

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 17 November 2011

Public Authority: London Borough of Redbridge
Address: PO Box No. 2
Town Hall
128-142 High Road
Ilford
Essex
IG1 1DD

Decision (including any steps ordered)

1. The complainant's request was as follows:

'I should like to request all information contained in the Council's records in relation to the above reference number. This information should be held in paper records and by electronic methods – internal and external information.'
2. The Commissioner's decision is that the London Borough of Redbridge (the Council) was wrong to consider this request to be vexatious in line with the provisions of section 14(1) of the Freedom of Information Act 2000.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - To confirm to the complainant whether it holds the information falling within the scope of the request, and, if information is held, it needs to provide the complainant with that information.
 - If the public authority believes that any of the information falling within the scope of the request is exempt from disclosure on the basis of the exemptions contained within Part II of FOIA, it should provide the complainant with a valid refusal notice which complies with the requirements of section 17 of FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply 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.

Background

5. In October 2009 the complainant requested from the Council information relating to two Council employees. These two employees hold senior roles within the Council's Children's Trust. The complainant requested the following information with regard to them:
 - Details of annual salary (including increases) paid from year 2005 to present date, inclusive.
 - Bonuses given to him/her from year 2005 to present date, inclusive; any additional rewards and incentives received by him/her, financial and or otherwise, from year 2005 to present date, inclusive.
 - Details of expenses and any other financial claims made, to include approved and declined claims, for year 2005 to present date, inclusive.
 - Details of annual leave awarded and used from year 2005 to present date, inclusive.
 - Details of sickness absence taken from year 2005 to present date, inclusive.
6. A response was provided to the complainant by the Council in which it disclosed information in the following manner: information regarding salary ranges for the years in question for both officers; a summarised spreadsheet detailing the total expenses and claim payments made for both officers for each year; information regarding annual leave entitlements; and, information regarding sickness absence policy.
7. Following an internal review of the Council's response, some additional information was disclosed to the complainant by it; namely, some copies of the employees' claim forms.
8. The request being considered in this Notice, refers to, and is directly related to, the above request regarding the two Council employees.
9. It should also be noted that the Council does have a long history of correspondence with the complainant. The majority of this correspondence has been in the form of complaints and requests to the Council by the complainant, relating to the Council's educational provisions for the complainant's children.

Request and response

10. On 12 July 2010, the complainant wrote to the Council and requested information in the following terms:

'I should like to request all information contained in the Council's records in relation to the above reference number. This information should be held in paper records and by electronic methods – internal and external information.'

11. The Council responded to the request being considered here on 29 July 2010. It stated that it would not respond to the request as it considered it to be vexatious.
12. Following an internal review the Council wrote to the complainant on 2 September 2010. It stated that it still considered the request to be vexatious.

Scope of the case

13. The complainant contacted the Commissioner to complain about the way her request for information had been handled, stating that her request was not vexatious as this provision of the Act had been misapplied by the Council.
14. The Commissioner considers the scope of this investigation to therefore be whether or not the Council was correct to consider the complainant's request vexatious.

Reasons for decision

15. Section 14(1) of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"

16. Previous Information Tribunal (Tribunal) decisions have aided the Commissioner when coming to a decision as to whether or not a request is vexatious. In determining whether a request is vexatious or not, 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:

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

- Could the request fairly be seen as obsessive?
 - Does the request have the effect of harassing the authority or causing distress to its staff?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
17. The Commissioner agrees with the Tribunal that the bar need not be set too high in determining whether to deem a request vexatious. He also agrees with the Tribunal that the term 'vexatious' should be given its ordinary meaning, which is that it 'vexes' (causes irritation or annoyance); in relation to section 14(1), the annoyance must be caused by the process of complying with the request.
18. The Council has stated that the complainant's request is vexatious as it is: obsessive, harassing or causing distress to the Council or its staff, having caused a significant burden in terms of time and expense and lacks any serious purpose or value.

Obsessive

19. The Council has stated that this request shows the pursuit, through the Act, of the two Council employees referred to in the complainant's previous request. It believes that this shows the request to be obsessive and that it was made to re-open issues which had already been debated.
20. In arguing this, the Council has pointed to the volume and nature of correspondence it had received from the complainant. The correspondence cited is a mixture of complaints to the Council by the complainant and requests for information, dating from April 2005 to November 2006. Having reviewed the summaries of correspondence provided to the Commissioner by the Council, he considers the majority of it to concern the Council's educational provisions for the complainant's children.
21. The Commissioner accepts the request being considered in this Notice, when read in connection with the previous request, to be for all information held by the Council surrounding its response to the previous request.
22. The correspondence the Council has pointed to as supporting evidence relates to the educational provisions of the Council to the complainant's children. The Commissioner understands that the two employees were senior officials within the Children's Trust. As such, they could potentially have an influence over the educational provisions of the Council and therefore the provisions to the complainant's children.
23. Given this, a connection could be made between the evidence provided by the Council to support its argument and the request being considered here; i.e. the request relates to two Council employees with possible

influence over the Council's educational provisions, the supporting evidence provided by the Council relates to the complainant's requests and complaints about her children's educational provisions.

