

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 3 October 2013

Public Authority: Stockport Metropolitan Borough Council
Address: Town Hall
Edward Street
Stockport
SK1 3XE

Decision (including any steps ordered)

1. The complainant has requested information relating to Vale View Primary School's Lightning Protection System results and a copy of the school's Lightning Risk Assessment. Stockport Metropolitan Council ('the council') refused the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the council has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Request and response

2. On 10 April 2013, the complainant wrote to the council and requested information in the following terms:

"I look forward to receiving a full report of the LPS remedial works, how much it costs and why it was necessary etc. I also look froward [sic] to receiving a copy of the schools Lightning Risk Assessment LRA."
3. The council responded on the same day. It stated that that the request has been refused under section 14(1) of the FOIA as it has been deemed vexatious. The council also stated that as the request has been refused, there is no provision for an internal review to be conducted.

Scope of the case

4. The complainant contacted the Commissioner on 10 April 2013 to complain about the way his request for information had been handled. He specifically stated that he was concerned the council had treated the requester rather than the request as vexatious and it was not prepared to review its decision.
5. The Commissioner has considered whether the council is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

6. 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. There is no public interest test.
7. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹ the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
8. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of

¹ UKUT 440 (AAC) (28 January 2013)

dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

9. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
10. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

Detrimental impact on the public authority

11. The council explained to the Commissioner that the refusal in this case was issued following a series of related requests for information submitted to the council since June 2011. It provided a spread sheet of requests from the complainant detailing 60 separate requests made prior to the one in this case, involving 155 related emails from the complainant. The council submitted that, on the whole, the requests relate to various building regulations and safety inspections primarily about Vale View Primary School. The Commissioner has noted that at least 45 of the 60 requests are directly related to the above theme and a number of the remainder concern building regulations and safety inspections at another location.
12. The council pointed out that the complainant has had approximately three live and overlapping information requests with the council, on the same subject matter, at any given time and that, in addition to the requests for information detailed above, he has submitted regular emails to the council solicitor on the same topics, which have been outside of the scope of the FOIA, as well as a large volume of requests for information directly to Vale View Primary School on the same topics.
13. Although the council considers that the complainant has made a large number of requests on the same topic, it has stated that the volume was not the primary reason why the decision was taken to apply the vexatious provision. When responding to the complainants requests for information, the council has recorded 42 occasions where the response

² http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

has directly lead to a further emails either asking for further information or disputing the information that has been provided. Although the council accepts that it is the complainants right to dispute information which has been provided or to ask for further information, it believes that the number of times this has occurred suggests that there is no amount of information which would satisfy the complainant and that any responses issued are likely to lead to further correspondence on the matter. It explained that over the course of the last two years, the council has provided the complainant with a vast amount of information relating to building regulations and environmental issues associated with the erection of buildings, the primary focus of these requests being the Vale View Primary School. The Commissioner has been provided with examples of information which has been provided such as the Lightning Protection System Inspection Certificate and assurance from the Lightning Protection Contractor that the level of protection is correct.

14. The council has expressed its concern with regard to the amount of time that is being spent answering requests about this subject that is diverting resources from other matters. It stated that if the issues the complainant raised uncovered serious concerns about the construction or operation of the school then it would have taken a very different view to these requests but this is not the position.

Serious purpose and justification of request

15. The council informed the Commissioner that the complainant has stated he is of the belief that Vale View Primary School has failed to comply with the relevant building regulations and operates in a 'legal void'. It has said that he has consistently made wide-ranging and unsubstantiated allegations of criminal behaviour against both the council as a whole and various individuals employed by the council, the school or the construction companies involved. The council is not aware of any substance to any of these allegations and informed the Commissioner that the site has been subject to all required inspections and regulations required for buildings of its kind. Additionally, the complainant's complaints have been investigated by the council solicitor who has advised him, on more than one occasion, that the school does not operate in a 'legal void' as suggested.
17. The council said that although the majority of the complainant's requests suggest a genuine interest and/or concern with the council's compliance with various building regulations, his refusal to accept that the buildings in questions have been built to an acceptable standard, despite being presented with evidence to this effect, demonstrates that responding to these request serves little or no legitimate purpose and that they are possibly obsessive in nature.

18. The council informed the complainant that any concerns in relation to the safety of the building or the legality of its construction and maintenance should be directed through the correct investigatory channels. It said that;

"The pattern of requests and comments made by you seem to suggest that you are attempting to uncover illegality in relation to various sites in the Stockport area and/or that you are attempting to conduct some investigation into these perceived issues.

Whatever your qualifications and/or past professional experience may be, you are not responsible for investigating building regulations in relation to Stockport buildings and there would be little purpose or value in providing you with any further information on these issues.

Should the correct investigatory bodies wish to investigate these issues clearly this information would be provided to them at the appropriate time."

The council informed the Commissioner that it is not aware that the complainant has attempted to raise any of his concerns to the correct investigatory bodies for investigation.

19. The council explained to the Commissioner that engaging in a lengthy series of requests for information under the FOI/EIR as the complainant has done suggests that the requests may not be based in any genuine interest and/or concerns about the safety of the site. The council believes that the complainant may be attempting to undertake his own investigation into these issues which is a manifestly unjustified, inappropriate and an improper use of the FOIA.
20. The council also questioned the serious purpose of the recent requests, including the one in this case, because it has engaged with the complainant on these issues for several years and he has been provided with a vast amount of information over this time which demonstrates beyond reasonable doubt that the buildings he is querying have been built and maintained in full compliance with all relevant regulations. The complainant however, refuses to accept the council's responses to very basic questions, such as whether the school or football changing facilities have ever been built at all, which the council believes supports its argument that the requests for information are not based out of genuine concern but are vexatious in nature. It stated that it has now reached a point where there is no further relevant information to provide to the complainant and that previous dealings with him on these matters clearly evidences that any information provided to him on these issues in future is likely to simply fuel a possibly obsessive series of correspondence which would serve little/no purpose or value but would

create a disproportionate amount of work for the council and its subsidiaries to respond to.

Conclusion on section 14(1)

21. The Commissioner has considered both the council's arguments and evidence and the complainant's position. The council has stated that when making this decision it has studied relevant case law, particularly the Dransfield Upper Tribunal case referenced in paragraph seven of this decision notice. Taking into consideration the findings of that Upper Tribunal in Dransfield, that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the council was correct to find the request vexatious. He has balanced the purpose and value of the request against the detrimental effect on the council, taking into account the fact that numerous related requests for information have been responded to and information has already been provided, and is satisfied that compliance would prolong correspondence and constitute an unfair burden on the council in a manner which would be disproportionate to the value. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Blanket ban

22. The council has confirmed that it has not issued the complainant with a blanket ban on requesting information and believes this is evidenced by the fact that it responded to an information request from him, unrelated to building matters, as recently as August 2013. The Commissioner's view is that each request should be considered on an individual basis and that, as stated above, the council was entitled in this case, to rely on section 14(1).

Other matters

23. The complainant has expressed his concern that by not being prepared to review its vexatious decision in this case, the council is in violation of the FOIA.
24. The Commissioner does not consider that the council has breached the FOIA in not reviewing its decision as there is no statutory requirement to conduct an internal review, rather it is a matter of good practice as stipulated in the section 45 Code of Practice³.

³ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

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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