

## The Request

---

5. Between 3 July 2007 and 20 September 2007, the complainant contacted the Council to request the following (the designated numbers have been allocated by the Commissioner):
  1. "the no. of enquiries received re high hedges, the no. who have paid the £300 you demand, and the no. remaining" - requested by email on 3 July 2007
  2. "the salary range for yourselves [the Chief Executive and the Service Director of Planning] and [an Arboriculture Officer]" - requested by email on 21 August 2007.
  3. i) "Can you please supply with the grade, and salary and salary range, of [specified employee] the officer you inform me is the Principal Officer in charge of information" - requested by email on 30 August 2007.  
  
ii) "the number of staff, their grade and their salary who are employed in the Freedom of Information Office" - requested by email on 30 August 2007
  4. the job advertisements and job descriptions of the staff in the Information Office - requested by email on 17 September 2007.
  5. "Can I please have copies of all agendas and minutes relating to the post of Principal Information Officer.  
I would also like copies of any instructions or advice circulated to Chief Officers and staff with regard to the role of Principal Information Officer.  
Can you please inform me of the names and designations of the persons who interviewed for the post of Principal Information Officer" - requested by email on 20 September 2007.
6. Regarding part 1 of the requests, the Council initially informed the complainant on 17 July 2007 that seven applicants had paid the £300 charge imposed by the Council. In a later email of 30 July 2007, the Council added that it had received 248 enquiries since the introduction of the legislation in 2005.

7. The Council replied to requests 2, 3(i) and 3(ii) in an email of 19 September 2007. Concerning part 2 of the requests, the Council provided the complainant with the salary range of the Chief Executive and the Service Director of Planning. However, it refused to disclose the salary range of the Arboriculture Officer under section 40 of the Act, as in 'the case of officers at [the employee's] level there is no similar expectation that their personal information would be released.'
8. Likewise, turning to request 3(i), the Council iterated that the requested information constituted personal data and referred to the exemption provided by section 40 of the Act as grounds for not complying with the request.
9. At the conclusion of its email, the Council stated that it was unable to supply exact information that would answer request 3(ii) as:

“[t]he service provided in relation to the Freedom of Information Act is a corporate service, involving all the Council departments and a number of Council staff, whose duties include responding to the Act with various levels of involvement. The Authority does not hold any information on the cost of the activity across the Council.”
10. On 25 September 2007, the Council reported to the complainant that it would not be releasing the job advertisements and job descriptions asked for under request 4. The Council relied on section 40(2) of the Act for the basis of the refusal, commenting that whilst:

“...the Council acknowledges that it is common practice to provide job descriptions in some circumstances, for example in cases where a vacant post is to be filled, in this instance your request for job descriptions is linked to the personal information of employees...we believe that release of this information without the expectation or consent of the staff concerned would contravene [the first data protection principle].”
11. Finally, in connection with part 5 of the requests, the Council issued a refusal notice to the complainant on 11 October 2007 stating that the requested records were being withheld pursuant to section 14 of the Act. Specifically, the Council indicated that its claim that the request was vexatious should be considered:

“...in context with others you have submitted to the Council and, in particular, those recently received relating to the salary details and personal information of various Council officers...”

Despite a number of refusals under section 40(2) of the Act, where we have explained that we believe information relating to staff below that of [the Service Director of Planning] to be personal, you have persisted in requesting such information. We believe this amounts to a pattern of behaviour that can be considered as vexatious.”
12. The complainant subsequently contacted the Council on 17 October 2007 to ask that it review its refusal to provide the requested information. Owing to later

developments in this case, it is evident that the Council interpreted this request for review as only concerning part 5 of the requests.

13. In an email of 31 October 2007, the Council relayed the outcome of its internal review to the complainant. The Council stated that an exemption panel had met earlier that day and considered that the decision to apply section 14(1) of the Act was correct.

## The Investigation

---

### Scope of the case

14. On 2 November 2007, the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

"All of the information I have requested is 'off the shelf' information in that it is routinely kept by the Personnel Officer in each department as a matter of course...

In seeking the information I requested I became increasingly aware of the existence of a specialist unit through whom all requests for information must be directed...

I have requested the information I have regarding this specialist unit, as it appears to have supreme authority over the disclosure, or lack of it, of all information."

15. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:

The Commissioner has confirmed with the complainant that he is now satisfied that the Council has supplied him with the relevant information associated with requests 1 - 4. Therefore, the subject of the Commissioner's determination here is whether the Council was right not to comply with request 5 under the provision afforded by section 14(1) of the Act.

### Chronology

16. The Commissioner emailed the complainant on 5 May 2008 setting out his understanding of the matter. Given that the Council had refused request 5 - under section 14(1) - on the premise that the complainant would have known in advance that the information would not be released, the Commissioner invited the Council to reassess whether this exemption should be applied.
17. In reply, the Council asked the Commissioner in its correspondence of 10 June 2008 to reconsider the terms of his letter. Amongst other points, the Council also reserved its right to provide additional documentary evidence in relation to part 5 of the requests.

18. On 25 June 2008, the Commissioner responded to the Council by requesting that it provide further clarification on its decision to withhold the requested information.
19. In its correspondence of 25 July 2008, the Council submitted documentation showing some of the previous exchanges of communication between the Council and the complainant. At this stage, the Council sought to expand on some of its reasons for applying section 14(1) to part 5 of the requests.
20. On 5 September 2008, the Commissioner asked the Council to structure its arguments for the engagement of section 14(1) in line with his guidance on this subject, as this would make it easier to make a considered assessment of this issue. Accordingly, the Council gave a more in-depth examination of its reasons for refusing request 5 in its letter of 1 October 2008.
21. In view of these developments, the Commissioner called the complainant on 29 October 2008 to update him on the investigation. The Commissioner stated that the Council's arguments in favour of its application of section 14(1) had considerable weight. In response, the complainant referred to his continuing dissatisfaction at the Council's general handling of his requests.
22. It was agreed that the Commissioner would write to the complainant setting out the status of the investigation, and explaining when and why a public authority may apply the section 14(1) exemption. The Commissioner provided the complainant with this summary by email on 7 November 2008, concluding his account by asking the complainant to confirm any areas of grievance.
23. On 12 December 2008, the complainant telephoned the Commissioner to express his continued dissatisfaction with the Council's position, as well as highlighting the general importance of the requested information.
24. In order to progress his investigation, the Commissioner telephoned the Council on 21 January 2009 to request that it provide any evidence of the types of behaviour the Council had previously referred to in its arguments for the application of section 14(1) of the Act.
25. The Council spoke to the Commissioner on 25 February 2009 to inform him that it would be sending him a response to his earlier request. Later the same day, the Council sent an email that indicated that a considerable amount of information was, or had been, held that concerned the complainant. However, the Council stated that some of this information had since been destroyed or would be too time-consuming to be retrieved. The Council, though, did emphasise the strain that the complainant's requests had placed on the organisation. It also attached a copy of the chain of emails that had been exchanged between the complainant and the Council around parts 1 -5 of the requests.
26. The Commissioner subsequently emailed the Council to indicate that the case around request 5 was unlikely to be resolved informally. Therefore, to ensure he had an accurate comprehension of the case, the Commissioner asked the Council to detail certain aspects of its position.

27. In its email of 4 March 2009, the Council did not answer the Commissioner's enquiries but instead stated that, in its opinion, it had already expended enough time on this issue. Consequently, the Council requested that the Commissioner see fit to make a determination on this matter.

## Analysis

---

28. In determining this case, the Commissioner has taken into account the submissions of both the public authority and the complainant. Full extracts of the relevant law considered in this case can also be found in the Legal Annex to this Notice.

## Substantive Procedural Matters

### Section 14(1) - Vexatious request

29. Section 14(1) provides that a public authority does not have a duty to comply with a request where it may be considered vexatious, although the Act does not go on to define vexatiousness. As a general principle, the Commissioner considers that this section of the Act is meant to serve as protection to public authorities against those who may abuse the right to seek information.
30. In weighing up whether section 14(1) applies, the Commissioner has considered the following factors:
- Could the request fairly be seen as obsessive or manifestly unreasonable?
  - Is the request harassing the authority or distressing to staff?
  - Would complying with the request impose a significant burden in terms of expense and distraction?
  - Is the request designed to cause disruption or annoyance?
  - Does the request lack any serious purpose or value?
31. In establishing whether a request is vexatious, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exclusion to apply.
32. The Council initially applied section 14(1) of the Act on the grounds that, as his similar requests had been refused under section 40(2), the complainant would have realised that the information in question would also be withheld.
33. The Commissioner would point out here that whether or not an authority believes requested information is exempt, is not an appropriate basis for deeming a request as vexatious. The Commissioner has, however, gone on to consider further arguments put forward by the Council for the application of section 14(1).

