

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2021

Public Authority: South Lakeland District Council
Address: South Lakeland House
Lowther Street
Kendal
Cumbria
LA9 4DQ

Decision (including any steps ordered)

1. The complainant has requested information relating to works carried out by South Lakeland District Council (the Council) to her daughter-in-law's property. The Council did not comply with the request, citing section 14(1) of the FOIA.
2. The Commissioner's decision is that the Council has not demonstrated that the request was vexatious and was therefore not entitled to rely on section 14(1) to refuse it.
3. The Commissioner required the Council to take the following step to ensure compliance with the legislation:
 - Issue a fresh response to the request which does not rely upon section 14(1).
4. The public authority 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

5. On 8 January 2020, the complainant wrote to the Council and requested information in the following terms:

"Please release the following information:

All files/documents relating to the Council's involvement in the works carried out to [address redacted]

The full Tender Process

The Criteria used/ Invitation to Tender

Expressions of interest, showing each Tender applicant by name during this whole process.

How the Council scores each applicant and, again, shown by name.

The reason the Council chose Quadriga.

Please let me have the requested information within the next seven days."

6. The Council responded on 13 January 2020, providing a history of requests for information and requests for internal review the complainant had made previously, including a disclosure it made to the complainant in April 2018.
7. The Council provided its substantive response on 15 January 2020. It referred to its email of 13 January 2020 and the disclosure it had made in April 2018, listing the disclosure information as follows:

"Appendix 1 – Project Team – Quadriga Contracts Ltd

K29541 Schedule of Works V.2 0 Quadriga Contracts Ltd.

Programme of Works.

Quadriga Contracts Ltd – Cover Letter.

Schedule 1 – ITT Part 2 – Quadriga Contracts Ltd.

Schedule 2 – Canvassing Collusive Certificate – Quadriga Contracts Ltd.

Schedule 3 – Form of Tender – Quadriga Contracts Ltd.

TWIMC Broker Letter.”

8. The Council explained that in line with its response dated 13 January 2020, that providing the information requested would mean accessing details information held in electronic and paper format and this would exceed the appropriate limit under section 12(1) of the FOIA.
9. The complainant contacted the Commissioner to complain about the council's response to the request. The Commissioner did not consider it would be necessary for the Council to carry out a further internal review and informed the complainant and the Council of this.
10. On 22 July 2020 the Commissioner issued a decision notice¹ stating that she did not consider the Council was entitled to rely on section 12(1) of the FOIA. The Commissioner therefore required the Council to issue a fresh response, not relying on section 12.
11. On the 21 August 2020 the Council issued a fresh response and refused the request citing section 14(1) of the FOIA.
12. As there has been a substantial passage of time and as the response of 21 August 2020 was already the second response to this request, the Commissioner's investigation commenced in the absence of a review.

Background

13. The Council explained to the Commissioner that there had been a significant failure by the owner of the property this request relates to, to execute substantial remedial works in order to make the property safe.
14. The Council stated that a "*sustained campaign of delay*" between October 2012 and March 2015 led to the Council informing the owner that if substantial remedial work in order to make the building safe was

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618071/fs50887650.pdf>

not undertaken, then the Council would have the power to either demolish the building or carry out works to repair it and charge the cost to the owner of the property.

15. In her complaint to the Commissioner the complainant stated that she does not agree that there was a sustained campaign of delay between October 2012 and March 2015 and that a Structural Engineer's report in 2012 stated that work was not considered urgent at the property. She also explained that in 2016 repairs were carried out at the property on behalf of the owner.

Scope of the case

16. On the 12 September 2020 the complainant contacted the Commissioner to complain about the Council's fresh response and application of section 14(1) of the FOIA to her request for information.
17. The Commissioner has therefore considered whether the Council was entitled to apply section 14(1) of the FOIA to this request for information.

Reasons for decision

Section 14(1) vexatious request

18. Section 14(1) of the FOIA states that section (1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
19. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*. The Tribunal commented that vexatious could be defined as "*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.
20. 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.

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

22. The Commissioner has published guidance on dealing with vexatious requests². That guidance includes a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether or not a request is vexatious.

23. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.

24. In that respect, the Commissioner's guidance states:

"The context and history in which the request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies."

25. Sometimes it will be obvious when a request is vexatious, but sometimes it may not be. On that point, the Commissioner's guidance states:

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

"In cases whether the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation and distress".

