

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 May 2011

Public Authority: Wyre Borough Council
Address: Civic Centre
Breck Road
Poulton-Le-Fylde
FY6 7PU

Summary

The complainant requested information about the expenses of two borough councillors. The public authority disclosed some information but this was considered by the complainant to be incomplete and he requested an internal review of the response. An internal review was not conducted, but the public authority subsequently wrote to the complainant, informing him that the request was now refused as vexatious, under section 14(1) of the Freedom of Information Act. The Commissioner finds that the public authority was incorrect to refuse the request as vexatious and upholds the complaint. He also finds that the public authority breached section 1(1)(a) and section 10(1) of the Act. He requires the public authority to provide a response to the complainant which complies with section 1 of the Act.

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 8 December 2009 the complainant submitted a request to Wyre Borough Council (the 'Council') for:

"Please supply all details of Wyre Borough Council expenses and allowances as claimed/granted by the two Fleetwood Councillors as indicated below. I require full details of the total expenses and

allowances granted or claimed and a full breakdown of claims granted or claimed for the years 2004, 2005, 2006, 2007, 2008 and 2009. [Names and details of two councillors were provided]

3. The council acknowledged receipt of the request on 9 December 2009 and requested clarification as to whether the requested information related to 'financial years' (ie April-March). The complainant replied on the same day, clarifying that his request related to calendar years.
4. The council disclosed some information on 6 January 2010, stating that where there are gaps in the records, the information is no longer held by it.
5. The complainant requested an internal review on 25 January 2010, giving his view that there are *"far too many gaps with no good explanation"* and that the disclosed information relates only to mileage allowances and there are other allowances and expenses available to the councillors which have not been disclosed.
6. The public authority replied on 26 January 2010, acknowledging the omissions in the information disclosed and providing the complainant with a further spreadsheet which had inadvertently been missed from the previous disclosure. The public authority also informed the complainant that the information disclosed had been prepared in respect of financial years. It enquired whether, in light of this further information, the complainant still required an internal review. The complainant replied on 26 January, reaffirming his request for an internal review. He indicated that the information disclosed provided *"little or no specific breakdown"*.
7. The council confirmed that an internal review had been initiated on 27 January 2010, and that this would be undertaken independently by Fylde Borough Council.
8. The complainant enquired about the progress of this internal review at intervals from 7 March 2010 to 3 May 2010. The council responded, indicating that it was unable to inform him of the progress of any review as the matter was being dealt with externally.
9. On 21 May 2010 Fylde Borough Council contacted the complainant by email to enquire whether he intended to respond to the points it had put to him in an email of 1 April 2010. The complainant replied on the same day, indicating that he had not received the 1 April 2010 email. He expressed his doubt that the email had been sent, saying:

"Don't try to pull that one mate!! I wasn't born yesterday. Further 20 working days is allowed for an internal review and this matter should have been chased up for nearly 4 months. [...] For the

record I have never had any email off you or anyone else at Fylde Borough Council. Further the original request was to WBC and if you don't talk to them that's not my problem. As stated the request was sent to FBC on 27/01/10 by WBC. [...] don't say that you've contacted me when you haven't. And even then waited 6 weeks for a response. Pull the other one mate!!!"

10. Fylde Borough Council replied to the complainant by email on 24 May 2010, declining to conduct the internal review on the grounds that *"you clearly have no confidence in my integrity [...] I will ask Wyre Borough Council to make alternative arrangements for the review to be carried out."*
11. On 24 May 2010 Wyre Borough Council also wrote to the complainant, informing him that it had recently formed the view that three of his requests were vexatious and would be refused under section 14(1) of the Act. It informed him that it would not correspond further with him on the matter.
12. The request which is the subject of this complaint was not listed in that notice, which related to requests on the subject of accidents involving council lawnmowers, but the Commissioner has established that the council also intends that the refusal should include this request.

The Investigation

Scope of the case

13. On 19 July 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 objected to the refusal on the stated grounds, that his request was vexatious.
 - He still required the internal review he had requested, and still required the information he had requested on 8 December 2009.
14. The Commissioner notes that the refusal of the request (as vexatious under section 14(1) of the Act) came some time after the initial disclosure of information. This indicates that the council has, at least to some extent, re-examined or reconsidered its response to the request. It is therefore reasonable to consider the refusal under section 14(1) to be the council's settled position after whatever reconsideration it deemed necessary. This is, in effect, the outcome of its review. The

Commissioner has therefore examined the council's refusal of the complainant's request as vexatious.

