

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2017

Public Authority: Great Yarmouth Borough Council
Address: Town Hall
Hall Plain
Great Yarmouth
NR30 2QF

Decision (including any steps ordered)

1. The complainant has submitted a request for information to Great Yarmouth Borough Council which concerns the financial payments or other assistance paid or given in respect of properties at specified locations, and any reviews, assessments and checks regarding the financial circumstances of any applicants and recipients of those payments.
2. The Commissioner has established that the Council did not reply to the complainant's request on the grounds that it is vexatious and subject to the Council's application of section 17(6) of the FOIA.
3. The Commissioner's decision is that Great Yarmouth Borough Council is entitled to rely on section 17(6) of the FOIA and therefore it is not obliged to reply to the complainant's request.
4. The Commissioner requires the public authority to take no further action in this matter.

Request and response

5. On 6 October 2016, the complainant wrote to Great Yarmouth Borough Council and requested information in the following terms:

"Freedom of Information (FOI) Act 2000 THIRD REQUEST

To pre-empt any inappropriate reply, such as your last response in making the unfounded and absurd claim that my request was – "Vexatious", I have copied this request directly to the Information

Commissioner, Elizabeth Denham, and others, for their information and consideration. When the information is provided, or a legitimate reasons for it not to be, I will stop making the request. Until such time,

Via my right under the above Act, I request the following information

Provide,

From June 16, 2009 to October 6, 2016 the specific amount(s) of any Government Grant, Council Grant, Subsidy, Financial Award (to include any Court/Legal Award), Money or other Assistance, processed, received, arranged, coordinated, directed, or in any way involving GYBC councillors, officials, employees or persons acting on behalf of GYBC, to effect and/or assist the building/development or conversion of existing buildings to homes/flats, located at

- (i) 6, 7, 8, 9 Sandown Road, Great Yarmouth, NR30 1EY
- (ii) 64 Wellesley Road, Great Yarmouth, NR30 1EX.

What review, checks, assessment, investigation, inspection, means-test, enquiry was made by GYBC as to the financial circumstances of the applicant(s) and recipient(s).

If applicable, provide the legal basis, with legislative/regulatory reference, for refusal to provide any of the above information.

Please advise of any costs."

Scope of the case

6. On 6 October 2016, the complainant wrote to the Commissioner to complain about the failure of the Council to respond to his request.
7. Having reviewed this complaint, the Commissioner determined that the focus of her investigation should be to determine whether the Great Yarmouth Council has handled the complainant's request in accordance with the FOIA, and specifically to determine whether the Council is entitled to not respond to the complainant's information request.

Reasons for decision

8. Under section 1(1) of the FOIA any person who makes a request for information to a public authority is entitled to be informed in writing whether the authority holds that information and to have that information communicated to him, provided that the information is not

subject to an application of section 12, 14 or one of the exemptions provided at Part II of the FOIA.

9. Section 14(1) of the FOIA allows a public authority to refuse a request for information if the request is vexatious.
10. Under section 17(6) a public authority is not required to issue a refusal notice to an applicant where the following criteria are met:
 - a) where the public authority is relying on a claim that section 14 applies;
 - b) where the public authority has previously issued to that applicant a notice which states that it is relying on such a claim; and,
 - c) it would in all the circumstances be unreasonable to serve a further notice in relation to the current claim.
11. The Council has advised the Commissioner that it has previously informed the complainant that his request for information is considered vexatious and that it now relies on section 17(6) of the FOIA , under which the Council is not required to make any further response.
12. The Council has provided the Commissioner with details of how it has handled two other requests submitted by the complainant. These requests are substantially identical to the request the complainant made on 2 October 2016.
13. The complainant made his first request for the same type of information on 21 June 2014. This request was dealt with under reference FOI2014-424 and resulted in the Council's disclosure of information relating to grants/loans made to limited companies. Information relating to the grants/loans made to private individuals was withheld in reliance on section 40(2) of the FOIA.
14. The Council's reliance on section 40(2) became the subject of a complaint made to the Commissioner on 13 August 2014 and a Decision Notice which was served on 12 May 2015¹. The Commissioner's decision was that the Council had "correctly withheld the information under section 40(2), and that all information has otherwise been disclosed".
15. On 24 November 2015, the complainant submitted a second request to the Council which asked for information identical to the request

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1431724/fs_50551547.pdf

considered in the Commissioner's notice. The Council's reference for this request was FOI2015-611.

16. The only substantive difference between the two requests is the period specified by the complainant which covers the information he would like to receive.
17. The Council responded to the complainant's second request on 9 December 2015 and advised him that his request was considered vexatious. The Council cited the complainant's unreasonable persistence and the fact that he had already subjected his first request to independent scrutiny by virtue of his complaint to the Commissioner.
18. On 6 October 2016 the complainant submitted his third request for information. Again this request was identical to those the complainant had previously made, save for the extension of the period he specified for the information he seeks.
19. The Council did not respond to the complainant's third request on the grounds that it has previously refused the same request on the grounds that it is vexatious.
20. The Council has advised the Commissioner that, "It did not seem sensible to keep sending refusals for the same question particular as [the complainant] has indicated that he intends to keep sending in the requests about the same properties..." and that, "the only option we had was to declare this series of requests vexatious".
21. The Council has confirmed to the Commissioner that there has been no change of any of the circumstances relating to the complainant's requests of 24 November 2015 and 6 October 2016, despite the change of end date.
22. The Council has assured the Commissioner that it holds no additional information from that considered by the Commissioner in case FS50551547 and that its position has not changed in that the withheld information is personal information and is exempt under Section 40(2).

The Commissioner's conclusion

23. The Commissioner has considered the Council's representations in this matter and also her own decision in case FS50551547.
24. The Commissioner is satisfied the complainant has submitted 3 requests to the Council which are substantially identical. She accepts that the Council has previously informed the complainant that his second request was refused by virtue of it being vexatious.

25. The Commissioner accepts that the Council is relying on section 14(1) of the FOIA in respect of the complainant's second request by virtue of its reference to the request being vexatious. Therefore the Commissioner therefore finds that criteria 'a' and 'b' of section 17(6) are met.
26. In respect of criterion 'c', the Commissioner must consider whether any of the circumstances associated with the complainant's requests changed?
27. It is clear to the Commissioner that the complainant has made a request for the same information he has asked for on two previous occasions.
28. It is also clear that some of the information is exempt from disclosure by virtue of it being the personal data of third party individuals, which the Commissioner has already determined.
29. The Commissioner accepts that the Council is relying on section 17(6) of the FOIA in respect of a request for the same information previously requested, albeit for an extended period. The fact that the request in this case covers the same information as that requested in the complainant's previous two requests, and, on the basis of the Council's assurance that there have been no changes in the circumstances surrounding the complainant's request, the Commissioner has decided that criterion 'c' of section 17(6) is also met.
30. The Commissioner's decision is that the Council is entitled to rely on section 17(6) of the FIOA and therefore it is not obliged to respond to the complainant's request of 6 October 2016.

Other matters

31. The Council should note the requirements of section 17(1) of the FOIA when issuing a refusal notice. This section requires a public authority to specify the exemption which it is relying on and to state why that exemption applies.
32. When the Council refused to comply with the complainant's second request the Council should have specified that it was relying on section 14(1) of the FOIA, rather than simply stating that the request was considered vexatious.

Right of appeal

33. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Andrew White
Group Manager
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