

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 March 2011

Public Authority: The Common Council of the City of London
Address: PO Box 270
Guildhall
London
EC2P 2EJ

Summary

The complainant requested the City of London ('CoL') to release copies of all correspondence between Alderman Luder and all Church of Scientology organisations in the last five years. The CoL responded refusing to comply with this request under section 14(1) of the Act. As the complainant remained dissatisfied, he approached the Commissioner. The Commissioner investigated the complaint and decided that section 14(1) of the Act does apply to this request. He therefore requires no further steps 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. The complainant contacted the CoL on 18 February 2010 to request the following information:

"Please provide details (where held by the Corporation, excluding information held by Alderman Luder as part of his constituency work) of:

- 1) Correspondence (including electronic correspondence such as faxes or emails),

- 2) Telephone calls,
- 3) Meetings

between the CoL Corporation and Alderman Luder, in respect of Scientology organisations, in the past 5 years.

By Scientology organisations I mean organisations which promote, recruit members for, or raise money for, Church of Scientology Religious Education College Incorporated [COSREC]..."

3. The CoL responded on 9 March 2010 to advise the complainant that it had estimated the cost to comply with his request would exceed the appropriate limit of £450 as prescribed by the Act. It provided a breakdown of its estimate under section 12 of the Act and asked the complainant to consider refining his request.
4. The complainant responded on 10 March 2010 refining his request for information as requested and in line with the CoL's estimate.
5. The CoL responded on 7 May 2010 to advise the complainant that it had reconsidered his request and now wished to rely on section 14(1) of the Act, as it was of the view that his request was vexatious.
6. The complainant contacted the CoL on 10 May 2010 to request an internal review.
7. The CoL responded on 8 June 2010 to inform the complainant that it was unable to carry out an internal review at this time because it was waiting for the outcome of other complaints the complainant had referred to the Commissioner and Information Tribunal.

The Investigation

Scope of the case

8. On 8 August 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 whether the CoL had acted appropriately by refusing to respond to his request under section 14(1) of the Act.

Chronology

9. The Commissioner wrote to the CoL on 7 September 2010 to inform it that he had received a complaint from the complainant concerning the handling of his information request dated 18 February 2010.
10. The CoL wrote to the Commissioner on 7 October 2010 to provide some background to the request and to explain in more detail why it considered section 14(1) of the Act applied in this case.
11. The Commissioner wrote to the CoL on 25 October 2010. He referred the CoL to the guidance he has issued in respect of section 14(1) of the Act and asked it to explain in more detail why it was of the view that this exemption applied.
12. The CoL responded on 10 January 2011 providing the additional information requested.
13. The Commissioner wrote to the CoL on 11 January 2011 to request some additional information.
14. The CoL responded on 19 January 2011, providing the additional information required.

Analysis

Substantive procedural matters

Section 14(1) – vexatious requests

15. Section 14(1) of the Act states that a public authority need not comply with section 1(1) of the Act if it considers the request for information is vexatious.
16. There is no single test for what sorts of requests may be considered to be vexatious. Instead, each individual case is judged on its own merits taking into account all of the circumstances surrounding the request. In his Awareness Guidance No 22 'Vexatious and repeated requests' (published 3 December 2008) the Commissioner has outlined a list of criteria which is useful to consider when determining whether a request for information is vexatious or not. The list of criteria is as follows:
 - Could the request fairly be seen to be obsessive?
 - Is the request harassing the authority or causing distress to 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?
17. It is not necessary for all of the above criteria to apply. However, it is the Commissioner's view that at least one of the above criteria must apply for a request to be considered vexatious and, in general terms, the more criteria that do apply the stronger the case. He accepts that many of the arguments submitted by the Council in support of this exemption can also apply to more than one of the above criteria.
18. When determining whether a request should be deemed vexatious and whether one or more of the above criteria applies, the Commissioner can consider the wider context and history of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form part of a wider pattern of behaviour that makes it vexatious. Nevertheless, the Commissioner recognises that it is the request and not the requester that must be vexatious in order for the provision to apply.

Can the request fairly be seen as obsessive?

