

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 September 2020

**Public Authority:** Rotherham Metropolitan Borough Council

**Address:** Riverside House  
Main street  
Rotherham  
S60 1AE

#### Decision (including any steps ordered)

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1. The complainant requested a copy of communications that arose from a particular email. Rotherham Metropolitan Borough Council (the Council) refused to comply with the request and cited section 14(1) of the FOIA (vexatious requests) as its basis for doing so.
2. The Commissioner's decision is that the Council was not entitled to rely on section 14(1) to refuse the request.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
  - Issue a fresh response to the request which does not rely on section 14(1) of the FOIA.
4. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 22 June 2019, the complainant wrote to the Council and requested information in the following terms:

*"This Freedom of Information request is for:*

*A copy of all the communications that arose from the email sent by [name redacted] on 12 January 2016 (please see extract below), including the statement that the Leader of the Council read out at a Council meeting in 2018. It is particularly important to have any communications involving [name redacted].*

### *Background*

*On 12 January 2016, [name redacted], who was carrying out an Internal Review to the response to a FOI Request, responded to an email with this (extract):*

*'[redacted]*

*Sent: Tuesday, January 12, 2016 12:19 PM*

*Subject: RE: FOI request and Voices of Despair Voices of Hope Order from SES Business Manager on 10 March 2015*

*... as you have intimated that the distribution decision was not only unmerited but dishonest I have forwarded your email to [name redacted] the Interim Director of Legal Services and Monitoring Officer, and her deputy [name redacted].*

*[name redacted]'*

*At a Rotherham Council meeting in 2018, in his response to Question from a member of the public, the Leader of the Council made a statement and he referred to the potential dishonesty referred to in the email from [name redacted] on 12 January 2016. The Leader appeared to read out from a prepared statement."*

6. The Council responded on 28 June 2019 and refused to provide the requested information. It stated that requests on this subject matter were still covered by a refusal notice that it previously issued on 16 February 2017, in which it cited section 14(1) of the FOIA. A copy of which was attached to the Council's response.
7. On 28 June 2019 the complainant requested an internal review.
8. Following an internal review the Council wrote to the complainant on 27 August 2019. It maintained its original position.

## Scope of the case

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9. The complainant contacted the Commissioner on 26 September 2019 to complain about the way his request for information had been handled. Specifically, he disputed the Council's decision to refuse his request on the basis that it was vexatious.
10. The scope of this case and the following analysis is to consider whether the Council was correct to rely on section 14(1) of the FOIA as its grounds for refusing to comply with the request.

## Reasons for decision

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### Section 14(1) – Vexatious requests

11. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
12. The term vexatious is not defined in the 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)<sup>1</sup>. 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.
13. 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.
14. 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*

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<sup>1</sup> <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

*a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).*

15. 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<sup>2</sup>.
16. Where relevant, public authorities may take into account wider factors such as the background and history of the request and its relationship with the requester. However, the Commissioner is keen to stress that in every case the question is whether the request itself is vexatious and not the person making it.

## **Background**

17. The complainant and a colleague compiled contributions from victims and others affected by child sexual exploitation in Rotherham into a publication titled "Voices of Despair, Voices of Hope" (the publication). The publication was produced in consultation with Council officers.
18. In 2015 the Council ordered 1500 copies of the publication with the intention of distributing them. However, later that year, after distributing a limited number of copies, the Council decided not to distribute it any further.

## **The Complainant's view**

19. The complainant argued that the Council was conflating separate issues. With regard to the Council's position that the matter was subject to the refusal notice dated 16 February 2020, the complainant stated that after an internal review the refusal notice was declared invalid and was withdrawn on 8 June 2020. In any event, he disputed that he was reopening a line of enquiry regarding the publication and stated that this request was about evidenced dishonesty by a Council officer in response to an information request.
20. It was the complainant's case that two First-tier Tribunal (FTT) decisions of 1 May 2019 demonstrated that the Council was not justified in taking the same approach to deny him access to information. He provided a copy of the FTT's decision, regarding a previous request for information

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealingwith-vexatious-requests.pdf>

relating to the publication which the Council found to be vexatious, in which his appeal was allowed.

