

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 June 2011

Public Authority: Stevenage Borough Council
Address: Daneshill House
Danestrete
Stevenage
Hertfordshire
SG1 1HN

Summary

The complainant requested details of the costs incurred by Stevenage Borough Council (the Council) in relation to an Information Tribunal case. The Council issued a refusal notice citing section 14(1) (vexatious) in respect of the request. In this case, having considered the context and history of the request, the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1).

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. A case involving the complainant and Stevenage Borough Council (the Council) was heard before the Information Tribunal in 2008. The Council had put the complainant on notice that it would be seeking its costs on the basis that his conduct had been vexatious and, in bringing the appeal, he had continued his campaign against the Council. On that occasion, the Tribunal made the decision not to award costs.

3. The costs at issue in this case are those for the Barrister employed by the Council to represent the Council and form its defence in that Tribunal case.

The Request

4. The complainant wrote to Stevenage Borough Council (the Council) on 7 September 2010. His correspondence was headed:

"Freedom of information request for details of payments to barristers and legal advice when defending my requests for information at tribunal 2008."

5. In this correspondence, he made the following request:

"I write to you regarding my above mentioned request for information and copies of all payments to the barristers who acted for Stevenage Borough Council and copies of any other payments for legal advice regarding Stevenage Borough Council's representation at the tribunal."

6. The Council responded on 6 October 2010 to this request and another request made by the same complainant on 2 August 2010. The request of 2 August 2010 is not the subject of this Decision Notice.
7. The Council refused to provide the requested information, advising the complainant that the Council *"consider these requests continue the pattern of vexatious and manifestly unreasonable behaviour"*.
8. The complainant requested an internal review on 7 October 2010.
9. The Council upheld its decision on 4 November 2010.

The Investigation

Scope of the case

10. The complainant contacted the Commissioner on 15 November 2010 to complain about the way his request for information had been handled.
11. The Commissioner notes that, having initially cited the Freedom of Information Act when making his request for copies of the costs incurred by the Council, in his request for an internal review the complainant referred to having made his request *"under the EIR [Environmental Information Regulations] Act"*.

12. The Commissioner has considered which regime is correct in relation to the request. In doing so, he has applied the test as to whether the requested information itself falls within the definition of environmental. The Commissioner has concluded that the request is not environmental. He therefore considers that the Council was entitled to consider the matter as a request under the Freedom of Information Act.
13. The Commissioner considers the scope of the case to be whether the Council was entitled to apply section 14(1) to the request.

Chronology

14. The Commissioner notified the Council on 7 January 2011 that he had received a complaint from the complainant and that his investigation would commence in due course.
15. The Council acknowledged this correspondence on 27 January 2011. It confirmed that it was citing the exemption in section 14(1) of the Act and provided further evidence in support of this.
16. The Commissioner wrote to the Council on 14 February 2011 to say that he was commencing his investigation and asking it for further explanation of its reasons for claiming that the request was vexatious.
17. The Council responded on 17 February 2011.

Analysis

Substantive Procedural Matters

Section 14 Vexatious or repeated requests

18. Under section 14(1), a public authority does not have to comply with a request for information if the request is vexatious. There is no public interest test.
19. The term "vexatious" is not defined further in the Act. The Commissioner notes, however, that it is the request rather than the requester which must be vexatious.
20. The Commissioner issued revised guidance entitled "*Vexatious or repeated requests*" in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out key questions for public authorities to consider when determining if a request is vexatious, which are set out below.
 - (i) Could the request fairly be seen as obsessive?

- (ii) Is the request harassing the authority or causing distress to staff?
- (iii) Would complying with the request impose a significant burden?
- (iv) Is the request designed to cause disruption or annoyance?
- (v) Does the request lack any serious purpose or value?

21. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However, it states that to judge a request as vexatious a public authority should usually be able to make persuasive arguments under more than one of the above headings.
22. Accordingly, the Commissioner has considered whether the Council has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case.
23. The Commissioner notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) stated, at paragraph 11, 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.
24. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) 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".*
25. In considering whether or not a request is vexatious, the Commissioner considers it appropriate to take into account the context and history of a request in addition to the request itself in relation to one or more of the five factors listed above.

Could the request fairly be seen as obsessive?

26. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? In answering this question, the Commissioner's view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.

27. With respect to the request under consideration in this case, the complainant told the Council:

"My request ... for copies of costs ...is the first time I have requested copies of this information, which I believe I am legally entitled to. I therefore do not consider this single request for this specific information as vexatious or manifestly unreasonable".

28. Similarly, he told the Commissioner:

"The reason SBC [the Council] refused my request for information was wrong because I have only asked for this information on one occasion".

29. The Commissioner's published guidance states:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious".

30. In this case, the Council told the complainant that it considered this request vexatious:

"bearing in mind the volume and persistence of your communications with the Council, your questioning of so many aspects of this development and your unwillingness to accept the officers explanations".

31. In correspondence with the Commissioner, the Council confirmed that it considered the request to be part of a pattern of obsessive and unreasonable behaviour given the context of other, related, requests. The Council has outlined the wider context and history which culminated in the request under consideration in this case.

32. The Commissioner understands that the Council had logged over 200 separate items of contact (emails, letters, phone calls and visits) from the complainant between 2007 and the time of the request and that this contact all relates directly or indirectly to a particular site and the planning process for its redevelopment.

