

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 17 November 2010**

**Public Authority:** Conwy County Borough Council  
**Address:** Bodlondeb  
Conwy  
LL32 8DU

### Summary

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The complainant requested a copy of the Council's policy that stated it should undertake a particular course of action that he alleged it had taken. The complainant also asked that, if no such policy existed, he be provided with copies of the minutes of any meetings at which that particular alleged course of action was decided upon. The Council initially stated that it did not hold the requested information but subsequently stated that it considered the request to be vexatious. The Commissioner has concluded that the request was vexatious and requires no steps to be taken by the Council.

### The Commissioner's Role

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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

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2. The complainant has informed the Commissioner that he has a "long history with this public authority". The complaint to which this Notice relates is one of a number of complaints to the Commissioner from the same complainant, regarding the same public authority.

3. The complainant's various requests for information stem from legal proceedings brought against him by Conwy County Borough Council (the 'Council') in relation to alleged non-payment of business rates. Since that case was heard the complainant has made numerous requests to the Council regarding the site of his former business and other related issues.
4. Following the legal action taken against the complainant by the Council, the complainant made a request to it for his own personal data. This culminated in the complainant taking legal action against the Council that, the Commissioner understands, resulted in the Court ordering the Council to disclose some information to the complainant and pay his costs. The request of 25 August 2009 relates to the legal action taken by the complainant.

## The Request

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5. On 25 August 2009, the complainant submitted the following request to the Council:

"Regarding [name of County Court] case number [case reference]...:

As you are aware, the Court ruled in my favour on the above case and ordered the Council to pay the legal costs of the case, as well as disclosing all correspondence between the Council and their external solicitors. The Council failed to comply with the Order of the Court, resulting in a Warrant of Execution being issued, followed by Court Bailiffs visiting the Council Offices to collect payment of costs in the case. The Council lied to the Court Bailiff by claiming the costs had been paid, when they were fully aware that they had not been paid.

Subsequently, the Court Bailiff was asked again to collect payment, whereupon the Council decided to pay the costs order to the Court, less the sum of £55, which represents the cost of issuing the Warrant of Execution.

Following submissions to the Court of [date] the Court ordered that the Council must pay the £55 outstanding in costs. The Council have now decided to apply to the Court to have the Order set aside, which has now been scheduled for a hearing on 15<sup>th</sup> September 2009.

Please provide the following information:

A copy of the Council's policy which states it should:

- a) disregard the provisions of the Data Protection Act, which is what led to me bringing the case against the Council in the first place.
- b) attempt to defend a case in Court that the Council had no reasonable chance of defending successfully, and hence wasting tax payers money thereon.
- c) lie to Officers of the Court (the Court Bailiff in this particular case)
- d) disregard an Order of the Court, causing a Court Hearing to be scheduled, which again the Council had no reasonable chance of defending successfully, and which will incur further considerable costs to the local taxpayers.

NOTE: to pre-empt your most likely response, I am NOT asking for ANY legal comment OR ANY legal opinion on the above matter. I am merely requesting a copy of Council Policy documents which cover the actions of those Council employees (principally [name of Council official]) engaged in the above actions. If the actions were not in line with any Council Policy, but were the result of a meeting, then a copy of the minutes of those meeting(s) will suffice to answer this FOI request."

- 6. The Council responded on 11 September 2009 and stated that it had established that no such policy "either exists or is held by this Council".
- 7. On 15 September 2009 the complainant emailed the Council and pointed it to the last paragraph of his request of 25 August 2009, in which he had asked a copy of "whatever due process was taken before the Council decided to embark on this course of action, ie. minutes of any meetings in which the matter was discussed / voted upon / decided –which is as far as I am aware the only way decisions such as this could have been legitimately made by the Council given your confirmation that the Council has no official policy to carry out said actions."
- 8. The Council responded on 21 September 2009 and stated that it considered the request to be vexatious and that, in accordance with section 14(1) of the Act, it did not therefore intend to comply.
- 9. The complainant requested an internal review of that decision on 22 September 2009 and the Council issued the findings of its review on 29 September 2009. The Council maintained its position that the request was vexatious.

