

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 February 2011

Public Authority: Conwy County Borough Council
Address: Bodlondeb
Conwy
LL32 8DU

Summary

The complainant requested a copy of Council minutes from a Council meeting at which it was decided that it should undertake a particular course of action that he alleged it had taken. The Council stated that it considered the request to be vexatious. The Commissioner has concluded that the request was vexatious and requires no steps to be taken by the Council.

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.

Background

2. The complainant has informed the Commissioner that he has a "long history with this public authority". The complaint to which this Notice relates is one of a number of complaints to the Commissioner from the same complainant, regarding the same public authority.
3. The complainant's various requests for information stem from legal proceedings brought against him by Conwy County Borough Council ("the Council") in relation to alleged non-payment of business rates. Since that case was heard the complainant has made numerous requests to the Council regarding the site of his former business and other related issues.

4. Following the legal action taken against the complainant by the Council, the complainant made a request to it for his own personal data. This culminated in the complainant taking legal action against the Council that, the Commissioner understands, resulted in the Court ordering the Council to disclose some information to the complainant and pay his costs. The request of 29 September 2009 relates to the legal action taken by the complainant.

The Request

5. On 29 September 2009, the complainant submitted the following request to the Council:

"The Council's Constitution states clearly that if it wishes to make a decision outside of any "policy framework", it must be "referred to the Council as a whole for decision"

With this in mind, please provide me with a copy of the minutes of the full Council whereby the following matters were discussed, and it was decided, presumably by majority vote? to carry out the following actions (hereinafter referred to as "the actions"):

that the Council should:

- a) disregard the provisions of the Data Protection Act, which is what led me to bring [a] case against the Council*
- b) attempt to defend a case in Court that the Council had no reasonable chance of defending successfully, and hence wasting taxpayers money thereon*
- c) lie to officers of the Court (the Court Bailiff in this particular case)*
- d) disregard an Order of the Court, causing a Court hearing to be scheduled, which again the Council [had] no reasonable chance of defending successfully, and which again [incurred] further considerable costs to the local taxpayer.*

NB: the above items a-d "the actions" are quoted from YOUR OWN letter of 15th Sept 2009 as above, which YOU published on this very website in the public domain, therefore please do not attempt to pressurise this website to edit the text of this request.

I have searched the published minutes of the Council on the Council's website, but cannot find the minutes of the particular

meeting where the Council as a whole voted to carry out the actions. This would indicate:

(i) that no such meeting ever took place which would in turn mean the Council has disregarded its own Constitution, which is of course an abuse of its powers and the Law.

or

(ii) the minutes of the meeting referred to above have simply not yet been published?

Clearly either (i) or (ii) must be the case. Since (i) is unconstitutional and unlawful, and the resulting actions illegal, I am naturally assuming (ii) is the case.

Therefore, to assist you in locating the minutes of the meeting in order to fulfil my request, I advise that your [named individual] (in-house solicitor), [named individual] and [named individual] are the principals involved in actually carrying out the actions, so logically they must either have personally been at the meeting where the "Council as a whole" decided to carry out the actions, or they were in receipt of some kind of written directive or instruction produced as a result of decisions made in the meeting which told them to carry out the actions. Such written directive/instruction will obviously make full reference to the time and date of the meeting, allowing the minutes of same to be easily located and retrieved for publication on this website – unless of course they are already published elsewhere, in which case please advise where I can view them.

Oh, and asking for a copy of minutes of a full Council meeting is NOT "vexatious or obsessive" – they are supposed to be publicly available. (just to pre-empt your most likely response given how you have recently decided to handle FOI requests from myself AND others submitted via this website)".

6. The Council responded on 9 October 2009 and stated that it had responded fully in the past and that it had made it known that no recorded information was held. In addition to being a repeated request, the Council also stated that it considered the request to form part of a wider pattern of vexatious behaviour and refused to comply with the request.
7. On 9 October 2009 the complainant emailed the Council and accused it of being vexatious in refusing to disclose the requested information. The complainant claimed that "simply claiming someone is "vexatious" is NOT a reason not to comply with the Law".