33. The Commissioner notes that the Information Tribunal case in 2008, to which the costs at issue in this case relate, involved requests about the same site and its proposed redevelopment.

34. In considering the question of reasonableness in the context of whether or not a request is vexatious, the Commissioner considers that it will be easier to identify these requests when there has been frequent previous

contact with the requester or the request forms part of a pattern, for instance when the same individual submits successive requests for information. Although these requests may not be repeated in the sense that they are requests for the same information, taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.

35. The Commissioner accepts that there is often a fine line between obsession and persistence and each case must be considered on its own facts. In this case, taking into account the context and background to the request, the Commissioner considers that the request can fairly be seen as obsessive.

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

36. The Commissioner acknowledges that there will often be an element of overlap between various vexatious criteria. For instance, where a request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. Whilst the complainant may not have intended to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.
37. The Commissioner considers that relevant factors could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations or complaints.
38. The Council has described there being a large volume of previous correspondence from the complainant over a three-year period, all relating to the same subject or related matters. It provided the Commissioner with details of the contact it had received from the complainant since 2007. In summary, it described there having been 255 items of contact recorded between 2007 and 2010:
- 72 in 2007;
 - 97 in 2008;
 - 63 in 2009; and
 - 23 in 2010.
39. The Council told the complainant

"You have previously complained to the Council, pursued your complaints with various external agencies and questioned the integrity of officers and in particular the planning officers who have diligently addressed all the issues you have raised with them."

40. The Commissioner considers it relevant to take account of this context and history in reaching his decision in this case.
41. The Commissioner understands that there is a background of requests for information and complaints from the requester in connection with the site and its proposed redevelopment. The Council has described there having been *"numerous complaints and allegations"* which have been investigated by the Council's Customer Complaints process, *"all of which were found to be without merit"*.
42. As the requested costs in this case were incurred as a result of matters concerning the site, the request under consideration could therefore be seen as the latest in a series of requests relating to the same issues.
43. In considering whether the complainant's request should be regarded as vexatious, the Commissioner considers it both reasonable and relevant to take into consideration the wider context in which the request was made. In this respect, he considers that the cumulative effect of the request was to harass the public authority and its staff.

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

44. The Act was enacted to assist people in seeking access to recorded information held by public authorities. However, it was not the intention of the Act to distract public authorities unreasonably from their other duties or for public money to be spent unproductively.
45. When considering if this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
46. In the Commissioner's view, the request in this case is not particularly complex or demanding. The Council accepts that compliance with this request in isolation would not create a significant burden or distraction.
47. However, the Commissioner understands that the Council is citing section 14 in this case in the context of the large volume of communication that has been received from the complainant over a three-year period which has caused what it has described as not only a significant burden but also *"a disproportionate drain on staff time and resource"*.

48. The Council did not provide specific examples of the nature of the distraction, nor of the manner in which it would be prevented from performing its functions. However, it told the complainant that it did not consider it was in the wider public interest to reply to requests that continually related to the same subject or related matters.
49. Having considered the arguments put forward in this case, the Commissioner considers that this factor can be viewed as supporting the application of section 14(1) of the Act.

Is the request designed to cause disruption or annoyance?

50. As discussed in the Commissioner's published guidance, this factor relates to a requester's intention and can therefore be difficult to prove. The Commissioner is mindful of the fact that under the Act the purpose behind any request is not a relevant factor. However, in examining the intent of the requester the Commissioner is considering the effect of complying with the request rather than questioning why he wants the information.
51. The Council has argued that the request meets the criteria of being designed to cause disruption or annoyance as it was made almost two years after the date of the hearing to which the costs at issue relate.
52. Having considered the matter, the Commissioner finds no conclusive evidence that the request is designed to cause any such disruption or annoyance. He has therefore not given any weight to this factor.

Does the request lack any serious purpose or value?

53. Whether a request has value is not of significance given that the Act is not concerned with the motives of an applicant, but rather in promoting transparency for its own sake. However, the Commissioner acknowledges that should any authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
54. The Council considers this element applies because the request is from the same individual whose decision forced the Council to incur costs in order to defend its position at appeal:

"Therefore the requestor is fully aware that the Council had no choice but to pay these costs."
55. In the Commissioner's view, this does not demonstrate sufficiently that the request has no purpose or value

56. However, the Commissioner has also taken into account the fact that, according to the Tribunal's Decision in that case, the Council was asked to quantify in broad terms how much it was seeking in costs and that an indicative figure was provided. In this respect, he notes that the complainant has not provided any evidence to show that information about the actual costs would satisfy any serious purpose or value.
57. Having weighed up these considerations, the Commissioner is not satisfied that it has been shown that the request lacks any serious purpose or value, and he has therefore disregarded this factor.

Was the request vexatious?

58. Section 14 of the FOIA is intended to protect public authorities from those who might abuse the right to request information. The Commissioner recognises that having to deal with clearly unreasonable requests can strain an organisation's resources, damage the credibility of the Act and get in the way of answering other requests.
59. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that the questions, to a greater or lesser extent, overlap and that the weight accorded to each will depend on the circumstances. He also reiterates that, in his view, it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1).
60. In this case the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1). He considers that the obsessive nature of the request, when taken in the context of the previous correspondence and its impact on the public authority and its staff, is sufficient for the request to be deemed as vexatious.

The Decision

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

Steps Required

62. The Commissioner requires no steps to be taken.

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

64. 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.
65. 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 22nd day of June 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
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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”.