

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2012

Public Authority: North East Lincolnshire Council
Address: Town Hall Square
Grimsby
North East Lincolnshire
DN31 1HU

Decision

1. The complainant has requested information about liability orders issued and withdrawn by the council in respect of council tax and non-domestic rates. The request was refused on the grounds of the costs for compliance, under section 12(1) of FOIA. During the Information Commissioner's investigation, North East Lincolnshire Council indicated that, in the alternative, it also intended to refuse the request under the provisions of section 14(1) of FOIA, on the grounds that the request was vexatious.
2. The Commissioner's decision is that North East Lincolnshire Council has not shown that the request was vexatious, and cannot rely on the provisions of section 14(1) of FOIA, but that council's estimate, that the cost for compliance with the request exceeds the statutory limit, was reasonable and the request was correctly refused on the grounds of section 12(1) of FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 1 November 2010, the complainant wrote to North East Lincolnshire Council (the council) requesting information about its use of liability orders in the context of recovery of debts for council tax and non-domestic rates. Its response on 4 November prompted a further request from the complainant, below, which is the subject of this complaint.

5. On 8 November 2010, the complainant wrote to the council and requested information in the following terms¹:

"You say

'North East Lincolnshire have never applied directly to the court to have a liability order removed, as liability orders can be removed internally by the Council.'

1. how many times a year between 2004-2009 please have you done this

2. You suggest different scenarios, please can you list them in order of volume per year.

3. What scenarios would your dept choose not to remove liability orders even if they're incorrect. or would this just be personal decision of the reviewing officer. Are you allowed to make a mistake in the court paperwork and still choose not to remove the liability order.

4. Please send me the paperwork that your officers use when deciding to remove/correct liability orders from your side." [sic]

6. The council responded on 10 November 2010. It stated that it had estimated that the time needed to cross reference the Council Tax accounts with removed Liability Orders in response to part 1 of the request would exceed the appropriate limit of £450 or 18 hours work. It offered to provide advice and assistance to the complainant to help him to refine his request so the cost limit would not be exceeded, and invited him to contact it to discuss refining his request.
7. It further stated that information in respect of part 2. of the request was not held by it, explained that parts 3 and 4 of the request were determined by the merits of the case, and provided the following clarification:

"Not all cases are sent to the Bailiff after a Liability Order is granted. The following reasons show why certain cases are not sent to the bailiff:

1. Account paid in full before the case is sent to the Bailiff.

¹ See http://www.whatdotheyknow.com/request/liability_orders_and_section12a

2. An amicable arrangement is made with the council to pay the remaining debt before it is passed to the bailiff.

3. Other Enforcement action is taken.

4. The Liability Order is removed

There are further reasons i.e. Deceased Customers and Bankrupt accounts are not passed to the bailiff either."

8. Following an internal review the council wrote to the complainant on 16 November 2010. It confirmed that following further investigation with the Council Tax service into the collation of the requested information, to extract the information requested would require a manual review of Council Tax accounts and that its estimate for the time required to do this would exceed the appropriate limit of £450 (18 hours) as previously stated.

9. There was further correspondence between the complainant and the public authority, during which the public authority disclosed additional information:

- on 15 December 2010

"Following an extensive review of the Council Tax and NNDR² system, I am pleased to provide you with details of the number of withdrawn liability orders between 2004 and 2009.

<i>Year</i>	<i>Council Tax</i>	<i>NNDR</i>
<i>2004</i>	<i>690</i>	<i>80</i>
<i>2005</i>	<i>576</i>	<i>90</i>
<i>2006</i>	<i>775</i>	<i>112</i>
<i>2007</i>	<i>661</i>	<i>132</i>
<i>2008</i>	<i>853</i>	<i>135</i>
<i>2009</i>	<i>739</i>	<i>139</i>

- on 11 January 2011:

"The reason a manual check is required to identify the precise reason for the withdrawal, is that when a liability order is removed a basic category description is entered with a more detailed

² National Non-Domestic Rates

description entered on the notes for the account. For your information I am pleased to provide a list of the basic category descriptions:

- * Billings Request*
- * By Agreement with Recovery Supervisor*
- * Cash Allocation Error*
- * Deceased*
- * Unanswered item in Dip*
- * Liability Dispute*
- * Incorrect Figure Shown on Summons*
- * Incomplete Address*
- * Awaiting info from Ratepayer*
- * Incorrectly Served*
- * Imprisoned*
- * As per S.M*
- * Multiple Summons*
- * Not Liable*
- * Other Reasons (see notes on pad)*
- * Paid*
- * Doc returned by P.O*
- * Payments up to date*
- * Rebate Granted*
- * Remitted by Court*
- * Small Balance*
- * VO reduction received not processed*
- * Withdrawn*
- * Write off*
- * Bankruptcy Liquidation*

The Council have estimated that the time require to manually check the notes for each account were a liability order has been removed to identify the reason for the withdrawal would exceed the appropriate limit of £450 (18 hours) and therefore will not be complying with your request to provide details of the reasons for each liability order being withdrawn."

- and, on 8 February 2011:

"Further investigation has taken place into whether a report can be extracted from the Council's system to identify for withdrawn liability orders the reason for the withdrawal. The investigation has identified that the reason code is not held against the liability order deleted record, and therefore the information you have requested can only be obtained by a manual check of every account."

10. The complainant continued to maintain that the information could easily be located and extracted by the use of search terms in the database application which stored the data about liability orders. Subsequent to the request considered above, the complainant's continued engagement with the council culminated in a further request for clarification of the response provided, on 12 January 2011. The council answered some of the complainant's questions in this request on 8 February and declined to engage further on the subject, informing the complainant of his right to bring a complaint to the Information Commissioner.

Scope of the case

11. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that the information had been refused, and gave his view that the information was contained in a database and was easily accessible if the appropriate search terms were applied to the database. He therefore disputed the council's explanation that obtaining the information would exceed the cost limit.
12. The Commissioner wrote to the council, requesting submissions in support of its position. It provided him with an explanation as to why the information could not be extracted by the use of search terms within the database. It also stated that, taking into account this request, other requests and substantial correspondence from the complainant, it had formed the view that the complainant's contact with it *"represented a targeted campaign of harassment and disruption against the Council and those individuals acting on its behalf"*. It therefore indicated that it intended to refuse 14 of the complainant's requests, including the present request, as vexatious under the provisions of section 14(1) of FOIA. It subsequently explained that, in the alternative, it continued to rely on its earlier refusal of the request on the grounds of cost.
13. The Commissioner informed the complainant of this additional ground of refusal, and that, having considered the council's estimate of its costs, his investigation would now need to also examine the council's refusal of the request as vexatious.
14. The Commissioner considers that the scope of this case is to examine the council's arguments for refusing the complainant's request as vexatious and, in the alternative, refusing it on the ground of the costs for compliance.

Reasons for decision

15. Sections 12 and 14 of FOIA state that:

Section 12: Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 14: 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”

16. The council has indicated that it has previously dealt with a significant volume of FOI requests, and continues to receive FOI requests and associated correspondence, from the complainant. It cites 10 requests submitted in 2009, nine requests in the period 25 May to 1 November 2010, and a further five requests between 1 November 2010 and 28 February 2011. The requests are often extensive in scope.

17. It believes that it has reached the point where some requests have become vexatious. The Commissioner understands that the public authority, having regard to the wider impact of the complainant's correspondence, wishes to rely firstly on its refusal under section 14 of FOIA and, if this fails, on section 12. The Commissioner will therefore first look at the position from the perspective of the requirements of section 14 of FOIA.

Section 14

18. In consideration of a refusal on the grounds of section 14(1) of FOIA, 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 public authority could refuse to comply with the request on the grounds that it is vexatious:

- 1) whether compliance would create a significant burden in terms of expense **and** distraction
- 2) whether the request is designed to cause disruption or annoyance

- 3) whether the request has the effect of harassing the public authority or its staff
 - 4) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - 5) whether the request has any serious purpose or value
19. Both the public authority and the complainant have provided detailed arguments in response to the Commissioner's enquiries. These are summarised, as far as possible, in the analysis of the five tests, below.

