

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 May 2011

Public Authority: London Borough of Bexley
Address: Civic Offices
Broadway
Bexleyheath
Kent
DA6 7LB

Summary

The complainant requested information relating to council committees. The public authority did not provide a response to these requests. The Commissioner finds that the requests are similar to requests previously submitted by the complainant which had been refused by the public authority as vexatious under section 14(1) of the Act, and that under the provisions of section 17(6) of the Act the public authority was not obliged to issue a further refusal in this case. He requires no action to be taken.

The Commissioner's Role

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.

The Request

2. On 4 February 2010, the complainant submitted a request to Bexley Council (the council) for

"Are the deliberations and the results of the deliberations, of any committee which has any input into the decisions/running of this council, withheld from the electorate? And which committees are they? If not you, then to whom should I put this question? Which committee decides who to approach with a request to be the independent chair on social services review/complaints panels?"

3. He did not receive a response to this request and complained to the Commissioner on 17 March 2010 that this, and two other requests, had not been answered.
4. The Commissioner established that these requests were considered, by the public authority to be vexatious and/or repeated, and that it relied on previously issued refusal notices of 29 November 2007 and 21 December 2007 in which it had explained to the complainant that it considered his requests to be vexatious and continued requests for the same information, or on related matters, would no longer receive a response.

The Investigation

Scope of the case

5. On 17 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - He had submitted three requests to the council, but had not received a response. The requests had not previously been answered by the council, therefore he disputed its refusal on the grounds stated.
6. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
7. The Commissioner has therefore examined the council's refusal of the complainant's request as vexatious, under section 14(1) of the Act.

Chronology

8. During the course of 2010 the Commissioner corresponded at intervals with the complainant. His complaint had initially related to three requests, submitted as follows:
 - **3 January 2010**, for *“What/how many committees that have any input to Council decision making/administration are the Bexly electorate barred from having knowledge of?”* [sic]
 - **22 January 2010**, for *“Which committees provide an input to the workings/decisions of Bexley Council, when the name and role of those said committees is withheld from the Bexley electorate?”*
 - **4 February 2010**, for *“Are the deliberations and the results of the deliberations, of any committee which has any input into the decisions/running of this council, withheld from the electorate? And which committees are they? If not you, then to whom should I put this question? Which committee decides who to approach with a request to be the independent chair on social services review/complaints panels?”*
9. The Commissioner established that the complainant considered his complaint specifically to be about the 4 February 2010 request. There was some confusion over whether he had asked the council to conduct an internal review of that request. Following advice from the Commissioner given at the time he initially submitted his complaint, the complainant had requested an internal review (of his 3 January request) on 16 April 2010, and had been sent the outcome of the council’s internal review on 9 June 2010. That internal review had confirmed the council’s position that the request was considered vexatious.
10. The Commissioner also corresponded at intervals with the council. On 19 January 2011 the Commissioner established that the council relied on its 29 November 2007 and 21 December 2007 letters to the complainant for its view that all three of his more recent requests were considered vexatious, and its internal review could be applied to all of them.

Findings of fact

11. The Commissioner has been reminded that his decision notice in case reference FS50193947¹ had considered the council’s 29 November 2007 and 21 December 2007 refusal, in respect of a request submitted by the same complainant to the council on 11 January 2008 for:

¹ See http://www.ico.gov.uk/~//media/documents/decisionnotices/2009/FS_50193947.ashx

*"who approved the selection of [name] as the independent person/chairman to sit on a Council Social Services Review Panel?
and*

whether the panel members were shown any proof of [name]'s identity".

12. That decision notice had upheld the council's refusal of the request as vexatious and did not require any steps to be taken by the council. No appeal to the Information Tribunal was made and therefore the Commissioner is satisfied that he, and the council, are entitled to rely on the findings of that decision notice.

Analysis

Substantive Procedural Matters

Section 14

13. The first question for the Commissioner in this case is therefore, whether the complainant's January and February 2010 requests can fairly be considered to be sufficiently closely related to his January 2008 (and previous) requests, so that the council is entitled to rely on its previous refusal in respect of these more recent requests.