Chronology

15. On 14 September the Commissioner wrote to the council, and to the complainant to inform them that this complaint had been accepted. He requested some initial information from the council.
16. On 28 September 2010 the Commissioner wrote to the council to ask it to confirm that the refusal of various requests as vexatious was intended to include the complainant's 8 December 2009 request and, if so, requesting its arguments and evidence for that position. The Commissioner also wrote to Fylde Borough Council on the same day, to request a copy of the 1 April 2010 email it had sent to the complainant in respect of its internal review.
17. Fylde Borough Council replied on the same day, providing a copy of the 1 April 2010 email, which requested clarification from the complainant as to the grounds of his request for an internal review. The email enquired whether, for example, he considered that more information was held and should be disclosed, or whether his dissatisfaction related to the provision of information relating to financial, rather than calendar years. Further enquiries by the Commissioner established that Fylde Borough Council was unable to show that this email had been received or read by the complainant.
18. Wyre Borough Council provided the Commissioner with its response to his initial enquiries. Additional enquiries and responses were made, but will not be detailed further here.
19. The Commissioner wrote to the complainant on 25 January 2011, setting out a brief summary of the council's position and inviting him to comment or rebut the points made, and provide supporting evidence if possible. The complainant replied on the same day, giving his rebuttal of the council's arguments and evidence for his position.

Analysis

Substantive Procedural Matters

Section 1

Information held/not held

20. The complainant's request was for information relating to calendar years. The council elected to provide information relating to financial

years, on the basis that this was how the information had been collated. This means, however, that information relating to the first part of 2004 (ie January-March, prior to the commencement of the 2004-05 financial year), and April-December 2009 (after the end of the 2008-09 financial year), was not disclosed. It argues that the information it holds is collated in such a way as to make disclosure by reference to calendar years difficult.

21. The council also indicated to the Commissioner, during the course of his investigation, that the complainant had now received all the information it held. The Commissioner also notes the council's statement in its initial 6 January 2010 disclosure that *"If there are gaps in the records it is because we no longer have the records."* The Commissioner considers that this would be likely to be interpreted as a denial that any further information is held, under section 1(1)(a) of the Act. Noting that further information was disclosed shortly thereafter, the Commissioner might accept that this response was given in good faith, and the omitted disclosure was a genuine oversight.
22. However, following specific enquiries, the council subsequently confirmed to the Commissioner that the requested information for January-March 2004, and April-December 2009 was held by it, and this information was disclosed to the complainant during the course of the investigation. The Commissioner finds that the council's response of 6 January would have led the complainant to believe that this information was not held by it, and the council made no apparent effort to locate, retrieve and disclose this information until the Commissioner's intervention. Accordingly, he finds that the council breached section 1(1)(a) of the Act in denying information was held, when that information was subsequently found to be held.

Section 14

23. The council's arguments for the application of section 14 of the Act and refusing the complainant's request as vexatious may be summarised as:
 - 1) *the request follows dissatisfaction with the named councillors in connection with efforts to obtain improvements to road safety, and is characterised by the council as being an attempt to pursue those councillors;*
 - 2) *the council is aware that the complainant has submitted vexatious requests to other public authorities;*
 - 3) *the council concludes that the tenor and tone of his correspondence fits a pattern which may reasonably be considered vexatious, and which has previously been seen in his dealings with various other public authorities;*

4) *taken as a whole, the council argues that his requests to it, particularly when considered in conjunction with those of his fiancée¹, may be considered obsessive;*

5) *the complainant's requests follow an established pattern where the request leads to further correspondence and enquiries in increasing detail, often culminating in exchanges of an argumentative nature when no further information is forthcoming; and*

6) *this process has the effect of harassing the public authority and its staff and serves no other discernable purpose. It is also argued to be a burden on the public authority.*

24. The Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:

- whether compliance would create a significant burden in terms of expense **and** distraction
- whether the request is designed to cause disruption or annoyance
- whether the request has the effect of harassing the public authority or its staff
- whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
- whether the request has any serious purpose or value

25. The council has presented its arguments, and indicates that these are couched in the terms contained in the Commissioner's guidance (which refers to the five tests commonly applied, above). The Commissioner has therefore attempted to consider the points summarised at paragraph 23, under the most appropriate factor from the list at paragraph 24, above.

Would compliance create a significant burden in terms of expense and distraction

26. The Commissioner considers the council's arguments in respect of this element to be inconclusive. Insofar as items 5) and 6), above, relate to this element, the council argues that the complainant's enquiries commonly lead to further requests for increasing levels of detail and,

¹ Considered in case reference FS50324562, relating to a road accident involving a council lawnmower.

when that process is exhausted, the complainant requests an internal review, ultimately taking his complaint to the Commissioner. It argues that this process does not increase openness and serves instead to increase the stress placed upon council staff called upon to deal with the matters raised by the complainant.