Whether compliance would create a significant burden in terms of expense and distraction

20. The request was initially refused on the grounds of cost, and the council has provided the Commissioner with details of its estimate for the costs of compliance, which will be considered in the 'section 12' analysis later in this decision notice. This is, for the purposes of the section 14 analysis below, accepted as the council's reasons for claiming that compliance would create a significant burden in terms of expense.
21. The council also explains that the wider context of its dealings with the complainant includes a substantial body of FOI requests and correspondence, sometimes up to eight items of correspondence in a single day. Dealing with these constitutes a significant burden and distraction for the council staff required to respond.
22. The Commissioner is satisfied that providing the requested information, to the level of detail specified in the request, would constitute a significant burden on the public authority, and that the task of retrieving and collating this information would necessarily impact on those departments which deal with the matters of interest to the complainant, distracting them from their regular activities. The Commissioner therefore agrees that compliance with the request, as submitted, would create a significant burden in terms of expense and distraction.
23. It is clear to the Commissioner, from an examination of the broader correspondence, that the complainant's impression of the council's systems or procedures leads him to believe that many tasks are, in reality, considerably more straightforward than the council claims. The Commissioner will consider this in more detail in the Section 12 analysis, below, but comments that the council does not appear to have taken some obvious opportunities to set out its position more clearly to the complainant.

Whether the request is designed to cause disruption or annoyance

24. The council observes that the complainant's requests often develop into a dialogue, of sorts, and that sometimes its responses elicit further requests for increasing levels of detail or analysis, or other engagement with the council. For example, in the present case, the initial request led to the follow-up request which is under consideration in this decision notice, and an examination of the correspondence available at the online link provided in the footnote to paragraph 5, above, shows the continuing discussion and negotiation which often arises from the complainant's requests. The council suggests that this demonstrates that the complainant's request is designed to cause disruption or annoyance.
25. The council also refers to the complainant's tendency to include comments and criticisms in his correspondence, a tendency which, again, is evident from an examination of the full correspondence for the present request. It also refers to the complainant's more general habit of commenting on 'past and resolved issues' as further evidence of an intention to cause disruption and annoyance by repeated reference to such matters.
26. It has also drawn the Commissioner's attention to the complainant's response when it informed him of its position that the matter was now concluded, and he was informed of his right to bring an appeal to the Information Commissioner. The complainant objected to the council's decision to close the matter, and complained that referring him to the Information Commissioner was a 'delaying tactic'. The council gives its view that this shows that the complainant does not wish to resolve the matter, rather they wish to continue the dispute and engagement with the council.
27. The Commissioner has some sympathy for the council's position in this particular regard. A public authority is not expected to continue to engage, indefinitely, with an applicant in respect of a request for information, and is likely, at some point, to wish to draw a line under a particular matter. Provided it does so consistent with the requirements of FOIA, and informs an applicant of his right of access to the Information Commissioner, this is an entirely proper course of action. Moreover, it is clear from the chain of correspondence in this particular request that the council has continued to engage, at some length, with the complainant and has provided him with several substantive responses to his various questions, queries and requests. It has not simply 'stonewalled' his secondary enquiries.
28. For this reason, it is also clear that the complainant's continued engagement in the matter was a result of the council's continued

engagement producing material of value to him. His expression of displeasure when the council broke off the contact could therefore be seen, in some lights, as simply an indication of honest frustration. He is clearly reluctant to abandon correspondence which was bearing fruit. Whether this can be said to equate to a vexatious intention to waste the council's time is another matter.