8. On 13 October 2009 the complainant emailed the Council and requested an internal review of its handling of the request.
9. The Council responded on 14 October 2009 and stated that it would not be engaging in further correspondence on this matter. It maintained its position as set out in its email to the complainant of 9 October 2009.

The Investigation

Scope of the case

10. On 23 June 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner would not usually consider complaints where there had been an undue delay in bringing them to him but in this case it appears that the complainant may have had difficulties contacting the Commissioner via his website. The complainant specifically asked the Commissioner to consider the following points:
 - The Council's failure to comply with the complainant's information request of 29 September 2009.
11. The Commissioner has therefore considered whether the Council handled the request of 29 September 2009 in accordance with the provisions of the Act; specifically he has considered whether it was correct to apply section 14 of the Act to the request.

Chronology

12. Following emails sent to the Commissioner by the complainant and discussions between the Commissioner and the complainant, on 4 August 2010, the complainant emailed the Commissioner with details of his complaints about the Council's handling of various requests he had submitted to it. On 27 August 2010, the Commissioner emailed the complainant with details of the complaint reference numbers that he had established in order to consider the various complaints. In that email the Commissioner included a summary of his initial view on those complaints for the complainant's consideration.
13. On 27 August 2010 the complainant emailed the Commissioner to dispute the Council's view that his request was vexatious.
14. On 6 December 2010 the Commissioner wrote to the Council to request further evidence to support its view that the request was vexatious.
15. On 23 December 2010, the Council wrote to the Commissioner and provided further evidence in support of its view that the request was

vexatious. The Council also stated that it considered the request to be repeated.

Analysis

Substantive Procedural Matters

Section 14(1)

16. Section 14(1) states that a public authority can withhold requested information if the request is vexatious.
17. There is no single test for deciding whether a request might be considered as vexatious. Therefore each case has to be judged on its own merits, taking into account all of the circumstances of the request.
18. In his guidance *"Vexatious and repeated requests"* the Commissioner has outlined a list of criteria to consider when deciding whether a request for information is vexatious or not.
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or distressing the staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
19. The guidance indicates that it is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. However it does state that to judge a request vexatious a public authority should usually be able to make persuasive arguments under more than one of the above bullet points. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner* (EA/2007/0130):

"a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach..."
(paragraph 20).
20. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) at paragraph 11 stated that the threshold for finding a request vexatious

need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.

21. In *Gowers v Information Commissioner* (EA/2007/0114), the Information Tribunal noted that when considering section 14:

"The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one".

22. The Commissioner therefore views it as appropriate to consider the context and history of a request, in addition to the request itself, when determining whether one or more of the five bullet points listed in paragraph 18 can be satisfied.

Context and history

23. As set out in paragraph 2, above, the complainant has a long history of correspondence and contact with the Council, which stems from a dispute over non-payment of business rates that resulted in legal proceedings. The nature of the dispute and the complainant's opinion of the Council are well documented in a website that he has established. The Commissioner has not provided details of that website in order to protect the identity of the complainant. However, having viewed the website the Commissioner is of the view that any reasonable person would conclude that the request forms part of a campaign against the Council.

24. For example, the website contains a section headed "the Legal Battle" under which there are a number of sub headings:

- CCBC [the Council] Crimes Exposed
- CCBC Named and Shamed
- CCBC Corruption Costs
- More CCBC scandal

The sub headings link to opinions that contain serious allegations against named Council officials. Reference is also made to the Council's refusal to comply with the Act and the complainant's view that, by refusing to comply with his requests, a named official is acting unlawfully.

25. The Commissioner considers that there is a direct link between the campaign mounted against the Council, as detailed on the above mentioned website, and this complaint. For example, the court case to which the complainant referred in his request of 29 September 2009 is referred to on his website, together with his opinion about the Council's actions and the actions of individual named officials.