27. The Commissioner is mindful of the comments of the Information Tribunal in *Betts v IC* (EA/2007/0109)² which stated, at paragraph 34:

"Albeit it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources."

28. The Commissioner understands therefore, that the council's arguments imply behaviour on the part of the complainant which is similar to that described by the tribunal in *Betts*, above, namely that compliance with the request would not bring the matter to a close, but would result in further requests, and possible escalation by way of complaints or requests for internal review, from the complainant.
29. However, the council has not shown that in this specific instance the amount of correspondence has approached the levels it alludes to, nor that its wider dealings with the complainant might otherwise lead it to anticipate such behaviour. The Commissioner has seen no evidence to suggest that the council's response to the request elicited further requests for additional information, nor that this request was merely the latest in a series of related requests. On the contrary, where the complainant first voiced his dissatisfaction with its response, the council quickly located further information which it admits it had failed to disclose to him, which lends considerable justification to his request for internal review in the circumstances.
30. The Commissioner observes that it is his experience that the process of making Freedom of Information (FOI) requests is often an iterative one. The response received in answer to a request quite often suggests other information which may be of interest to the applicant, and leads naturally enough to the submission of supplementary or follow-up requests. To categorise this process as generally indicative of a vexatious request is not something which the Commissioner can endorse.

² See <http://www.informationtribunal.gov.uk/DBFiles/Decision/i61/betts.pdf>

31. The Commissioner consequently does not accept the council's argument and gives no weight to it.

Is the request designed to cause disruption or annoyance

32. The council's arguments for this element are essentially the same ones considered under the 'burden' section, above. Additionally, however, the council suggests that the complainant's choice of language, being argumentative, is designed to cause annoyance. The examples of the complainant's language which have been cited include those quoted at paragraph 9, above, plus other comments in different requests such as: *"don't pontificate with me"; "blatant lies"* and others characterised as 'throwing insults at council officers'.
33. The council also cites various examples of the complainant's dealings with other public authorities which can be found on the 'WhatDoTheyKnow.com' (WDTK) website³, which it describes as *"argumentative, impatient, ill-mannered and obsessively concerned with the police, the accident and Hatfield Avenue"*.
34. The Commissioner has examined the complainant's correspondence on the specific request on WDTK to which the council has directed him. He has not located anything which he considers could reasonably be described in the terms suggested by the council and consequently he finds the council's description of the nature of the complainant's tone and language to be overstated. The overall tenor of the complainant's entries on the WDTK website is summed-up by the council as 'aggressive, uncivilised, vindictive and designed to cause maximum harassment'. The Commissioner, having not found anything of note in the complaint to which he was specifically directed, has not found it necessary to search further within the WDTK website for examples to support the council's viewpoint.
35. The Commissioner finds the comments of the Information Tribunal in *Jacobs v IC* (EA/2010/0041)⁴ helpful, at paragraph 27:

"Although it is relevant to consider the impact that the Request and associated communications may have on those to whom they are addressed, the Tribunal should not be over-protective of them."

³ The council cites the following specific example:
http://www.whatdotheyknow.com/request/police_vehicles_in_use_in_fleetw#outgoing-46750

⁴ See
[http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20(w).pdf)

Public authorities and the individuals representing them must expect to be exposed to an element of robust and persistent questioning, sometimes articulated in fairly critical tones. And the test of when a dialogue develops to the stage where it may be said to have become vexatious will be an objective one, not based on the particular sensitivities of the individual or individuals dealing with the person making the request. This particular factor will carry weight in the overall assessment only if distress or irritation would be caused to a reasonably calm, professional and resilient officer of a public authority"

36. The Commissioner is not persuaded that the examples cited by the council support its argument. The examples provided to him might reasonably be categorised as *"robust and persistent questioning, sometimes articulated in fairly critical tones"* and do not appear to him to cross the line into behaviour which would distress or irritate a reasonably calm, professional and resilient officer of a public authority. Consequently he gives no weight to this factor.

