



## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 8 June 2006**

**Public Authority: North Down Borough Council**

**Address: The Town Hall  
The Castle  
Bangor  
BT20 4BT**

#### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the Public Authority has not dealt with the complainant's request in accordance with Part I of the Freedom of Information Act 2000 in that it has failed to comply with its obligations under section 1. This failure stemmed from an incorrect application of the provisions of section 14 relating to vexatious requests.**

**However, in view of the matters set out below no further steps are required to be taken by the Public Authority.**

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#### **1. Freedom of Information Act 2000 – Application for a Decision and the Duty of the Commissioner**

**1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').**

**1.2 Where a complainant has made an application for a decision, unless:**

- a complainant has failed to exhaust a local complaints procedure, or**
- the application is frivolous or vexatious, or**
- the application has been subject to undue delay, or**
- the application has been withdrawn or abandoned,**

**the Commissioner is under a duty to make a decision.**



- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## 2. The Complaint

- 2.1 The complainant has advised that in his letter of 11<sup>th</sup> April 2005 the complainant requested the following information from North Down Borough Council ("the Council") in accordance with section 1 of the Act :-

- “1. The current wage band for the Town Clerk.
2. The total phone account, line rental and call charges to the Council for the Town Clerks cell phone for the last 5 years.
3. The total claimed in mileage allowances for the last 5 years.
4. The total claimed for expenses (meals, drinks, hotels and hospitality) by the Town Clerk on Council credit cards for the last 5 years.
5. The phone number for the Town Clerks Council financed cell phone
6. The direct line phone number for the Town Clerks Office
7. The email address for the Town Clerk. “

In its letter of 6<sup>th</sup> May 2005, the Council responded to the complainant stating that the “Council will not be releasing this information to you, this decision has been reached on the grounds that “it is being sought for vexatious purposes”.”

In his letter dated 9<sup>th</sup> May 2005 the complainant sought an internal review of the Council's decision and asked that the Council “explain in detail how they arrived at the conclusion that this information “is being sought for vexatious purposes”.”

On 12<sup>th</sup> May 2005, the Council replied to the complainant stating: “your appeal has been considered, but... ..the information will not be released to you on the grounds that it is being sought for vexatious purposes”.”

On 18<sup>th</sup> May 2005, the complainant applied to the Commissioner for a decision as to whether the Council had dealt with his request in accordance with the requirements of Part 1 of the Act. The complainant asked that the Commissioner consider the decision of the Council refusing his request and the reason given by the Council for that refusal.

The Commissioner has considered whether the Council has complied with its obligations under section 1(1) of the Act and whether the Council has properly applied section 14(i) of the Act in all the circumstances of the case.

## 3. Relevant Statutory Obligations under the Act



3.1 **Section 1** provides that –

- “(1) Any person making a request for information to a public authority is entitled-
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.”
- (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

3.2 **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.”

**4.0 Review of the case**

4.1 Scope of the Review:

The Commissioner has considered whether the Council has complied with the requirements of section 1(1) of the Act and whether the Council has properly applied section 14(i) of the Act.

**The Commissioner's Investigation:**

- 4.2 On 20<sup>th</sup> July 2005 the Commissioner wrote to the Council and asked that the Council provide an explanation of the grounds on which the Council considered the complainant's request to be “vexatious”. The Commissioner also provided the Council with a copy of the Commissioner's guidelines on the subject of vexatious and repeated requests. The Commissioner did not receive a response to this letter.
- 4.6 On 7<sup>th</sup> October 2005, the Commissioner again wrote to the Council seeking details of the reasons for the Council's reliance upon section 14 of the Act to refuse the complainant's request for information. The Commissioner again provided to the Council a copy of the Commissioner's guidelines on vexatious and repeated requests. The Commissioner explained to the Council that a public authority must give must be able to justify its decision to rely upon section 14 (i) of the Act.

The Commissioner advised that he may consider “vexatious” a request, which may be the latest in a series of requests, which would impose a significant burden upon the public authority and which:

- clearly does not have any serious purpose or value;



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- is designed to cause disruption or annoyance;
- has the effect of harassing the public authority; or
- can otherwise be fairly characterized as obsessive or manifestly unreasonable.

The Commissioner further explained to the Council that where a public authority concludes that a particular request represents a continuation of behaviour which has been judged to be vexatious that it may consider refusing the request under section 14 of the Act. The Commissioner asked that the Council provide clear evidence of the behaviour in question if this was the Council's contention.