## The Investigation

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### Scope of the case

10. On 23 June 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner would not usually consider complaints where there had been an undue delay in bringing them to him but in this case it appears that the complainant may have had difficulties contacting the Commissioner via his website. The complainant specifically asked the Commissioner to consider the following points:
  - The Council's failure to comply with various information requests, including that of 25 August 2009.
11. The public authority had initially considered the complainant's request of 25 August 2009 and his subsequent email of 15 September 2009 to be separate requests. The Commissioner therefore initially established two separate complaint numbers to address the requests separately. However, on consideration the Commissioner has concluded that the complainant's email of 15 September 2009 was not a separate request but was reference to part of the request of 25 August 2009 that he considered not to have been answered by the Council's response of 11 September 2009. The Commissioner therefore closed the other complaint cases that he has established in relation to this matter.
12. The Commissioner has therefore considered whether the Council handled the request of 25 August 2009 in accordance with the provisions of the Act; specifically he has considered whether it was correct to apply section 14(1) to the request.

### Chronology

13. Following emails sent to the Commissioner by the complainant and discussions between the Commissioner and the complainant, on 4 August 2010, the complainant emailed the Commissioner with details of his complaints about the Council's handling of various requests he had submitted to it. On 27 August 2010, the Commissioner emailed the complainant with details of the complaint reference numbers that he had established in order to consider the various complaints. In that email the Commissioner included a summary of his initial view on those complaints for the complainant's consideration.

14. On 1 September 2010, the complainant emailed the Commissioner to dispute the view that the Council did not hold the requested information.
15. Following emails between the Commissioner and the Council in relation to the scope of the various complaints brought to him by the complainant, on 13 October 2010 the Commissioner telephoned the Council to discuss the specific complaint to which this Notice refers. The Commissioner put forward his view that the complainant's request of 25 August 2009 and his subsequent email of 15 September 2009 were not separate requests but part of the same request. The Commissioner also asked the Council to clarify its position in relation to the request; i.e. did it consider the request in its entirety to be vexatious? The Council confirmed that it initially considered that the most effective way to deal with the request was to state that it did not hold the requested information but subsequently reconsidered its position and determined that the request was vexatious.

## Analysis

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### Substantive Procedural Matters

#### Section 14

16. Section 14(1) of the Act states that:

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

The full text of section 14 is available in the Legal Annex at the end of this Notice.

17. The Commissioner's approach is outlined in his guidance entitled 'Vexatious or repeated requests'<sup>1</sup>. The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:
  - it would create a significant burden in terms of expense and distraction;
  - it is designed to cause disruption or annoyance;

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<sup>1</sup>[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_and\\_repeated\\_requests\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf)

- it has the effect of harassing the public authority;
  - it can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
  - it clearly does not have any serious purpose or value.
18. The guidance indicates that it is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. However it does state that to judge a request vexatious a public authority should usually be able to make persuasive arguments under more than one of the above bullet points. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner* (EA/2007/0130):
- "a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach..."* (paragraph 20).
19. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) at paragraph 11 stated that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
20. In *Gowers v Information Commissioner* (EA/2007/0114), the Information Tribunal noted that when considering section 14:
- "The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one"*
21. The Commissioner therefore views it as appropriate to consider the context and history of a request, in addition to the request itself, when determining whether one or more of the five bullet points listed in paragraph 17 can be satisfied.
22. In reaching his decision in this case, the Commissioner has considered the evidence provided by the Council and the complainant and considered the context and history of correspondence and contact between the complainant and the Council up until the date of the request. The Commissioner also gave considerable weight to the language used in the request and subsequent emails that the complainant sent to the Council in relation to this matter.

