

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 June 2012

Public Authority: Wandsworth Council
Address: Town Hall
Wandsworth High Street
London
SW18 2PU

Decision (including any steps ordered)

1. The complainant has requested information relating to parking enforcement at Wandsworth Council ('the council'). The Commissioner considers that these requests relate to the same matter as a previous decision notice¹ and therefore the analysis and conclusions reached in that previous notice are applicable in this instance. The Commissioner's decision is that the council was correct to apply the vexatious exclusion to these requests. However, it was in breach of its procedural obligations but the Commissioner does not require the council to take any further action.

Request and response

2. On 4 March 2011, the complainant requested the following information:

"...I would now want to see how many contested PCNs were cynically and carefully cancelled in the 'eleventh hour' period of *just one day over the month before adjudication*. Who orchestrates all this? Is it NSL, or [named employee]?"²

¹ Reference FS50400972; FS50397482 on the ICO website:
http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx

² ICO complaint reference number FS50435916, Wandsworth Council reference number 4439

3. The council responded on 1 April 2011 stating that the request is being refused as vexatious in accordance with section 14(1) FOIA.
4. An internal review response was provided on 22 August 2011 stating that the decision to apply section 14(1) was upheld.
5. On 11 March 2011, the complainant reminded the council of 10 specific requests already made and requested the fullest disclosures without any further delay.³
6. The council responded on 15 April 2011 detailing how each of the requests had been previously handled by the council and stating that the requests are vexatious in accordance with section 14(1) of FOIA.
7. An internal review was provided by the council on 24 August 2012 stating that section 14(1) had been applied correctly.
8. On 14 March 2011, the complainant made the following request:

“...I have particularly asked [named employee] to disclose whether I am dealing with Council employees, or NSL employees masquerading as Council staff. With this in mind, please confirm the status of yourself and [named employee] by return mail.”⁴
9. The council responded on 14 April 2011 stating that the request is being refused as vexatious in accordance with section 14(1) FOIA.
10. An internal review response was provided on 24 August 2011 stating that the decision to apply section 14 was upheld.
11. On 22 June 2011, the complainant wrote to Wandsworth Council (‘the council’) and requested information in the following terms:

“My understanding is that Mouchel is set PCN targets of the order of 180,000 per annum in its Parking Enforcement Services Contract with Wandsworth. As the setting of PCN targets is unlawful within the Traffic Management Act, I would now like to make a new, separate FOIA request for the sight of the aforementioned contract. I have previously referred to NSL staff masquerading as Council officers. I would now also like to make the same FOIA request concerning the status of staff

³ ICO complaint reference number FS50435926, Wandsworth Council reference number 4442

⁴ FS50435920, Wandsworth Council reference number 4447

of Mouchel that I may have been dealing with. I would also like the disclosure on all PCN revenue/performance bonus-related elements of the Mouchel contract."⁵

12. The council did not send a response to this request.

Scope of the case

13. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. The council has applied section 14(1) to all of these requests for the same reasons. The Commissioner has therefore addressed all four complaints in this decision notice and has considered whether the council were correct to treat the requests as vexatious.

Reasons for decision

14. Section 14(1) of the FOIA provides that:

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

15. As stated in paragraph 1, the Commissioner issued a decision notice relating to two requests on the same subject matter as the requests in this decision notice. That previous decision notice found that the council had correctly applied the vexatious exclusion at section 14(1).

16. The Commissioner is aware that the complainant became involved in a dispute with the council after his wife received a Penalty Charge Notice in June 2010. After exhausting the council's internal procedures, the complainant lodged an appeal with the Parking and Traffic Appeal Service. The council maintains that the vehicle was parked incorrectly and the parking ticket was issued lawfully. However, the council accepted there was a procedural error and so the ticket was cancelled in September 2010 before the appeal was heard by the Parking and Traffic Appeal Service. Subsequently the complainant made requests for information and allegations regarding parking enforcement at the council.

⁵ ICO complaint reference number FS50432122

17. The Commissioner considers that as these requests represent a continuation of the complainant's previous correspondence with the council about the same issue (indeed, the 10 part request made on 11 March 2011 includes both of the requests which were the subject of the previous decision notice), the analysis and conclusions set out in the previous decision notice are also applicable in this instance. For brevity, the Commissioner will not reproduce the content of that decision notice here but he has adopted the analysis and concluded that the council correctly applied the vexatious exclusion to this request.
18. The Commissioner notes that the previous decision notice was unsuccessfully appealed to the First-tier Tribunal (Information Rights) and permission to appeal to the Upper Tribunal was refused.

Procedural requirements

Section 17

19. Section 17(5) of the FOIA 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."

20. The request made on 11 March 2011 was responded to on 15 April 2011, more than 20 working days after it was received. The council therefore breached its obligations under section 17(5).

21. The request made on 14 March 2011 was responded to on 14 April 2011, more than 20 working days after it was received. The council therefore breached its obligations under section 17(5).

22. Section 17(6) of the FOIA states that a public authority is not required to provide a refusal notice where:

"(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

23. In this case, the council did not respond to the request made on 22 June 2011. As the council is relying on section 14(1) and provided a refusal

notice on 15 April 2011 which states that, in accordance with section 17(6), it considers that it would be unreasonable to expect the council to continue to give a further notice of vexatiousness for subsequent related requests, the Commissioner believes that, in all the circumstances, it would be unreasonable to expect the council to issue a separate notice regarding this request. He believes that this is the case because he has already determined that previous requests about the underlying subject matter are vexatious, which renders the issuing of a further notice unreasonable. He has therefore concluded that section 17(6) has been appropriately applied to this request.

Other matters

24. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern.

Section 50(1) of the Act requires the Commissioner to make a decision in relation to complaints he receives about public authorities' compliance with the Act when dealing with requests for information. However, under section 50(2)(c) the Commissioner has the right to refuse to make a decision if it appears to him that a particular application is frivolous or vexatious.

As outlined in this decision notice, the Commissioner has upheld the council's decisions to deem requests of a similar nature vexatious.

In view of the findings of this decision notice and that in the case of FS50400972; FS50397482, the Commissioner considers that the complainant has sought to use requests for information and subsequent complaints to the Commissioner as a means of pursuing his grievance against the council. The Commissioner believes this represents a pattern of vexatious behaviour. In future the Commissioner will consider whether it is appropriate for him to exercise his discretion under section 50(2)(c) to refuse to make a decision in relation to any complaint about a request of a similar nature from the complainant.

Right of appeal

25. 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

26. 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.
27. 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

Andrew White
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