- 4.7 On 10<sup>th</sup> October 2005 the Commissioner was advised by the Council, by telephone, that the Council had received a number of other requests for information from the complainant and that responding to the previous requests made by the complainant had caused considerable disruption to the Council. The Council expressed concern as to how the complainant might use the information once received. The Commissioner clarified to the Council that the right to access information under the Act was motive blind. The Council also advised that it would seek legal advice on whether the complainant's request of 11<sup>th</sup> April 2006 was in fact "vexatious" under the terms of section 14 of the Act.
- 4.8 On 5<sup>th</sup> December 2005 Solicitors for the Council wrote to the Commissioner confirming that it was their intention to consult with Counsel on the issue of whether the complainant's request was vexatious and that this consultation was to take place on the 15<sup>th</sup> December 2005.
- 4.9 On 16<sup>th</sup> December 2005 the Solicitors for the Council advised the Commissioner that, having considered all of the circumstances of this case, it was their view that *"it is accepted that at this juncture the requests made by [the complainant] are not sufficient to satisfy the test of vexatiousness which is analogous to the test of what constitutes a vexatious litigant in High Court proceedings"*. Following discussions between the Council's solicitor and the Commissioner, on 21<sup>st</sup> December 2005, the Council provided to the complainant all that information sought by the complainant in his request of 11<sup>th</sup> April 2005.
- 4.10 The Commissioner is mindful that the requested information has now been provided to the complainant. However, in all the circumstances of the case the Commissioner is satisfied that it is appropriate to issue a Decision Notice. The question as to what constitutes a vexatious request is one which Public Authorities generally find difficult and it is for this reason that the Commissioner considers it is important that there is a formal record of the outcome of this case as guide to this particular public authority and, incidentally, others on the application of section 14(i) of the Act. Therefore although there are no steps which the Commissioner requires the Council to take in this instance. The Commissioner is of the view that there are sound reasons of principle for proceeding to Decision Notice.



## 5.0 The Commissioner's Decision

- 5.1 The Commissioner is satisfied that in this case the Council initially refused to comply with the request of the complainant as a result of its failure to correctly apply section 14(i) of the Act. The Commissioner is satisfied that at the time of the request the Council misinterpreted, and accordingly failed to fulfill, its obligations under, the Act. The Council did not initially give consideration to whether the request itself was "vexatious" but made its decision to refuse the request of the complainant solely on the basis of that all requests from the complainant were considered "vexatious".
- 5.2 As a result of the intervention of the Commissioner and the guidance, on the proper interpretation of section 14(i) of the Act, given to it by the Commissioner, the Council did release the requested information to the complainant.
- 5.3 The Commissioner recognises that a public authority should be permitted, where appropriate, to protect its resources from organisations and individuals who might seek to abuse their rights under the Act and so dissipate those resources. However, public authorities are not to conclude that a request is vexatious unless there are sound grounds for such a decision.
- 5.4 Section 14(1) of the Act states that the general right of access to information "*does not oblige a public authority to comply with a request for information if the request for information if the request is vexatious*".
- 5.5 The Commissioner is satisfied that it is reasonable to treat as vexatious a request that would impose a significant burden and is designed to subject a public authority to inconvenience, harassment or expense or, indeed, has that ancillary consequence. Where the applicant does not intend to cause inconvenience or expense, if a reasonable person would conclude that the main effect of the request would be disproportionate inconvenience or expense, then it may be appropriate to treat the request as vexatious.
- 5.6 In the Commissioner's view, although the test applied by the courts in respect of those alleged to be vexatious litigants is relevant, it is not directly analogous to the test of what constitutes a vexatious request for information. In its considerations of requests under the Act, a public authority must remain mindful that it is the request, rather than the requester, which must be vexatious. The Commissioner considers that it is the nature and effect of the request, rather than merely the intentions of the applicant, which should determine whether a request may be considered vexatious. In his guidance the Commissioner reminds authorities that each request must be considered by the public authority on a case by case basis. Where a public authority seeks to have regard to a pattern or series of requests from an applicant then that public authority must be satisfied that the latest in that series or pattern would itself be fairly characterized, by a reasonable person, as obsessive or



manifestly unreasonable. Such an abuse of the right of access might properly be characterized as vexatious for the purposes of the Act.

5.7 In this case, the Council did not give proper consideration to the request made by the complainant on 11<sup>th</sup> April 2005 but rather considered that all requests from the complainant were vexatious. The Council was unable to provide to the Commissioner evidence that this particular request formed part of a series of requests which might be characterized as obsessive or manifestly unreasonable.

5.8 The Commissioner's decision in this matter is that the Council, wrongly sought to rely upon section 14(i) of the Act to withhold the requested information. Therefore the Commissioner is satisfied that the Council has not dealt with the complainant's request in accordance with the requirements of section 1(i) of the Act in that it failed to communicate to the complainant information held it as requested by the complainant.

## 6.0 Action Required

The Commissioner recognises that the Council has acknowledged its failure to comply with its obligations under the Act and that the Council, in response to the intervention of the Commissioner, has released to the complainant all that information requested by the complainant which initially was wrongly withheld from the complainant by the Council. The Commissioner is satisfied therefore that no further action is required by the Council in relation to this complaint.

## 7.0 Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "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@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 8th day of June 2006**



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**Signed .....**

**Phil Boyd**  
**Assistant Commissioner**

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