14. The Commissioner refers to his decision notice in case reference FS50193947 which states, at paragraph 12:

"The Commissioner is aware that the complainant has been in correspondence with the public authority regarding his dissatisfaction with a Social Services Review Panel since 2005. The public authority has provided evidence of 6 letters containing several separate requests for information regarding the organisation of the panel and the appointment of the Chair. Requests were submitted by the complainant approximately once a month between July and November 2007."

15. The chair of the social services review panel in that case was the individual named in the complainant's 11 January 2008 request (the 'named individual').
16. The council has directed the Commissioner's attention to an exchange of correspondence between it and the complainant starting in late 2009. On 17 December 2009 the complainant submitted a request for:

"WHAT ARE THE SPECIFIC DUTIES/TASKS OF EACH 'COMMITTEE' WITH REGARD TO THE ADMINISTRATION/FUNCTION OF BEXLEY COUNCIL?"

17. This was given the council's reference 9/829 and it responded on 19 December 2009, providing him with a copy of the council's constitution, which explains the functions of its various committees. The complainant responded on 21 December 2009, stating:

"SO WHICH COMMITTEE APPOINTED [the 'named individual']?"

18. This request was refused, as vexatious, in an email on 20 January 2010 and the complainant replied to the council's refusal notice on the same date, stating:

***This** is my request for information-*

My request was and is, which and how many committees which have any input to the tasks/workings of the council are the electorate barred from having knowledge of.

Stop trying to confuse and escape from answering the issue." [sic]

19. The Commissioner notes that this was essentially the request submitted by the complainant on 3 January 2010 and acknowledges the possibility for confusion in the complainant's mind about which request the council's 20 January 2010 refusal referred to. He observes, however, that the statement quoted at paragraph 18, above, is contained in a chain of emails which includes the 21 December 2009 request, and the council's 20 January 2010 response. Therefore, it should be clear to the complainant which of his requests applies in the circumstances.
20. It is also clear that the complainant has continued to submit requests relating to the 'named individual', despite the council's previous refusals and warning that the matter would not receive any further response from it.
21. Even if the complainant has misunderstood the specific request to which the response should apply, the Commissioner is satisfied that this chain of correspondence shows that the complainant's recent requests about the tasks and functions of council committees are closely related to the complainant's requests about the appointment of the named individual to a Social services Review Panel, which was a key theme of the requests refused as vexatious, and considered in case reference FS50193947.
22. The Commissioner put this to the complainant in order to give him an opportunity to refute this inference. In his response the complainant

asserts that the identity of the named individual is a side-issue which is not relevant to this complaint and which has, for the moment, been dropped. He argues that the previous decision notice, being related to requests about the identity of an individual, has no bearing on the recent requests about the name of a committee.

23. The Commissioner therefore understands the complainant's position to be that the identity of the 'named individual' is a "*side-issue*" to his recent series of requests about council committees. It is not an entirely separate issue to his requests about council committees. While the complainant argues that it is not relevant to his current complaint, the Commissioner finds that his 4 February 2010 request cannot reasonably be considered in isolation from the earlier, vexatious, requests.
24. It is clear to the Commissioner that the complainant conflates his 17 December 2009 request about council committees with his 21 December 2009 request about the 'named individual' - they are contained within the same email chain and the second request is meaningless without the context provided by the first. Also, any possible confusion on the part of the complainant (eg in his 20 January 2010 response within the same email chain) about the underlying request he has made, makes it reasonably clear that, in the complainant's own mind, these are not matters which are entirely separate.
25. The Commissioner notes that:
 - the named individual was the independent chair of a social services review panel;
 - the complainant's (refused) request of 11 January 2008, to which the Commissioner's decision notice in case FS50193947 refers, relates to the appointment of the independent chair to a social services review panel;
 - the complainant's email exchange with the council of 17 December 2009 to 20 January 2010 connects the named individual, the tasks of council committees and the functions of the council; and
 - the complainant's 4 February 2010 request, which is the agreed subject of this complaint, makes reference both to the deliberations of council committees and their functions within the council and also, directly, to which committees have input to the appointment of the independent chair to social services review panels.
26. The Commissioner is therefore satisfied that the complainant's series of three requests of 3 January to 4 February 2010 which are referred to at the head of this decision notice are directly related to the same general subjects as his previous requests which were refused as vexatious.

Furthermore the specific request (of 4 February 2010), which the complainant refers to in the current complaint, makes direct reference to committees relating to the appointment of the independent chair for social services review panels, a matter which the council's 21 December 2007 refusal notice specifically mentions as a subject which will no longer receive a response.