19. It is the Commissioner's view that obsessive requests are usually a very strong indication of vexatiousness. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.
20. The CoL argued that it has been subjected to a continuous campaign from the complainant since February 2009 following its decision to the grant COSREC mandatory rate relief in October 2006. At the time the complainant clarified his request to the CoL on 10 March 2010 the CoL had received 14 previous information requests from the complainant and 5 complaints, all relating to COSREC and the CoL's decision to grant mandatory rate relief. The CoL also confirmed that it was aware, having reviewed the "What do they know" website, that the complainant had made over 100 further information requests to other public authorities on the same matter by the time it refused this request under section 14(1) of the Act.
21. The CoL argued that if you considered this request in the context of the number, frequency, length and scope of his previous requests and correspondence, it is reasonable to conclude that this request demonstrates behaviour which can be seen to be obsessive.

22. The Commissioner notes that the requests focus on the COSREC, the CoL's decision to grant mandatory rate relief to COSREC and the complainant's belief that this decision is incorrect and illegal. The requests are often voluminous in nature requesting copies of information spanning a 5 year period. The Commissioner acknowledges that the complainant has made a substantial number of requests relating to this matter to the CoL and other public authorities across the UK since 2009; at least 114 according to the CoL's calculation. The Commissioner considers it is reasonable to state, having reviewed the What Do They Know website himself and the requests the complainant has made, that he has subjected the CoL and other public authorities to a continual stream of requests and correspondence over this period. In the Commissioner's view, this level and continual flow of requests demonstrates behaviour of an obsessive nature.
23. The Commissioner considers the frequency of these requests would also been seen by any reasonable person to be obsessive. The Commissioner notes that on three occasions the complainant has made two information requests to the CoL in the same day. Many other requests have been made to the CoL within 24 hours of a response being received demonstrating clearly that such requests are a direct result of the responses the complainant has received in respect of his earlier requests.
24. The history of requests and contact with the CoL demonstrates that a response to one request frequently leads to further requests being made and that such behaviour is likely to continue regardless of the response the complainant may receive or the information provided. It is the Commissioner's view that such behaviour is unlikely to cease until the complainant achieves what he believes to be correct decision in respect of the granting of mandatory rate relief to COSREC i.e. the reversal of the CoL's current decision to allow such relief. Overall, the Commissioner is satisfied that continued behaviour of this nature would be viewed by any reasonable person to be obsessive.
25. In conclusion, for the reasons explained above, the Commissioner is satisfied that the request can fairly be seen to be obsessive.

Is the request harassing the authority or causing distressing to staff?

26. As stated previously, in many cases, there will be an element of overlap between the different criteria outlined in paragraph 15 above. For example, a request which is considered to be excessive will often be said to have the effect of harassing the public authority.

27. The Commissioner must primarily consider the effect the complainant's actions have had on the CoL. He can however take into account the history of the case and the manner of any previous dealings with the complainant. It is important to highlight that whilst the complainant may not have intended to cause distress, the Commissioner must consider whether that was in fact the effect it did have. A complainant's reasons for making the request may in themselves be reasonable. However, a request may still be considered to be vexatious because of the effect it has had on the public authority and its staff.
28. The CoL argued that it considers the request can be seen to be harassing the authority and its staff due to the scale of work which would be required to comply with the request and because this request is part of an ongoing campaign by the complainant for information relating to COSREC and the CoL's decision to grant mandatory rate relief.
29. It also considers the scope of the request implies failings by the CoL, even if such concerns are not expressed explicitly. The CoL is of the view that this is demonstrated by the complainant's need to see details and all information held over a period of 5 years relating to, in effect, the management of one matter; the CoL's relations with COSREC. To this extent, it considers the request harasses the CoL and especially any staff or Council Members who may have been involved in such management. Furthermore, it has argued that the complainant's approach of providing responses to correspondence from the CoL usually within less than a day of writing, compounded by the numerous ongoing requests and complaints on the same topic, to be harassing to the CoL and its staff.
30. It is the Commissioner's view that there is no evidence from the requests alone or any further evidence supplied by the CoL that the complainant is directly targeting or fixating on particular members of staff. No names of members of staff are mentioned and indeed no explicit concerns are expressed by the complainant in this request or previous requests to suggest that he is making allegations of any improper conduct. The Commissioner notes that the CoL holds a different view and considers the scope of the complainant's request implies that he is looking for evidence of wrong doing. The Commissioner considers it is difficult to make such an assumption without any firm evidence from the complainant that this is his intention or that he wishes to target particular employees. In any event, the Commissioner considers that the public has a right to question decisions made by a public authority and seek access to information which will enable them to better understand the decisions