29. On the one hand, a public authority ought to have the right to manage its workload in dealing with an FOI request, consistent with the procedural requirements of FOIA; on the other hand, an applicant being unhappy when that happens is not inherently vexatious. On balance, the Commissioner agrees with the council's view that, given the choice, it is likely that the complainant would have continued to engage with it, and that this would be likely to cause disruption and annoyance. He is not persuaded, however, that this was the purpose for which the request, or the follow-up correspondence, was designed.
30. The council also explains that it has offered meetings with the complainant to discuss his issues and contact arrangements, and these have been refused. It suggests that this demonstrates the complainant's unwillingness to engage with the council to resolve the matter and reduce the burden on its resources, therefore his requests were not about resolving issues, but about causing disruption. The complainant has given the Commissioner his view that the council's offers of meetings were likely to be of very limited help, in the context of the circumstances in which they were offered.
31. The Commissioner understands that the offer of meetings this refers to relates to a review of the restricted contact measures the council had put in place to help it deal with the complainant's volume of correspondence. It is not apparent, from the council's submissions, that the meeting proposed would have been intending to address the complainant's underlying concerns, but rather that it would have been looking only at the measures in place to manage the complainant's contact with it. This appears, from the evidence available to the Commissioner, to be the root of the complainant's unwillingness to participate: he argues that such a meeting would not assist him in pursuing his various concerns or grievances. Therefore, insofar as it seeks to suggest a measure of intransigence and disruptive intent on the part of the complainant, the Commissioner considers this element of the council's argument to be of limited help to its case.
32. The Commissioner refers to his observations about the council's 'advice and assistance' at paragraphs 74-79, below. While it is clear that the complainant's requests often give rise to further correspondence, it is also clear that the council's responses are not always as clear and straightforward as they could be. If a response is not clear, or the

reason for a refusal is not adequately explained, it is not unreasonable to expect further contact from an applicant who is attempting to decide whether or not his request has been complied with.

33. The Commissioner is therefore not persuaded that the complainant's conduct in pursuing the request after receiving the council's response demonstrates any vexatious quality in the request. This is because it is also reasonably clear from the correspondence that the complainant is striving to understand the reasons for the refusal in the face of what he believes to be a simple and straightforward request, he is not simply trying to harass or disrupt the council. The 'piecemeal' nature of the disclosures in the present case also lends a degree of support to the complainant's persistence. The tone of the communication from the complainant is not aggressive or confrontational.
34. The council's argument is, partly, that engaging with the complainant is burdensome, yet its responses to some of the complainant's requests and correspondence appear to invite further engagement, where a more straightforward response and careful explanation of the circumstances might have settled matters more efficiently. The complainant should not be penalised for this.
35. The test in this part of the Commissioner's guidance is whether the request can be shown to be **designed** to cause disruption or harassment. The council's arguments do not provide any evidence to this effect and therefore the Commissioner does not find that the complainant's requests are designed to cause disruption or harassment. He has, however, taken the council's arguments into account insofar as they relate to whether the request **has the effect of** harassing the authority or its staff, as below. For the reasons expressed above, he finds that a proportion of the complainant's correspondence about his requests can reasonably be argued to be due to the nature of the council's responses to his enquiries, which are not always as clear or helpful as they could be in the first instance. While it is clear enough that the requests are quite likely to have the effect of harassing the public authority which it claims, he therefore gives the arguments above only modest weight when considering the next test.

Whether the request has the effect of harassing the public authority or its staff

36. The council cites the complainant's habit of including comments and opinions in his requests, which are submitted via a public FOI website and therefore more broadly circulated than if they had simply been submitted to the council directly. It argues that, by choosing to use a public website in this way, the complainant is using this public forum as a way to spread his accusations more widely. It also argues that the

complainant targets named individuals within the council for criticism and allegations, and intimidates individuals with threats to involve the media, professional bodies or the police.

37. The council also observes that the complainant occasionally sends comments to it via other channels, eg email, outside the public FOI website where the request was submitted. It argues that this shows that the complainant is selective about those comments which he chooses to make public and those he makes more privately, and that this indicates that the complainant is pursuing a campaign. The Commissioner notes that the specific examples of such private comments cited by the council appear to be consistent with various other comments placed in the public domain by the complainant so the council's argument is inconclusive. Further, the emails cited are typically sent, or copied, to parties who it is not at all clear would be contactable via the FOI website's facilities. He is not satisfied that the council has adequately made its case for this particular point.
38. The Commissioner wishes to make clear that the fact that a request is submitted (and visible) via a public website is not itself indicative of any vexatious intent, and he recognises that many people find the facilities of such websites helpful. He also accepts that using such websites should not inhibit an applicant from expressing themselves freely, other than as required for compliance with any terms of use which the website operators impose, and that critical comment is not at all unusual on such websites. The Commissioner therefore does not accept that the complainant's decision to use this website should, in itself, be deemed indicative of any vexatious intent.
39. He has, however, gone on to consider whether a reasonable person, in receipt of the sort of comments and criticism evidenced by the council and, particularly, being aware that some of these comments are public, would be likely to feel harassed or distressed by them. This is consistent with previous views of the First-Tier Tribunal (Information Rights), for example, in the case of *Jacobs v IC* (EA/2010/0041)³. The Commissioner concludes that the examples cited by the council do not step beyond the bounds envisaged by the Tribunal in the case of *Jacobs*. He recognises, however, that prolonged and frequent contact with the complainant's correspondence might make council staff inherently more