26. It is for the public authority to demonstrate to the Commissioner why the exemption at section 14 applies.

The Council's position

27. In its submission to the Commissioner, the Council provided a history of its relationship with the complainant. It explained that it initially contacted the property owner in 2011 informing her that if substantial remedial works in order to make the building safe were not undertaken, then the Council would have the power to demolish the building or carry out works to repair it and charge the cost to the owner of the property.
28. The Council explained to the Commissioner that it considers the request has been comprehensively addressed. It explained that in April 2018, the Council released documents which can be seen at paragraph 7 of this notice.
29. It explained that there have been a number of communications between the Council and the complainant regarding the property and it believes the request for *"All files/documents relating to the Council's involvement in the works carried out to [address redacted]"* is designed to cause disruption to an ongoing and lengthy process.
30. The Council explained that having exhausted the Council's complaints procedure as well as the Council's access to information procedure, the complainant pursued a complaint with the Local Government Ombudsman (LGO) who found no fault in the Council's decision to tender, procure and appoint a contractor, Quadriga Contract Ltd, to undertake the remedial work to the building. It provided details of this decision to the Commissioner.
31. The Council explained to the Commissioner that it believed the purpose and value of this request is designed to cause disruption and is manifestly unreasonable.

The complainant's position

32. In her complaint to the Commissioner the complainant explained that in 2012 a small piece of pointing was pushed out between two stones where a seed had taken root. She explained that the same Structural Engineer Company that oversaw a conversion of the property into three

separate dwellings attended and its report stated that work was not considered urgent.

33. The complainant explained to the Commissioner that the main reason for requesting the information was that she felt the total costs were high and she believed items listed were unnecessary.

The Commissioner's view

34. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances to assist in making a judgement about whether a request is vexatious.
35. In her guidance on dealing with vexatious requests, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
36. The Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering main stream services or answering legitimate requests. The Commissioner does, however, recognise that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption.
37. In cases involving section 14, the Commissioner does need to consider the wider value and purpose behind the request which has been deemed vexatious, or behind the overall use which the Council highlights as its reasons for declaring a request vexatious.
38. The Council provided the Commissioner with the background of its dealings with the complainant and her daughter-in-law in relation to the work carried out at the property this request relates to. However the council has not provided the Commissioner with a detailed history of its engagement with the complainant on this matter. In particular it is not clear to the Commissioner the extent of the information requests made by the complainant. With the knowledge of the previous decision notice on this request, the Commissioner is aware that the council still holds a large amount of information on this matter which the complainant has not had access to.

39. The Commissioner takes on board the Council's assertion that the request appears to be an attempt to reopen an issue that has already been addressed by the Council itself and the LGO. However the Commissioner can also see that this request for information represents a matter that is of utmost importance to the complainant personally and potentially of wider public interest in terms of the transparency of the Council's actions.
40. The Commissioner has viewed the LGO's decision which addresses the Council's decision to carry out repairs on the property when this was not carried out by the owner, and whether it conducted a fair tendering process. The LGO found there was no fault in the Council's actions.
41. Having considered the background, the Commissioner is satisfied that the complainant's request addresses a valid concern she has with the works the Council has commissioned. From the LGO's investigation it does not appear to address the complainant's concern that items were listed on the schedule of works that she believes were unnecessary to carry out. Although the LGO found no fault with the Council's tender process, the complainant still has concerns regarding the amount Quadriga Contract Ltd charged, and the extent of the works carried out. Whilst, the complainant appears to have exhausted channels of complaint with both the Council and the LGO regarding the Council's actions. The Commissioner recognises that the complainant has still not gained access to the full information held by the council on this matter.
42. The LGO's investigation decided the actions of the Council were correct and due to a court order being issued it could not investigate whether the works should have been carried out. However, it can be argued that there is a wider public interest in the matter of how the Council carries out urgent work on properties in disrepair. Considering the Upper Tribunal case of the *Information Commissioner v Devon CC & Dransfield* we must not forget that one of the main purposes of the FOIA is to provide citizens with a (qualified) right to access to official information and therefore a means of holding public authorities to account.
43. The Commissioner recognises 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. In this instance, the Commissioner does not consider that the issue of vexatiousness is clear-cut, and in particular the Commissioner is not satisfied that the Council has provided sufficient evidence of its previous dealings with the complainant to the extent that it renders this request vexatious.

44. From the information presented to her and taking into consideration the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that on this occasion the Council was incorrect to find this request vexatious.

Right of appeal

45. 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

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

46. 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.
47. 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

Laura Tomkinson
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