it has made. It could equally be argued that this is the complainant's intention and he is thorough when making his requests.

31. Furthermore, the Commissioner notes that each request is politely written and there is no evidence from the tone of his requests or correspondence that he wishes to or has a clear intention to harass the authority or distress members of staff.
32. However, it is the Commissioner's view that the frequency and continual flow of requests regardless of what response or information is provided, together with the complainant's tendency to submit multiple requests at any one time and respond within 24 hours of a response from the authority demonstrates the complainant's ongoing campaign against the CoL concerning its decision to grant mandatory rate relief to COSREC. As stated above, the relevant consideration here is the effect the complainant's actions have had on the authority even if he did not intend to harass it and its staff. While the Commissioner does not agree that the complainant intended to deliberately harass the authority and its staff, as there is no firm evidence to support this, he does consider the complainant's obsessive behaviour and continual stream of requests has the effect of harassing the authority.
33. Although more finely balanced than the previous criteria he has considered, the Commissioner has concluded that the obsessive nature of the complainant's requests so far can be reasonably viewed as having the effect of harassing the CoL as an authority.

Would complying with the request impose a significant burden in terms of expense and distraction?

34. When considering this factor, the Commissioner endorses the approach taken by the Information Tribunal in *Mr J Welsh v the Information Commissioner (EA/2007/0088)*. In this case, the Tribunal considered that whether a request constitutes a significant burden is:

"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."

A request can be perceived to be a significant burden when taking into account the history of the request and the probability that compliance would lead to further requests and correspondence.

35. It is the Commissioner's view that if a public authority is simply concerned about the cost of compliance, section 12 of the Act should be considered. Section 14(1) of the Act can take into account the issue of financial resources but the overall approach to establishing whether

- a request is vexatious is much broader than this. The overall burden placed on a public authority is taken into account; the time and resources spent so far on addressing previous request or matters relating to the same topic, the level of distraction already caused and the likely distraction compliance with the current request would cause. Also the extent to which the public authority and its staff has and would be diverted from other work and overall duties is a relevant factor.
36. The CoL argued that it has already spent a considerable amount of time and public resources responding to the complainant's previous requests, the appeals its responses have generated and to several complaints referred to the Commissioner. Compliance with this particular request would further involve a substantial amount of time and resources imposing a significant burden on the authority.
 37. It stated that the complainant's previous requests have required significant involvement and coordination of staff across the authority extracting information from numerous sources. The CoL argued that compliance with this request would involve the same and it is of the view that this is an unreasonable diversion of its time and resources.
 38. The CoL confirmed that the complainant's requests have diverted staff away from other statutory functions to a degree which is unreasonable, particularly in the current financial climate where public authorities are experiencing cuts to public funding and it is more important than ever to manage resources effectively. It stated that the resourcing needs of all statutory services needs to be taken into account when considering the demands made through the Act, particularly where these could unreasonably divert staff away from other duties and functions.
 39. The Commissioner notes that the complainant has already made 14 requests to the CoL regarding COSREC and the authority's decision to grant mandatory rate relief, many of which the CoL has responded to. He also notes that many more have been made to other public authorities across the UK. The request the subject of this Notice is a continuation of the complainant's previous requests seeking further information about this topic. The Commissioner accepts that prior to this request the CoL had already spent a significant amount of time and resources responding to the complainant's earlier requests and the complaints that followed these requests which were then often referred to the Commissioner. To respond to this request, would place a further significant burden upon the CoL in terms of time and public expense and disproportionately distract the CoL and its staff away from other business.