34. An important feature of the Council's submissions concerns the unreasonableness of the complainant's efforts to overturn its high-hedges policy. Yet, the complainant's recent requests would seem to demonstrate a shift away from the high-hedges policy towards the Council's information team or senior figures in the Council.
35. Nevertheless, the Commissioner is aware that the complainant has openly asserted that all his requests form part of his high-hedges challenge. When assessing the history of the request then, the Commissioner has viewed it in this context.

**Could the request fairly be seen as obsessive or manifestly unreasonable?**

36. The Commissioner acknowledges that where requests can be considered obsessive or manifestly unreasonable, it is usually a very strong indication of vexatiousness. The Commissioner considers that contributory factors can include the volume and frequency of correspondence and, tellingly, whether there is a clear intention to use the request to reopen issues that have already been debated.
37. On the one hand, the Commissioner is mindful that there is a marked discrepancy in the amounts being charged for a high-hedges adjudication with, as the Commissioner understands it, the fee charged by some public authorities well below that imposed by the Council. Given this variance, the Commissioner believes that it would not be entirely unreasonable for the complainant to continue to pursue this issue
38. On the other hand, however, the Commissioner has considered the Council's claim that the way in which the complainant carries out his opposition to the high-hedges policy is no longer appropriate. An important observation relates to the fact that the Council has reviewed its high-hedges policy on two different occasions but the complainant has continued to pursue this matter directly with the Council regardless of this fact.
39. The Commissioner also considers that continuing to pursue the issue about the high-hedges policy by making requests for information about the department that refused previous information requests is suggestive of obsessive or manifestly unreasonable behaviour. The Commissioner has reached this conclusion on the basis that information about the Council's "specialist unit" for handling Freedom of Information requests is unlikely to further the campaign against high-hedges in any direct manner. He also notes that the Act provides a right of appeal to the Information Commissioner for situations where an applicant does not agree with a public authority's decision about the application of the Act. Finally, the Commissioner notes that the complainant's requests have followed a pattern whereby, upon receipt of a letter with which the complainant does not agree, the complainant initiates requests about the costs to the Council of funding the individual or department with whose assessment he disagrees.

40. The Commissioner accepts that there is a fine line between persistence and a request being manifestly unreasonable or obsessive. Yet, the Commissioner recognises that an authority should be protected from an applicant who is repeatedly using the Act to get it to revisit an issue that has already been considered.
41. The Commissioner believes that the pattern of the complainant's requests instil little confidence that compliance would not simply have triggered further correspondence and requests as, ultimately, it seems likely that the complainant would continue to make further requests until the high-hedges fee was dropped, no matter what information was provided. Against this background, the Commissioner believes that the request is manifestly unreasonable.

**Does the request have the effect of harassing the public authority or causing distress to staff?**

42. The Commissioner understands that, in many cases, there will be an element of overlap between the various vexatious criteria. For instance, where a request is considered manifestly unreasonable, it may often be the case that it will have the effect of harassing a public authority. Importantly, whilst the complainant may not have intended to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.
43. For further direction in this area, the Commissioner has borne in mind the Tribunal's comments in *Gowers v Information Commissioner* (EA/2007/01149):

“...what we do find is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient as hostile, provocative and often personal...and amounting to a determined and relentless campaign.”
44. In its representations to the Commissioner, the Council has highlighted the complainant's alleged attempts to cause disruption to the authority. This has included his decided avoidance of the usual communication channels, such as the Information Office. In addition, the complainant regularly copied in correspondence to a number of different parties, including various members of staff, councillors and Members of Parliament. This, the Council believes, is:

“...designed to get a reaction from as many of those contacted as possible and to give the effect that because these people are involved, the Council should consider an approach that might be different to any other applicant.”
45. To return to the *Gowers* decision, the Commissioner has not been provided with any evidence to suggest that the complainant has been 'hostile' or particularly 'provocative.' However, a number of the complainant's requests, including the one in question, are focused on individuals in the Council. These have been submitted following circumstances where, in the complainant's opinion, that staff member has not assisted his enquiries. In the Commissioner's view, it would be



reasonable for the individuals concerned to see such requests as apparently questioning their ability to carry out their duties.