### **The Council's view**

21. In her correspondence to the Council the Commissioner explained her approach to investigating the application of section 14(1). She asked the Council to provide detailed representations in support of its position that the request in this case was vexatious. In line with her standard approach, she asked the Council to provide:
  - details of the detrimental impact of complying with the request,
  - why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value, and
  - if relevant, details of any wider context and history to the request if the Council believes that this background supports its application of section 14(1), including relevant documentary evidence to support such a claim.
22. In its initial submission to the Commissioner, the Council stated that it was relying on section 14(2) of the FOIA (repeated requests) to refuse the request. However, it responded to the Commissioner's questions regarding its application of section 14(1) and did not appear to have provided evidence that section 14(2) was engaged. The Commissioner contacted the Council again to clarify whether it had amended its position. The Council confirmed that it was relying on section 14(1) to refuse the request, not section 14(2).
23. With regard to its reliance on section 14(1) to refuse the request, the Council stated that the matter was subject to the refusal notice it had previously issued on 16 February 2017. It stated that the refusal notice *"was put in place in 2017 due to the substantial amount of resource that had already gone into complying with previous requests relating to matters around the customer's own publication 'Voices of Despair, Voices of Hope'".* It said the requests had become repetitive and excessive in nature and claimed there was no further wider public value to the requests and they were having a detrimental impact on the Council and ultimately the public purse.
24. The Council told the Commissioner that there was a long and ongoing relationship with the complainant. It stated that this involved freedom of information requests, subject access requests, questions at Council, petitions and business as usual enquiries. It stated that while the requests differed to some extent they all stemmed from the aforementioned publication.

25. The Council argued that the time spent in complying with the complainant's requests dominated officer time and was directly impacting on the Council's performance and assistance to other customers.
26. The Council stated that in the year 2019/20 it received and responded to 10 freedom of information requests, five internal reviews and four subject access requests from the complainant relating to the same issue. It provided a table with further details of these requests, including the date of receipt, date of response and whether information was disclosed or refused. The Council believed this demonstrated that it had assessed each request without bias and within a timely manner.
27. From this table, the Commissioner notes that only three freedom of information requests and one internal review request were submitted by the complainant prior to the request being considered in this notice. The remainder, including the subject access requests, were submitted after the Council had provided its response to this request.
28. The Council also considered that several of the complainant's requests were confusing and unclear. It explained that, *"to ensure we are acting fairly the Council has gone back to the customer on several occasions to clarify what is being requested. This is so all parties are clear that the request is being processed and interpreted with a mutual understanding."*
29. The Council stated that it felt harassed and fatigued by the continual requests. It argued that it was becoming exhausted with the repetitive nature of the enquiries. In particular, as nearly all responses were challenged or disbelieved by the complainant, despite the Council's efforts to be as open and transparent as possible. In addition, it said that the complainant often did not reflect upon the information or response provided before requesting an internal review.
30. With regard to the complainant's assertion that it was conflating issues, the Council denied this and advised the Commissioner that "evidenced dishonesty" was a common enquiry by the complainant, which he made by various routes. The Council stated that it had responded to multiple requests on this matter and that any relevant information it held had already been provided in response to previous requests.
31. The Council confirmed that it had revisited the request at internal review and during the Commissioner's investigation, but did not wish to alter its position. It believed it had handled the request fairly and appropriately.

## The Commissioner's decision

32. The Commissioner recognises that in some cases it will be obvious that a request is vexatious. However, in many cases the question of whether section 14(1) applies is likely to be less clear-cut. In such cases, the Commissioner considers the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually mean weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. Often, the wider circumstances surrounding the request will also be a major factor in determining whether the request is vexatious.
33. In this case, the Council did not argue that the request was vexatious in isolation. Instead, it argued that request was vexatious based on its ongoing relationship with the complainant and the aggregated burden placed on it by his requests and correspondence.
34. The Commissioner understands that, in line with its refusal notice dated 16 February 2017, the Council has taken the position that any subsequent requests relating to the publication "Voices of Despair Voices of Hope" are vexatious.
35. However, in a letter to the complainant dated 8 June 2017 the Council withdrew the refusal notice of 16 February 2017 as it was not in response to a FOIA request. The Commissioner considers that the Council has confused matters by continuing to refer to a refusal notice which it has declared invalid.
36. The Commissioner understands that the correspondence of 8 June 2017 was also a section 14(1) refusal notice of a request submitted by the complainant on 6 April 2017. It was this request which was the subject of the FTT decision the complainant provided as evidence to support his position.
37. Having reviewed the FTT's decision, the Commissioner notes that the FTT found that the 6 April 2017 request was not vexatious. The FTT commented on the serious purpose of the complainant's requests and criticised the Council's handling of them. It stated:

*"RMBC did in fact purchase 1500 copies of Voices, what it changed its mind about was whether to distribute them. What the Appellant has sought has been an explanation from RMBC as to why it changed its mind. He has done so not from personal 'dissatisfaction', but from his sense of obligation to those who contributed to the publication in good faith, and with raised expectations that their 'voices' would indeed be heard, whose*

*expectations were then dashed, leading some of them to feel that they had yet again not been listened to. That, this Tribunal finds, has always been the Appellant's motivation, and purpose of all his requests*

*His contention that there has, or may have been, dishonesty on the part of RMBC officers, or others, is not a wild allegation made from the beginning, but one that has been his reaction to the piecemeal, and as he sees it, less than satisfactory manner in which information has been released in response to his requests. He does not assert any improper motives such as personal gain or greed, merely that there has been less than open and frank disclosure."*

38. The fact that the FTT found a previous request was not vexatious does not necessarily mean that this request is also not vexatious. However, the Commissioner considers that the Council's position that the complainant's requests have been vexatious since early 2017 is weakened in this case.
39. Although the Council's position was that the matter had been ongoing for a period of years dating back to at least 2017, and that the complainant had submitted numerous requests about the publication during this time, it chose only to provide documentary evidence from 2019 and 2020 to support this claim.
40. The Commissioner considers that a public authority may take into account evidence it has about events and correspondence which led up to the request in question being made. It may also take into consideration anything that happens within the period of 20 working days following receipt during which it is dealing with the request. However, anything that happens after that cut off point will not usually be relevant.
41. When writing to the Council to seek clarification on its position following its initial representations, the Commissioner also reminded the Council of this point and gave it a further opportunity to provide evidence pre-dating the request. However, the Council did not provide any additional evidence.
42. As the Commissioner has observed above at paragraph 27, the Council only provided details of three FOIA requests that were submitted prior to this request. The remainder of the requests in the table cannot be considered as evidence to support its decision to refuse the request in question as vexatious, as they were all submitted after the Council issued its response to the 22 June 2019 request.



43. It is not clear whether the three previous requests were for information related to the publication. Nevertheless, the Commissioner does not deem it unreasonable for the complainant to have submitted three requests within a six month period. From the FTT's decision the Commissioner is aware of six further requests submitted between September 2015 and April 2017. Even taking these requests into consideration, she does not consider this demonstrates a disproportionate burden was placed on the Council and cannot see that this would have a detrimental impact on its ability to deal with other applicants' requests.
44. The Council argued that several of the complainant's requests were confusing and unclear. However, it did not state whether or not it considered the request in question confusing, nor did it provide an example of any previous requests which were. The Commissioner considers the complainant's request in this case was specific, and would not have required any clarification in order for the Council to comply with the request. It is, therefore, difficult for the Commissioner to place any weight on this argument.
45. The Commissioner's guidance specifies what she expects from a public authority when investigating whether or not a request is vexatious. The guidance explains that when building a case to support its position a public authority must bear in mind that the Commissioner will primarily be looking for evidence that the request would have an unjustified or disproportionate effect on the authority.
46. In this case, the Commissioner does not consider that the Council has provided sufficient evidence to demonstrate the detrimental impact of compliance with this request. The Commissioner is not persuaded that the request was vexatious.
47. The Commissioner's decision is that the Council was not entitled to rely upon section 14(1) of the FOIA to refuse to comply with this request. At paragraph three above, the Council is now required to issue a fresh response to this request.

## Right of appeal

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48. 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)

49. 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.
50. 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**  
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**SK9 5AF**