40. The pattern of previous requests suggest that if the CoL had responded to this request this would more than likely have led to further requests being made by the complainant placing an even greater burden upon the CoL in terms of expense and distraction. It is the Commissioner's view that this pattern of behaviour would more than likely continue regardless of any response the complainant may receive.
41. For the reasons explained above, the Commissioner is satisfied that had the Council responded to this request it would have imposed a significant burden upon the CoL in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

42. As the Commissioner's Awareness Guidance stipulates, this is a difficult factor to prove, as it relates to the requester's intention. Unless the requester has explicitly stated that their intention is to cause disruption and annoyance or there is independent evidence to support this, it will be difficult for any public authority to argue that this factor applies in a particular case.
43. The CoL informed the Commissioner that it considers this request and the complainant's earlier requests are part of an ongoing campaign the complainant has against the authority concerning its decision to grant mandatory rate relief to COSREC. It considers this request is designed to cause disruption and annoyance in an attempt to gain the campaign's objectives, which are to challenge this decision. It refers to the Information Tribunal hearing of *Mr J Welsh v Information Commissioner EA/2007/0088*, in which the Tribunal stated:

"It does not follow that a request can only be vexatious if the applicant intended it to be so; it may be vexatious regardless of its motives".
44. While the Commissioner agrees with the Tribunal's statement and adheres to this approach when determining whether a request is vexatious or not, it is his view that this is the overall approach to be taken when considering cases of this nature. As explained previously, the Commissioner considers the factors listed in paragraph 15 above are useful when considering cases of this nature. The factors listed, with the exception of the factor being considered here, relate to the effect the request has and the effects the complainant's previous requests and actions in the same context have had on a public authority rather than the intentions or motives of the complainant. However, this factor does concern the requestor's intention and motive and unless the complainant has specifically stated that his request is designed to cause "disruption and annoyance" it is a difficult factor to prove.

45. Although the CoL is of the view that the complainant's behaviour and the history of previous requests demonstrates an intention to cause it disruption and annoyance, the Commissioner has not seen any evidence, explicit or implicit, which demonstrates that this was the complainant's intention. It is the Commissioner's view that regardless of how the complainant's behaviour may be viewed by him or others the complainant appears to have genuine and real reasons for pursuing his concerns about the CoL's decision to grant mandatory rate relief to COSREC via the Act.
46. For the reasons explained above, the Commissioner has concluded that the request was not designed to cause disruption or annoyance.

Does the request have serious purpose or value?

47. The CoL acknowledged that the request could be considered to have serious purpose and value. It referred to the Informational Tribunal hearing of *R H Coggins V Information Commissioner EA/2007/0130* in which the Tribunal stated that it:

"...could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious."
48. It confirmed that it considered this important issue and weighed it up against the considerable extent of the work which would be involved in complying with the request, the associated consideration of harassment to the authority and its staff, the disruption and annoyance to the authority arising from this request and the associated requests and complaints from the complainant. The CoL reached the view that the scenario described by the Tribunal in the above mentioned hearing is not applicable in this case for the reasons it explained in support of the application of the other factors addressed above.
49. As stated previously, the Commissioner is of the view that the complainant has real and genuine reasons for pursuing information relating to CoL's decision to grant rate relief to COSREC. He also acknowledges that there is a great public interest in the sort of information the complainant has been seeking over the last two years being released into the public domain to enable the public to understand more clearly the reasons why the CoL granted mandatory rate relief to COSREC. In the hearing of *Mr William Thackeray v Information Commissioner & The Common Council of the City of*

London (EA/2009/00958) the Tribunal highlighted the public interest in this information and in fact stated the following:

"The Tribunal wished to recommend to the Council that it reconsider its position in light of this Tribunal assessment of the public interests in favour of disclosure."