27. The complainant indicated to the Commissioner (at a late stage in his investigation) that he had dropped his enquiries about which committees decide who to appoint as the independent chairman of social services review panels, and also his enquiries about the named individual, and asserted that this has been the case since 16 September 2010. The Commissioner notes that, even if this were to be accepted by all sides as correct, it occurs much later than the requests which are under consideration in this decision notice were submitted (and refused), and therefore has no bearing on the circumstances which led to their refusal, and which the Commissioner has investigated. The Commissioner's role in this case is to determine whether the council's response, as given at the time and in the circumstances pertaining at that time, complied with the provisions of the Act.
28. For the reasons explained at paragraph 12, above, the Commissioner relies on the analysis contained in his decision notice for case reference FS50193947. He finds that this request is sufficiently similar to requests which have previously been refused as vexatious, so that the council is entitled to rely on its refusal notices of 29 November 2007 and 21 December 2007 in relation to this request. He therefore finds no need either to examine the council's reasons for refusing the present request as vexatious, or to reconsider the arguments employed in his previous decision.
29. The Commissioner finds that the request was correctly refused as vexatious.

Procedural Requirements

Section 17

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) provides that –

"Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."
30. The Commissioner has considered the provisions of section 17(6) of the Act, which removes the obligation to issue a refusal notice in the case of requests refused under section 14 of the Act, in circumstances where a previous refusal notice has been given and it would be unreasonable in all the circumstances to expect the public authority to issue a further such refusal notice. In that consideration, in order to address the issue of 'reasonableness' referred to in section 17(6), the Commissioner has had regard to three particular parameters in this case:
- has the public authority previously communicated to the complainant that it will no longer respond to requests to which the previous section 14 refusal would apply;
 - is the present request sufficiently linked to the previously refused request; and
 - have the circumstances changed sufficiently so that it would be unreasonable to rely on the previous refusal?
31. The Commissioner notes that, as at paragraph 26 above, the public authority's letter to the complainant of 21 December 2007 does inform him that the council will no longer engage in correspondence with him *"on any matters to do with your hearing with the Social Services Review Panel, the Council's procedures for organising such Panels, or the identity of the Panel's members."* The Commissioner is therefore satisfied that the complainant can have had no reasonable expectation that the council would continue to engage with him on these subjects.
32. Paragraphs 13-26 make clear the Commissioner's view that the present request is clearly linked to the previously refused request. To the extent that the request, on its face, purports to be for different information, the Commissioner is satisfied that this may be considered to be a device employed by the complainant, in order to revisit the previously refused issues.
33. The complainant's interests relate to a past event or series of events, not to an ongoing or developing situation. He is, in effect, continuing to request the same information which was previously refused as

vexatious, under section 14(1) of the Act. That information cannot have changed as it refers to a fixed event in the past, the information held is not subject to change with the passage of time. There is no suggestion that events in the interim might have altered the underlying situation to an extent which would, if the original request were reconsidered today, render the previous refusal to any extent unreasonable.

34. The Commissioner is satisfied that section 17(6) of the Act applies in the circumstances of this complaint. It is clear that the complainant's correspondence on the matter of the named individual, the constitution of social services review panels and the functions of council committees have persisted long after the Commissioner first examined this matter in 2008 and 2009 and it would not be reasonable to expect the public authority to serve a further notice under section 17(5).

The Decision

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

Steps Required

36. The Commissioner requires no steps to be taken.

Right of Appeal

37. 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.

Website: www.informationtribunal.gov.uk

38. 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.
39. 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 16th day of May 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

(d) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(e) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

(f) section 21

(g) section 23

(h) section 32

(i) section 34

(j) section 36 so far as relating to information held by the House of Commons or the House of Lords

(k) in section 40 –

(i) subsection (1), and

(ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,

(iii) section 41, and

(iv) section 44"

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (a) specifies the exemption in question, and
- (b) states (if that would not otherwise be apparent) why the exemption applies."

Section 17(2) states –

"Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

- 1. that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

- 1. that the information is exempt information only by virtue of a provision not specified in section 2(3), and

- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) provides that –

"Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

Section 17(7) provides that –

"A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of

requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50."

Application for decision by Commissioner

Section 50(1) provides that -

"Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I."