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[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) at paragraph 27

sensitive to his comments and criticisms. This, while understandable, risks classifying the requester as vexatious, rather than the request.

40. With regard to the complainant's habit of naming individuals, the council has cited some specific examples in its submissions to the Commissioner. Some of those individuals are very senior council staff, who have also been singled out for criticism in a District Auditor's report⁴. Others, while not mentioned in that report, are also reasonably senior council staff, who might be expected to receive a degree of robust criticism from citizens as a normal part of their role. The examples cited to the Commissioner include the following:

"[...] I am saying that [name] has given you a false statement. I am saying that the actions of [department] have been fraudulent for years."

"[...] it identifies when [staff role] from the council failed in [their] duties."

"[name and role]. Putting you as [role] could not have been more appropriate, it brings the [situation] full curcle, from false accounting to fabricating evidence. Management at NELC 2001-2010" [sic]

41. These examples do not appear to the Commissioner to be the sort of hostile or abusive criticisms or defamatory remarks which might suggest that the complainant had overstepped the mark, albeit he appears to be close to this mark in some instances. They might, on the other hand, reasonably be characterised as falling within the range of 'fair comment' expressing, as they do, the complainant's genuinely-held views about the actions of certain council staff. The Commissioner acknowledges that, in the circumstances, council staff may have become 'sensitised' to the complainant's comments, and might therefore have genuinely found them to be harassing or distressing to some degree, but the test in *Jacobs* is expressed more strongly:

"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

⁴ <http://www.audit-commission.gov.uk/SiteCollectionDocuments/PublicInterestReports/nelincolnshirecouncilpir24jun2009REP.pdf>

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"

The Commissioner recognises that this does not mean that the council staff are expected to endure abusive or otherwise unreasonable criticism, or are required to be more 'thick-skinned' than others. It does not give members of the public licence to abuse public employees. He is, however, not persuaded that the council has provided sufficient evidence to show that the complainant's requests or correspondence had become vexatious in this regard.

42. The council also cites the complainant's tendency to make what it characterises as 'threats' to take the matters to the police, professional bodies or the media. The council argues that if he has valid concerns, he should take those concerns to the relevant authorities and desist from making such threats to its staff. It comments that it has asked him to produce his evidence to support his various allegations, and he has not done so. It therefore considers the complainant's allegations to be unfounded and cites the dismissal of an earlier complaint by the Local Government Ombudsman.
43. The complainant has confirmed to the Commissioner that he has made some complaints to external bodies, including the District Auditor, the DCLG⁵, police and CIPFA⁶, some of which he understands were out of time, while others were premature due to his lack of sufficient evidence at the time. He explains that some of his requests have been designed to obtain suitable evidence to support his complaints, and that two complaints to the police and one to the DCLG are still ongoing.
44. Mindful of the First-Tier Tribunal's observations in the case of *Jacobs*, the Commissioner notes also that the complainant's criticisms are, in the main, directed at senior staff, or staff in public-facing roles, and that these are the sort of council staff who might therefore expect to receive a degree of robust comment, questioning or criticism. The complainant's comments, while direct, are neither offensive nor abusive, and the Commissioner does not consider the council's case in respect of this particular test to have been adequately made out.