50. Although this hearing was dealing with information which was subject to legal professional privilege, it highlighted the considerable public interest in the disclosure of any information which would assist the public in understanding more clearly why the CoL chose to grant mandatory rate relief to COSREC.
51. Taking into account all of the above factors, the Commissioner has concluded that the complainant's request does have serious purpose and value. The relevant consideration now is whether this serious and proper purpose justifies the ongoing campaign against the CoL and the continuing information requests. In the Information Tribunal hearing of *Tony Wise v Information Commissioner EA/2009/0080*, the Tribunal stated that:

"[it is] appropriate to considering the timing of the requests. A proper purpose may become less easy to justify if its pursuit becomes disproportionate."

52. While it can be said that the complainant's request has serious purpose and value, it remains the Commissioner's view that the request subject of this Notice would reasonably be seen by any person to be obsessive and to be placing a significant burden upon the authority in terms of expense and distraction. The Commissioner notes that the complainant's earlier requests to the CoL dated 7 April 2009 and two on 9 June 2009 for information relating to the CoL's decision to grant rate relief to COSREC were still subject to an ongoing investigation with the Commissioner at the time this request was made. A further information request dated 4 February 2009 was also subject to an appeal at the Information Tribunal. Instead of waiting for these matters to be considered, the complainant continued to make further requests, 4 new requests in total up to and including the request the subject of this Notice, for any recorded information relating to the CoL's dealings with COSREC over a considerable time period. During this period the complainant also submitted a refined version of two previous requests to which the CoL had applied sections 12 and 14(1) of the Act.
53. It is the Commissioner's view that this continuation of requests for any information whatsoever relating to COSREC demonstrates that the complainant's actions became disproportionate to his initial objective

and became a campaign against the CoL to pursue the reversal of its decision to grant rate relief. The Commissioner accepts that there is a legitimate public interest in knowing why the CoL chose to grant mandatory rate relief to COSREC and understands the public's interest in gaining access to information which would help them understand more clearly why this decision was reached. However, earlier information requests for this information were under formal consideration by both the Commissioner and the Information Tribunal at the time of this request. The Commissioner considers the pattern of behaviour demonstrated by the complainant of continued requests for all types of recorded information relating to any dealings with COSREC whilst such independent investigations were ongoing is disproportionate to the overall purpose and value of complainant's initial objective and has become obsessive.

54. Although the Commissioner has concluded that the request has serious purpose and value, he does not consider the request's value or purpose outweighs the other factors considered above.

Conclusion

55. Overall, the Commissioner has concluded that three of the five factors listed in paragraph 16 above are met and there is sufficient weight in these factors to support the assertion that section 14(1) of the Act applies to this request.

Procedural Requirements

56. As the CoL failed to issue a refusal notice to the complainant advising him that it wished to rely on section 14(1) of the Act within 20 working days of him refining his request, the Commissioner has found that the CoL breached section 17(5) of the Act in this case.

The Decision

57. The Commissioner's decision is that the CoL dealt with the following aspect of the request for information in accordance with the Act:
- It acted appropriately in refusing to comply with the request under section 14(1) of the Act.
58. The Commissioner's decision is that the CoL did not deal with the following aspect of the request for information in accordance with the Act:

- it breached section 17(5) of the Act by failing to issue a refusal notice to the complainant advising him that it wished to rely on section 14(1) within 20 working days of him refining his request.

Steps Required

59. The Commissioner requires no steps to be taken.

Other Matters

60. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern. Concerning the complainant's request for an internal review, the Commissioner notes that the CoL failed to carry out an internal review because it was waiting to hear the outcome of other complaints referred to the Commissioner and Information Tribunal by the complainant.
61. There is no timescale laid down in the Act for a public authority to complete an internal review but the Commissioner has since issued guidance which recommends 20 working days from the date of request as a reasonable time for completing an internal review and (in exceptional circumstances) no later than 40 working days. Also, Part VI of the Code of Practice issued under section 45 of the Act states in this regard:
- "41. In all cases, complaints should be acknowledged promptly and the complainant should be informed of an authority's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the authority should inform the complainant and explain the reason for the delay."*
62. The Commissioner notes that, in failing to advise the complainant of the estimated date for completion of the internal review and in failing to complete the internal review within a reasonable timescale the Council failed to conform to Part VI of the section 45 Code of Practice.

Right of Appeal

63. 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

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.

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 24th day of March 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

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 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 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."