46. Given the effect that this would have on any staff member dealing with the complainant, the Commissioner believes that a reasonable person would perceive the request as 'personal' and, correspondingly, would conclude that the individual who was the subject of a request would find it distressing or harassing.

**Would complying with the request impose a significant burden in terms of expense and distraction?**

47. When considering whether this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
48. This is supported by the Tribunal in *Welsh v the Information Commissioner (EA/2007/0088)*, who remarked that whether a request represents a significant burden is "not just a question of financial resources but also includes issues of diversion and distraction from other work."
49. The complainant has made a total of 31 freedom requests between June 2005 and October 2007. On the face of it, the experience of the Commissioner would suggest that this number of requests would not seem to be excessive, nor overly burdensome to the Council.
50. However, the Commissioner is aware that 24 of these requests were made in 2007 and therefore reflected a significant step up in the frequency of requests being handled by the Council. The Council has also highlighted the resources that it has had to put in to dealing with the complainant by phone or by other communication routes, as well as handling the requests from councillors and Members of Parliament who have been copied in to the complainant's correspondence with the Council.
51. The Commissioner would point out that a significant number of the complainant's requests, including the one being considered here, would not seem to be particularly demanding or complex so as to place a great strain on the Council. Nevertheless, given the nature of the complainant's contact with the Council, particularly in his efforts to amplify the effect of the request by copying in third-parties, the Commissioner would concur that the request imposes a significant burden.

**Was the request designed to cause disruption or annoyance?**

52. The complainant has openly stated that the underlying purpose of his requests was to elicit a change in the high-hedges policy. The Council has therefore argued that the complainant's persistence with his requests, despite a review of the high-hedges having taken place, was now simply to cause disruption.

53. In the Commissioner's view, albeit that it is not clear how the information in question would further the complainants campaign, the pattern of requests is symptomatic of the complainant's commitment to these issues, rather than a concerted effort just to disrupt or annoy the authority.

**Does the request lack any serious purpose or value?**

54. By itself, whether a request does or does not have value is not of significance given that the freedom of information legislation is not concerned with the motives of an applicant, but in promoting transparency for its own sake. However, the Commissioner acknowledges that should an authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
55. Although this has not been tackled in any detail, the Council has stated that as the complainant is only interested in overturning the high-hedges policy, it can see no connected reason why the complainant would wish to have access to information entirely unrelated to this subject. The Council has therefore inferred that the complainant wishes to question the appropriateness of the appointment of the Principal Information Officer. Owing to the context of the previous requests, the Council has suggested that the step away from the original issue implies that the request lacks serious value.
56. In his decision in Weymouth and Portland Borough Council (ref: FS50190964), the Commissioner stated that "to label a request as having no serious value is tantamount to suggesting that the requestor is being frivolous by simply asking for the information in question." In this instance, the complainant has asserted that the Information Office, headed by the Principal Information Officer, has proved obstructive to his requests for information. He has therefore gone on to question the sense of the Council paying for the upkeep of a department that he feels does not provide real benefit.
57. The Commissioner considers that, viewed in isolation, a request with the aim of establishing if value for money is provided by a public authority will be a request with a serious purpose. However, the Commissioner has viewed this latest request in the context of the complainant's comments that all his requests are made in pursuance of his high-hedges campaign. The Commissioner considers that this context reduces the value of the request.
58. This is because if the complainants purpose is, as he has previously stated, to assist him in pursuing a challenge against the high-hedges policy, then the Commissioner considers that provision of the information in request 5 will be of little assistance, and therefore minimal value, in this respect.

**Conclusion**

59. As noted, the Commissioner is aware that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of transparency in the workings of an authority.

60. When considering these competing interests, the Commissioner feels that it is important to take an overarching view of the circumstances of a request. Accordingly, taking into account the number and strength of the factors in favour of applying section 14(1), the Commissioner is convinced that there is a sufficiently strong case to deem the request as vexatious.

### **The Decision**

---

61. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

### **Steps Required**

---

62. The Commissioner requires no steps to be taken.

## Right of Appeal

---

63. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 29th day of September 2009**

**Signed .....**

**Lisa Adshead  
Senior FOI Policy Manager**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### **Vexatious or Repeated Requests**

**Section 14(1)** provides that –

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

### **Personal information.**

**Section 40(2)** provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”