⁵ The Department for Communities and Local Government

⁶ The Chartered Institute of Public Finance and Accountancy

45. Recognising the relevance of the arguments employed in the previous section about 'disruption or annoyance' (paragraphs 24-35), the Commissioner gives some modest weight to the council's argument that the effect of the requests on the council and its staff is one of annoyance and harassment, albeit he has already found that this was not the complainant's designed intention. Therefore, the Commissioner agrees that there is some evidence to show that the complainant's requests do, to some degree, have 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

46. The complainant's history with the council includes a previous complaint which was taken to the Local Government Ombudsman. After an investigation, the Ombudsman dismissed the complaint. The council argues that his more recent requests stem from that complaint, and can therefore be characterised as revisiting 'past and resolved issues'. This, it argues, shows that the complainant's behaviour is obsessive and manifestly unreasonable in that it seeks to reopen matters which have already been independently investigated. It also argues that this goes to its corresponding view, that the requests lack serious purpose or value.
47. The complainant believes that the council may have misled the Ombudsman during his investigation. He further defends his position by pointing out that the various requests cannot be said to link directly to the matter of his original complaint, and he therefore refutes the council's characterisation of them in that way.
48. He explains that his dealings with the council, in light of the matter which gave rise to his original complaint to the Ombudsman (and other related, and unrelated, dealings with the council), have given him good grounds to believe that the council is not conducting various aspects of its business properly. He cites critical Audit Commission reviews and news reports from around 2004 and 2005 which showed North East Lincolnshire Council as being among the poorest-performing councils in the country, and more recent Audit Commission reports which, while acknowledging progress, still show areas requiring further improvement.
49. He also takes some support from the District Auditor's findings, above, and cites, as an example, the council's published statistics on its collection rate for council tax which suggests a 98% success rate. He has compared published statistics relating to the use of liability orders and bailiffs in enforcing the collection of council tax, and believes that this 98% figure cannot be reconciled with those published statistics.

50. He concludes that the council would have had to 'fudge' the figures to achieve this rate, and suspects that some of the improvements recognised by more recent Audit Commission reports may incorporate a degree of manipulation of key performance indicators by the council, and he explains that *"most of my requests are to find the fudging"*.
51. The Commissioner notes that only a proportion of the complainant's requests relate to the collection or administration of council tax and non-domestic rates (which was the subject of his complaint to the Ombudsman), and that any such related requests are not so clearly linked to his Ombudsman complaint that they should be seen as attempts to reopen or revisit that complaint. Rather, the complainant argues that his experience, and complaint to the Ombudsman, gave him cause to suspect problems within that part of the council's administration, and he is trying to uncover those problems. The present complaint concerns a request which is more closely related to the issues arising from his complaint to the Ombudsman than some of his other requests, but Commissioner recognises that this is not the same as trying to force a re-hearing of his specific complaint.

Section 14, summary and conclusion

52. This is a case in which the arguments are not clear-cut. It is evident that the council finds dealing with the complainant difficult and time-consuming, and the impact on its operations and the demands the complainant's requests make on its resources should not be underestimated. The council asks the Commissioner to take this into consideration as the main factor in its arguments.
53. It is equally evident that the complainant is sincere in his views, and that at least some of his concerns have been borne out by a District Auditor's report, which appears particularly critical of the Executive Director Corporate Services and the Deputy Director of Finance in respect of one high-profile issue. The complainant's view is that the lack of controls evident in the District Auditor's report, and the council's failure to get to grips with those shortcomings, justifies his suspicions about further lack of controls elsewhere. This view is clearly not without at least some foundation in light of successive Audit Commission reports which have been critical of council operations.
54. Furthermore, the council's submissions indicated that the complainant had made numerous FOI requests, and sent in approximately 500 other items of correspondence in the material period. While this is not disputed by the complainant, his version of events casts a different light on the matter. He has explained that, aside from his concerns about the proper functioning of the council, he has been engaged in two, legitimate, disputes with the council. He explains that approximately

80% of his correspondence with the council has been about those two disputes, and the remaining 20% constitutes his FOI requests and associated correspondence.