## Context and history

23. As set out in paragraph 2, above, the complainant has a long history of correspondence and contact with the Council which stems from a dispute over non-payment of business rates that resulted in legal proceedings. The nature of the dispute and the complainant's opinion of the Council are well documented in a website that he has established. The Commissioner has not provided details of that website in order to protect the identity of the complainant. However, having viewed the website the Commissioner is of the view that any reasonable person would conclude that the request forms part of a campaign against the Council.
24. For example, the website contains a section headed "the Legal Battle" under which there are a number of sub headings:
- CCBC [the Council] Crimes Exposed
  - CCBC Named and Shamed
  - CCBC Corruption Costs
  - More CCBC scandal

The sub headings link to opinions written by the complainant that contain serious allegations against named Council officials. Reference is also made to the Council's refusal to comply with the Act and the complainant's view that, by refusing to comply with his requests, a named official is acting unlawfully. A direct link is provided from the website to the complainant's requests, including his request of 25 August 2009, via a popular website used by individuals to submit requests under the Act and to post the responses they receive.

25. The Commissioner considers that there is a direct link between the campaign mounted against the Council, as detailed on the above mentioned website and this complaint. For example, the court case to which the complainant referred in his request of 25 August 2009, is referred to on his website, together with his opinion about the Council's actions and the actions of individual named officials.
26. In addition to the history detailed above, the Commissioner has been informed by the Council that from 7 January 2009 up to and including on 25 August 2009 (the request to which this Notice relates), the complainant submitted 7 requests for information to it – some of which have been answered and some of which have resulted in complaints to the Commissioner. The Commissioner's view is that while these requests might, on their face, appear to be for varied information, the underlying issue at their heart is his business and the Council's decision to take court action against the complainant. In addition, the

Commissioner notes that the civil proceedings referred to in the complainant's request were concluded in early 2009. The Commissioner therefore considers that the complainant's request of 25 August 2009 is evidence of an attempt to draw out a matter that has previously been considered and concluded by an independent body – in this case the Court.

27. Taking into account the context and history of the request and previous contact between the complainant and the Council, the Commissioner considers that it is reasonable to conclude that the request of 25 August 2010 forms part of wider campaign against the Council in relation to its decision to take legal action against him. As such, the Commissioner considers that the request could be considered obsessive.
28. The Commissioner has also taken into account the way in which the complainant has gone about making his request and, while the Act is not generally concerned with the motives behind a request, he considers that the complainant's approach suggests that his request may lack a serious purpose or value. The Commissioner considers that any reasonable person would not expect a public authority to hold a policy, or minutes of meetings, that directed its officials to act inappropriately, unlawfully or even criminally. The Commissioner's view is that it is likely that the complainant would have been aware of this at the time of his request and that this undermines its value.

### **The request and related correspondence**

29. The Commissioner considers that language used by the complainant in the request of 25 August 2010 could in itself be considered vexatious. The Commissioner's view is that it is unreasonable and unrealistic to expect a public authority to hold a policy that states it should act inappropriately, unlawfully or even illegally. Similarly, the Commissioner considers it unreasonable to expect a public authority to hold minutes of meetings at which it was determined that it should, for example "breach the provisions of the Data Protection Act" or "lie to Officers of the Court". Taking into account the tone of the complainant's request, the Commissioner's view is that the request could be deemed to the effect of harassing the authority or causing distress to staff.
30. During the course of the investigation the Commissioner informed the complainant that rather than using the Act to raise grievances or complaints against the Council, the allegations he levied at the Council would appear to be matters that he should consider raising with the Police and/or the Public Services Ombudsman for Wales.



31. The Commissioner also notes the use of hostile language by the complainant in his correspondence with the Council in relation to his request of 25 August 2009. For example, following the Council's letter to him of 21 September 2009 in which it stated that it considered his request to be vexatious, the complainant requested, by email, an internal review on 22 September 2009. His email included the following excerpt:

"I demand an internal review, which I have no doubt you will use as a further excuse to waste more time and not actually do anything as per usual – however that is the process before reporting you to the Information Commissioner for your flagrant abuse of the Law.