24. However, the Commissioner considers this link to be too remote to accept that correspondence and requests about the educational provisions of the Council to the complainant's children evidence a specific pursuit of the Council employees. The Commissioner considers that the complaints are about the Council's educational provisions to the complainant's children and not the role played, or actions taken, by the two Council employees in relation to these provisions. Given this, the Commissioner cannot accept the other correspondence as evidence to suggest an obsession with the specific subject matter of the request being considered in this notice.
25. With regards to the complainant wishing to re-open issues already discussed, the Commissioner accepts that only one previous request has been made which directly relates to the two Council employees. Secondly, the request currently being considered, although it does follow on from the previous one, does not ask for the same or similar information as the previous related request. It asks for the information held which surrounded the decisions made with regards to the previous request. Based on this, the Commissioner does not accept that the complainant is attempting to re-open issues.
26. The Commissioner therefore does not consider the complainant's request to be obsessive; the correspondence cited is too far removed from the subject matter of the request and in making this request the complainant is not attempting to re-open issues already concluded.

Significant Burden

27. The Council has stated that responding to this request would cause a significant amount of distraction from its core functions and a significant administrative burden on its staff. In supporting this argument the Council has relied on the previously discussed correspondence to evidence this. The Commissioner accepts that in doing this, the Council is suggesting that it is in responding to this request, in combination with all of the previous correspondence with the Council that has imposed the significant burden.
28. However, as the Commissioner has accepted the link between the subject matter of this request and the cited correspondence to be insufficient, he cannot conclude on significant burden on that basis.
29. The Council has stated that it would not consider the request to be burdensome enough for it to be sufficient to refuse the request under section 12(1) of the Act (Exemption where cost of compliance exceeds appropriate limit). Therefore the Commissioner considers that the

burden can only be considered on the basis of this request and the previous, related request.

30. The Commissioner does not consider that complying with this request by itself, could cause a significant administrative burden to the Council's staff or distraction from its core functions. The Commissioner therefore does not accept that the threshold of significant burden has been reached with regards to this request.

Harassing or causing distress to staff

31. The Council has stated that the request being considered here was made with the intention to cause harassment and distress to staff as it relates to individual members of staff (namely the two Council employees), is of a personal nature and the staff would have to be consulted before any disclosure of information was potentially made.
32. The Commissioner accepts that the previous request was of a personal nature and may perhaps be information which individuals would not like to be released. He would also accept that it could be indicative of a vexatious request if considered in combination with previous, related, dealings with the complainant.
33. The Commissioner considers that requests for the type of information made by the complainant in her previous request are ones which public authorities quite regularly deal with (particularly when related to senior employees, as it is here). Indeed, the Council responded to the previous request in accordance with the Commissioner's position regarding this type of information.
34. The Commissioner considers that senior figures within a public authority could expect to have requests of this nature made about them and would therefore consider it less likely to cause them distress or be seen as harassing. Although the request being considered in this Notice does flow from the previous request and could potentially be seen as the pursuit of the employees, reviewed in isolation, the Commissioner considers it to be a request for further information surrounding the decision on a previous request.
35. The Commissioner accepts that the background leading to a request can be considered when assessing whether or not a request is vexatious. However, he has already concluded that the evidence cited as background to this request by the Council is too remote from the subject matter of the request currently being considered. Given this, all that the Commissioner can consider as background to the current request is the previous related request. On the basis of this and the above analysis, the Commissioner considers there to be too little evidence to suggest that the complainant's request was made with the purpose of harassing or causing distress to staff.

Lacks any serious purpose or value

36. The Council has stated that this request has no serious purpose or value as the complainant is merely dissatisfied with the response provided to the previous request and the subsequent decision of the Commissioner in relation to that request.
37. However, the Commissioner does not accept that this suggests a lack of serious purpose. It is clear that the complainant is dissatisfied with the response of the Council to the previous request. Indeed, the Commissioner considers it possible that the request being considered in this Notice was made in order to better understand the Council's decision regarding the previous request.
38. The Commissioner would concede that if the evidence provided to support this request as being vexatious did directly relate to the subject matter of the request, it could be seen to lack serious purpose. It would suggest that it was made to pursue the two Council employees and was not made with the serious purpose of gaining further information in relation to a previous response. However, given that the Commissioner has already excluded the Council's supporting evidence as too remote to the subject matter of the current request he cannot accept this to be the case. The Commissioner considers that the complainant made the request with a serious purpose and therefore does not agree that it lacked any serious purpose.

Conclusion

39. The Commissioner does not accept that this request is vexatious. Although the Council has received a large amount of correspondence from the complainant, the subject matter of this correspondence does not relate closely enough to the request being considered for it to be indicative of the request being vexatious under any of the categories of a vexatious request outlined earlier in this Notice.

Right of appeal

40. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

**Alexander Ganotis
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SK9 5AF**