55. This was put to the council, which agreed that the proportions are fair. The Commissioner will not elaborate on the nature of the specific complaints which took up 80% of the complainant's dealings with the council as these are a private matter for the complainant, but he is satisfied that a substantial level of contact would have been reasonable in the circumstances. For the council to include these dealings in its arguments for the vexatious nature of the complainant's requests is not appropriate.
56. The Information Tribunal has commented that a consideration of a refusal of a request as vexatious may not necessarily lend itself to an overly structured approach, and has given its view that it is likely that the outcome will be obvious from an examination of the facts of the case. The Commissioner acknowledges this position and, insofar as his analysis of the five factors listed above leads him to any conclusion, that conclusion is that it is not obvious that the complainant's requests are vexatious.
57. The council does not appear to have taken some obvious opportunities to make its position plain to the complainant, and its responses may occasionally come across as disingenuous or evasive. The complainant cannot be criticised for challenging its responses in those circumstances.
58. Some of the council's supporting evidence for parts of its case appears to the Commissioner to be slightly contrived. Some of its evidence, particularly relating to the volume of the complainant's correspondence, is taken out of context and attempting to apply it to this case is unreasonable. The Commissioner therefore felt compelled to examine its other arguments more closely and finds them, broadly, unsatisfactory in varying degrees. The Commissioner notes that the council seeks to rely, in the main, on its arguments relating to the burden, which suggests to him that it may be aware that its other points lack substance.
59. It is clear that the council's dealings with the complainant are highly unsatisfactory for both sides, and the burden placed on it is quite evident. It is also fair to recognise that the present request is more closely aligned to the complainant's original complaint to the Local Government Ombudsman than many of his other requests, which may give rise to some concern that he is seeking a means to reopen that complaint. The complainant, however, is evidently sincere in his views, which derive from his personal experience. Crucially, he can take a fair degree of support from critical reports from the Audit Commission and District Auditor, which does show that his suspicions are not baseless.

One fundamentally important pillar of FOIA is that it enables concerned or interested citizens to examine the workings of public bodies.

60. If the complainant's concerns were less founded in rational suspicions, to which independent, high-level investigations have lent some support, the Commissioner would be more likely to agree with the council that the complainant's behaviour was unjustified. In the circumstances, however, the Commissioner finds that the complainant has sufficient serious purpose behind his requests that this ought, in the circumstances, to outweigh the burden on the council arising from his requests. The Commissioner also discounts that element of the burden caused by the complainant's dealings in relation to his two disputes, which are external to his requests for information. When that is disregarded, the burden is notably reduced. He finds that the council has incorrectly refused the complainant's request as vexatious under section 14(1) of FOIA.

Section 12

61. Section 12 of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit which in this case is £450 as laid out in section 3(2) of the Fees Regulations⁷.
62. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
- determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.

The calculation is £25 per person per hour

63. The complainant argues that most of the information in his various requests is compiled into databases and is therefore easily searchable,
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⁷ The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

but the council's responses tend to treat the information as if it is kept as paper records. The Commissioner has considered this with specific reference to parts 1, 2 and 3 of the request.

64. The Commissioner notes that the council provided further information to the complainant at intervals between 15 December 2010 and 8 February 2011. This is explained by the council as being in response to further correspondence from the complainant, either where he had suggested possible search options which had enabled it to locate further information, or where it had extracted further information by way of further assistance to him, for example the number of withdrawn liability orders for 2004-2009, or the reason codes (ie, the reasons applied when deleting the record of a withdrawn liability order from the council's database) in partial response to part 2 of his request. The 'reason codes' are understood to be broadly equivalent to the complainant's 'scenarios'.
65. The council has explained that the statutory cost limit would be exceeded if it answered part 2 of the complainant's 8 November request fully, because the reason code for the withdrawal of the liability order is not held against the council tax or NNDR account record. Where a liability order is withdrawn, it is deleted from the relevant council tax or NNDR account record, meaning the information about withdrawn liability orders cannot be extracted from the Council's system via a report, and the only method to obtain the information requested is by a manual check of each individual account.
66. Its estimate of the time required for the manual checking of all the accounts identified for the period 2004 to 2009, based on an assumption of 5 minutes per account, is 415 hours; even if the request was reduced to a single year, for example 2005 which had the fewest withdrawals, it estimates the time required to provide this information through manual checks would be 55.5 hours.
67. The council's explanation is that the reason codes are not themselves held in a table associated with the relevant council tax or NNDR account by the database and are instead associated with the database entry for any summons which is associated with the liability order
68. Because the required information is not held against the deleted liability order record, a manual check of the individual account's notes is required meaning that the information cannot be reported by running a system extract report. The council has given two explanations why the withdrawal reason code cannot be reported on directly from the council's software system, and why therefore a manual check of the notes of the individual accounts is required to obtain the requested information, these are:

[1] **Where a reason code is not entered** If a user selects the option 'Delete Liability Order and Costs', there is no field on the council's system to enter a withdrawal reason, therefore no reason code is held for these withdrawn liability orders.