Does the request have the effect of harassing the public authority or its staff

37. The council argues that this request is intended to harass the two named councillors. Its reason for this argument is that it believes the two councillors had become involved in a campaign for improvements to a section of road described by the complainant as an 'accident blackspot' (and where the complainant's fiancée was involved in an accident with a council lawnmower). When that campaign was unsuccessful, the complainant embarked on a campaign to pursue these councillors via their expenses claims. The council states that its FOI staff have spoken to the councillors, who have confirmed that they felt harassed by the complainant and considered his FOI requests to be 'vindictive, pointless and deliberately time-wasting'.
38. The complainant, for his part, argues that his interest in the councillors pre-dates his road safety campaigning and originates in the fact that both councillors sat not only on Wyre Borough Council, but also as county councillors for Fleetwood, where he lives. He wanted to check and compare the expenses claimed from Wyre Borough Council and from Lancashire County Council. He has provided the Commissioner with evidence that a similar request had been submitted to Lancashire County Council on 12 May 2009, pre-dating his fiancée's accident by some 7 weeks and prior to any road safety concerns – he explains that he only became aware of issues relating to the 'accident blackspot' in February 2010.

39. The Commissioner asked the council for evidence to support its allegation that the two councillors had been approached by the complainant about road safety matters and it has not provided any.
40. Despite the assertions that the councillors felt harassed by the complainant's request, the Commissioner does not find this point to have been satisfactorily shown by the public authority in its arguments. Rather, he finds the complainant's arguments and supporting evidence more persuasive in this case and consequently he gives no weight to the council's arguments in this factor.

Can the request otherwise fairly be characterised as obsessive or manifestly unreasonable

41. The council's arguments focus on the complainant's behaviour in relation to a number of different public authorities. The council argues, in effect, that by exhibiting these characteristics in his dealings with various different public authorities, the complainant may be seen to adopt a generally unreasonable position.
42. The Commissioner is however concerned that the council, in taking the complainant's dealings with other public authorities as a key basis for its application of section 14, risks characterising the requester, not the request, as vexatious. The council has not supported its view with evidence that its own dealings with the complainant can fairly be characterised as manifestly unreasonable.
43. It also argues that the request is obsessive, being associated with other requests from him, and also from his fiancée, about road safety. As has been shown above, however, the connection with road safety, implied by the involvement of the two councillors in road safety campaigning, is not supported by the evidence. The Commissioner gives no weight to this factor.

Does the request have any serious purpose or value

44. This is commonly the factor which can weigh most in the complainant's favour, and which has the potential to overturn the previous arguments. As the Information Tribunal in *Coggins v IC (EA/2007/0130)*⁵ states, at paragraph 20:

"the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of

⁵ See <http://www.informationtribunal.gov.uk/DBFiles/Decision/i119/Coggins.pdf>

harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious"

45. In this case, however, the Commissioner has not given any weight to the council's arguments that the request is vexatious, therefore there is no need for an examination of any serious purpose behind the requests, in order to counter that weight. In general terms, the Act is considered to be blind to the motives of the requester and it does not matter whether a request is made for any purpose, whether trivial or serious. It would therefore be inappropriate to examine the complainant's motives for making his request in circumstances where those motives are not relevant. The complainant has, nevertheless, explained his reasons for making the request, which appear entirely in keeping with the spirit of the Act in holding public authorities accountable to the public. These are at odds with the reasons the council has assumed, incorrectly, to be the case.

Summary

46. The Commissioner has considered the council's arguments in support of its decision to refuse the complainant's request as vexatious and has found no evidence to support its arguments. On the contrary, he has found the complainant's arguments in certain factors to be more persuasive. He considers the possibility that that the council may have been unduly influenced by its interpretation of the complainant's dealings with other public authorities.
47. The Commissioner is satisfied that, on the evidence which has been provided to him, the request cannot reasonably be argued to be vexatious and the council has incorrectly applied the provisions of section 14(1) of the Act to the complainant's request.

Procedural Requirements

Section 10

48. The complainant submitted his request on 8 December 2009 and received a partial response on 6 January 2010. He received further information, which had mistakenly been omitted from the response, on 26 January 2010. Still more information was only disclosed during the course of the Commissioner's investigation, after prompting by the Commissioner. The second and third tranches of disclosure were made outside the statutory timescale for disclosure of 20 working days. The council has therefore breached section 10(1) of the Act.

The Decision

49. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

- The request was incorrectly refused as vexatious under section 14(1) of the Act;
- In denying information was held, which was subsequently located and disclosed, the public authority breached section 1(1)(a) of the Act.
- By its failure to disclose information within 20 working days, the council breached section 10(1) of the Act.

Steps Required

50. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Provide the complainant with a response to his request which complies with the provisions of section 1 of the Act.

51. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

52. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

53. 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

54. 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.
55. 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 25th 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 –

- (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."

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 –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) 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"

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Vexatious or Repeated Requests

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”

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”