Your continued abuse of the Law is costing the local taxpayer hundreds, probably thousands, of pounds in time costs of staff, correspondence etc. – all of which will be required to be accounted for in a future FOI request, at such times as the Council decides it is going to act within the Law.

Let us be quite clear, it is YOU who is the vexatious party, not I – as it is quite clear to anyone viewing the list of requests to Conwy Council on this site [the website mentioned in paragraph 23, above], and your continued desperate attempts to prevent the truth getting out to the public."

The email was signed as follows:

"Your Nemesis,

[complainant's name]"

32. Following the Council's letter to the complainant of 29 September 2009, in which it set out the findings of its internal review, he sent a further email to the Council on the same date:

"[name of Council official]

Again you accuse me in public of being "obsessive and vexatious" – your libellous statement has been forwarded to my Lawyers for actioning in due course.

Again, the only people being vexatious are you and your co-conspirators at Conwy County Borough Council...

Naturally, yet another formal complaint has been made to the information commissioner, with a request they now launch a prosecution against you for your continued refusal to comply with the Freedom of Information Act.

Your Nemesis

[complainant's name]"

33. The Commissioner considers that the effect of this hostile language towards the Council and its employees is likely to have the effect of causing harassment to the authority and distress to its staff. Whether this was the intention of the complainant is not the issue that the Commissioner must consider – rather he must consider the effect of the language.
34. The Commissioner also notes the complainant's statement in his email of 22 September 2009, as detailed in paragraph 29, above, regarding the likelihood of further requests being submitted in the future. The Commissioner considers that this statement could be viewed as an attempt by the complainant to use the Act as a way of threatening or harassing the Council – i.e. if the Council does not comply with his request then he implies that a further request is likely.
35. The Commissioner also considers the way in which the complainant signed his emails of 22 and 29 September 2009 to be indicative of language designed to intimidate or harass the Council and its employees. By ending his emails "Your Nemesis" the complainant has, in the Commissioner's view, given a clear indication that his correspondence with the Council is likely to continue and lends a rather sinister tone to his request. The Commissioner considers that the use of this language would have the effect of causing harassment to the Council and distress to its employees.

### **The Commissioner's view**

36. The Commissioner's view is that the Act was enacted to assist people in seeking access to recorded information held by public authorities and not as a tool with which to harass them or to engage in protracted correspondence about matters that have either been addressed through other channels (in this case the Courts) or that would be more appropriately be raised with other bodies (in this case the Police or the Public Services Ombudsman for Wales). While the Commissioner acknowledges that the complainant in this case may feel that he has genuine concerns about the way in which the Council has acted, the Commissioner neither has the jurisdiction nor the evidence to reach

any conclusion on those matters. The Commissioner's role in the context of complaints brought to him under section 50 of the Act, is to determine whether a public authority correctly applied the provisions of the Act.

37. As explained previously in this Notice, it is not necessary for every factor identified in the Commissioner's guidance as being relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1). In this case the Commissioner considers that there are sufficient grounds to justify upholding the application of section 14(1) and, based on the information set out above, the Commissioner considers that the public authority was correct to determine that the request was vexatious. For the reasons previously stated in the Notice, he considers that the request, together with subsequent correspondence and evidence of a campaign against the Council, can be considered obsessive and to have the effect of causing harassment to the Council and distress to its employees.

## **The Decision**

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

## **Steps Required**

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39. The Commissioner requires no steps to be taken.

## Right of Appeal

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40. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

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 sent.

**Dated the 17<sup>th</sup> day of November 2010**

**Signed .....**

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

## **Legal Annex**

### **Section 14**

#### Vexatious or repeated requests

Section 14 of the Act provides that:

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

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.