[2] **Where a reason code is entered** If the user selects 'Delete Liability Order and Withdraw Summons Notice and Costs' they are required to enter a reason code in the withdrawal reason field which is a mandatory field. This reason code is held against the original summons record, not the liability order record, and whilst the system can report against all liability orders that have been deleted, it cannot report the withdrawal reason entered as it is not held in the same table (i.e. it is held within the summons details table).

69. If the different reason codes had been compiled into a table within the database which was associated with the individual council tax or NNDR account, it would have been possible to set up a search which would have compared the table contents against the database as a whole, and extract the number of times each reason was used. This is what the complainant anticipated would have been possible.
70. The council confirmed that it was surprised when it discovered that the reason codes were not available in this way as it had also expected to be able to undertake an automated search as envisaged by the complainant. This is understood to be a shortcoming in the software application used by the council.
71. An examination of each account would show the reason codes if these had been annotated on the account. These could be compiled manually to provide the information requested for the number of times each reason was used. This is the task which would require the time estimated by the council at paragraph 64 above. The Commissioner considers that the council's estimate of 5 minutes per account is reasonable, and notes that in order to bring the search under the cost limit, *for this element of the request alone*, the search would need to take less than twelve seconds, per account, on average.
72. The Commissioner therefore finds that the council has conducted a search of its database which did enable it to respond to some elements of the complainant's request, but that automated searches of the database to establish how many times each of the reason codes were used in each year were not possible. The Commissioner concludes that the council's estimate of the time required to conduct a manual search of the database for the requested information is reasonable and provides an adequate basis to refuse the request on the grounds that the cost for compliance would exceed the statutory limit of £450.

73. The Commissioner finds that the council correctly refused part 2 of the complainant's request on the grounds of cost for compliance under section 12(1) of FOIA.

Section 16

74. Section 16(1) of FOIA deals with the duty of a public authority to provide advice and assistance to a person making a request, where it is reasonable to expect it to do so. When applying the fees regulations under section 12 the Information Commissioner expects that a public authority should have regard to its duties under section 16 of FOIA to provide advice and assistance to the requestor.
75. The Commissioner is clear that where an authority refuses a request because the appropriate limit has been exceeded, it should, bearing in mind the duty under section 16 of FOIA to advise and assist an applicant, provide information on how the estimate has been arrived at and provide advice to the applicant as to how the request could be refined or limited to come within the cost limit. The council's response did not provide details of its estimate, summarised at paragraph 64 above, nor explain why a manual search was necessary in circumstances when it would have been reasonable to assume that an automated search would have been possible.
76. The duty in relation to advice and assistance under section 16 of FOIA is a duty to **provide** that advice and assistance (so far as it would be reasonable to do so), not a duty to **offer to provide** advice and assistance. The council's response did not provide advice and assistance, but simply offered to do so. While the Commissioner would not go so far as the complainant, who has characterised this as a 'delaying tactic', he notes that if it felt able to provide advice and assistance, it should have done so at the time. Offering to do so at some indeterminate future time will inevitably require further engagement from the complainant, and will have the effect of delaying matters.
77. The Commissioner notes, however, that in this case the council continued to engage with the complainant following its refusal and, as a consequence of that engagement, further information was located and disclosed to him.
78. Accordingly, the Commissioner considers that the council did provide advice and assistance to the complainant. While that advice and assistance was not such that it enabled him to narrow or refine the request, it is not clear to the Commissioner, given the explanation of the council's systems above, that any advice and assistance could have enabled the request to be refined in order to bring it under the cost limit, because a manual search of the account records would still remain

necessary, even if a shorter time period, or a subset of the 'reason codes' was chosen.

79. Consequently the Commissioner does not find any breach of section 16 in this case.

Right of appeal

80. 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

81. 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.

82. 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

Rachael Cragg
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SK9 5AF