26. In addition to the history detailed above, the Commissioner has been informed by the Council that from 7 January 2009 up to and including 29 September 2009 (the request to which this Notice relates), the complainant submitted eight requests for information to it – some of which have been answered and some of which have resulted in complaints to the Commissioner. The Commissioner's view is that while these requests might, on their face, appear to be for varied information, the underlying issue at their heart is his business and the Council's decision to take court action against the complainant. In addition, the Commissioner notes that the reference to civil proceedings in the complainant's request of 29 September 2009 is evidence of an attempt to draw out a matter that has previously been considered and concluded by an independent body – in this case the Court.
27. Taking into account the context and history of the request and previous contact between the complainant and the Council, the Commissioner considers that it is reasonable to conclude that the request of 29 September 2009 forms part of a wider campaign against the Council in relation to its decision to take legal action against him. As such, the Commissioner considers that the request could be considered obsessive.
28. The Commissioner has also taken into account the way in which the complainant has gone about making his request and, while the Act is not generally concerned with the motives behind a request, he considers that the complainant's approach suggests that his request may lack a serious purpose or value. The Commissioner considers that any reasonable person would not expect a public authority to hold minutes of meetings that directed its officials to act inappropriately, unlawfully or even criminally. The Commissioner's view is that it is likely that the complainant would have been aware of this at the time of the request and that this undermines its value.

The request and related correspondence

29. The Commissioner considers that language used by the complainant in the request of 29 September 2009 could in itself be considered vexatious. The Commissioner's view is that it is unreasonable to expect a public authority to hold minutes of meetings at which it was determined that it should act inappropriately or unlawfully by, for example, breaching the provisions of the Data Protection Act or lying to officers of the Court. Taking into account the tone of the complainant's request, the Commissioner's view is that the request could be deemed to the effect of harassing the authority or causing distress to staff.
30. The Commissioner is aware of correspondence relating to a substantially similar request made by the complainant on 25 August 2009. The complaint in relation to this request has already been considered by the

Commissioner under case reference FS50326126. The complainant emailed the Council in respect of this related request on 22 September 2009. The email included the following excerpt:

"I demand an internal review, which I have no doubt you will use as a further excuse to waste more time and not actually do anything as per usual – however that is the process before reporting you to the Information Commissioner for your flagrant abuse of the Law.

Your continued abuse of the Law is costing the local taxpayer hundreds, probably thousands, of pounds in time costs of staff, correspondence etc. – all of which will be required to be accounted for in a future FOI request, at such times as the Council decides it is going to act within the Law.

Let us be quite clear, it is YOU who is the vexatious party, not I – as it is quite clear to anyone viewing the list of requests to Conwy Council on this site, and your continued desperate attempts to prevent the truth getting out to the public".

The email was signed as follows:

"Your Nemesis,

[complainant's name]"

31. The complainant also wrote to the Council on 29 September 2009, in respect of the related request outlined in paragraph 30, above. This email included the following:

"[name of Council official]

Again you accuse me in public of being "obsessive and vexatious" – your libellous statement has been forwarded to my Lawyers for actioning in due course.

Again, the only people being vexatious are you and your co-conspirators at Conwy County Borough Council...

Naturally, yet another formal complaint has been made to the information commissioner, with a request they now launch a prosecution against you for your continued refusal to comply with the Freedom of Information Act.

Your Nemesis

[complainant's name]"

32. The Commissioner considers that the effect of this language towards the Council and its employees is likely to have the effect of causing harassment to the authority and distress to its staff. Whether this was the intention of the complainant is not the issue that the Commissioner must consider – rather he must consider the effect of the language.
33. The Commissioner also notes the complainant's statement in his email of 22 September 2009, as detailed in paragraph 30, above, regarding the likelihood of further requests being submitted in the future. The Commissioner considers that this statement could be viewed as an attempt by the complainant to use the Act as a way of threatening or harassing the Council – i.e. if the Council does not comply with his request then he implies that a further request is likely. In this case, a further request was in fact submitted on 29 September 2009, which is the subject of this Decision Notice.
34. The Commissioner also considers the way in which the complainant signed his emails of 22 and 29 September 2009 to be indicative of language designed to intimidate or harass the Council and its employees. By ending his emails "Your Nemesis" the complainant has, in the Commissioner's view, given a clear indication that his correspondence with the Council is likely to continue and lends a rather sinister tone to his request. The Commissioner considers that the use of this language would have the effect of causing harassment to the Council and distress to its employees.
35. The Commissioner notes the ongoing correspondence that continued after the complainant had made his request of 29 September 2009. For example, following the Council's response of 9 October 2009 in which it stated that it considered his request to be vexatious, the complainant emailed the Council on the same day with the following:

"YOU ARE BEING VEXATIOUS

YOU DO NOT HAVE ANY AUTHORITY WHATSOEVER TO MAKE SUCH A STATEMENT UNILATERALLY AS: "...the Council will not be engaging in further correspondence..."

I DEMAND you quote the exact policy of the Council [...]"

Further emails in a similar vein were received from the complainant on 14 October 2009, 26 November 2009, 9 December 2009, 2 January 2010, 15 January 2010, 8 February 2010 and 21 June 2010.

36. The Commissioner notes the continued flow of correspondence to the Council and that even after receiving a valid response from the Council, the complainant continued to question the Council, "demanding" that it respond to his request and accusing the Council itself of being vexatious.

Whilst this was subsequent to the Council's decision to declare the request of 29 September 2009 vexatious, nevertheless the Commissioner considers this to be further indication of language and behaviour designed to intimidate or harass the Council and its employees.

The Commissioner's view

37. The Commissioner's view is that the Act was enacted to assist people in seeking access to recorded information held by public authorities and not as a tool with which to harass them or to engage in protracted correspondence about matters that have been addressed through other channels (in this case the Courts) or that would be more appropriately raised with other bodies (in this case the Police or the Public Services Ombudsman for Wales). While the Commissioner acknowledges that the complainant in this case may feel that he has genuine concerns about the way in which the Council has acted, the Commissioner neither has the jurisdiction nor the evidence to reach any conclusion on those matters. The Commissioner's role in the context of complaints brought to him under section 50 of the Act, is to determine whether a public authority correctly applied the provisions of the Act.
38. As explained previously in this Notice, it is not necessary for every factor identified in the Commissioner's guidance as being relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1). In this case the Commissioner considers that there are sufficient grounds to justify upholding the application of section 14(1) and, based on the information set out above, the Commissioner considers that the public authority was correct to determine that the request was vexatious. For the reasons previously stated in the Notice, he considers that the request, together with associated correspondence and evidence of a campaign against the Council, can be considered obsessive and to have the effect of causing harassment to the Council and distress to its employees.

Section 14(2)

39. In correspondence to the Commissioner, the Council stated in its letter of 22 December 2010 that, in its view, the request was repeated, as well as vexatious. The Council therefore considered that it would not have been obliged to comply with the request for information by virtue of section 14(2) of the Act.
40. The Commissioner notes that the complainant's request of 29 September 2009 was substantially similar to his request made on 25 August 2009 (clarified on 15 September 2009), which has already been considered by the Commissioner under case reference FS50326126.

41. Section 14(2) of the Act 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 the previous request and the making of the current request”.

42. The Commissioner considers that the requests of 25 August 2009 and 29 September 2009 were substantially similar. The Commissioner notes that the request of 29 September 2009 was made little more than a month after the substantially similar request of 25 August 2009. The second request was made on the same date that the internal review result was sent out by the Council in respect of the earlier request. The Commissioner does not consider, therefore, that a reasonable interval had elapsed between compliance with the first request and the making of the second request.
43. The Commissioner therefore considers that there are sufficient grounds to uphold the Council’s application of section 14(2) and, based on the information set out above, the Commissioner considers that the public authority was correct to determine that the request was repeated.

The Decision

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

Steps Required

45. The Commissioner requires no steps to be taken.

Right of Appeal

46. 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

47. 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.
48. 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 10th day of February 2011

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

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.”