

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2014

Public Authority: East Sussex County Council
Address: County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1SW

Decision (including any steps ordered)

1. The complainant has made requests for information relating to the council's actions as regards the care provided to his wife. The council refused to respond to the request on the basis that section 17(6) applied – that previous similar requests had been received from the complainant which the council decided were vexatious.
2. The Commissioner's decision is that the council has correctly applied section 17(6) to the requests.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 4 September 2013 the complainant wrote to East Sussex County Council and requested information in the following terms:

"Please advise, by copy document if available, the authority ESSC relied upon to provide my Wife's sensitive personal data (namely TMary Sheets') to the Court of Protection and all other parties to Case No [case number redacted].

Please advise, by copy document if available, the authority ESSC relied upon to provide my Wife's sensitive personal data (namely a financial Assessment' - as per [name redacted] letter of 31st May 2012 - ref

LA/LT480/RG/M B) to the Court of Protection and all other parties to Case No [case number redacted].

Please advise, by copy document if available, the authorities ESSC relied upon to refuse to provide the same sensitive personal data to myself at times when I held her Lasting Power of Attorney and she was formally assessed by Clinical Experts as without competence."

5. On 12 September 2013 the complainant also made a request under the Act for:

A. I note that you state "As you did not wish to provide all the information required, we are unable to fully complete the financial assessment for [name redacted]" (by whom I believe you mean my Wife, [name redacted])

Please therefore provide documentary copies demonstrating:

- 1. the precise nature of "all the information required"*
- 2. the authority you rely upon for your "requirement"*
- 3. any other authority that makes reference to the provision of the subject of your "requirement" (in this I consider particularly, but not exclusively, the NHS Council Accommodation Regulation Guidelines)*

B. Although I note you state "Our legal team has confirmed [name redacted] is a joint owner of [address redacted], therefore this will be considered as a capital asset within the financial assessment, you do not state the value of the 'capital asset' although clearly you consider it to be in excess of £ 23,250?"

Please therefore provide documentary copies demonstrating:

- 1. the actual value you have ascribed to this "capital asset"*
- 2. the authority you rely upon for the determination of this actual value*
- 3. any authority that states the manner in which an asset as described (joint ownership of a property) is valued (in this I consider particularly, but not exclusively, the NHS Council Accommodation Regulation Guidelines)*

C You further state "Based on the information provided, as [name redacted] capital assets are in excess of the capital threshold of £23,250 she will be required to pay the full cost towards her care"

Please therefore provide documentary copies demonstrating:

1. *That my Wife's "capital assets are in excess of the capital threshold of £23,250"*
2. *All authorities that you rely upon to specifically warrant your statement that my Wife "will be required to pay the full cost towards her care"*

D Given your statement that "You will be invoiced by East Sussex County Council for the full cost of [name redacted] care at [address redacted]."

Please provide documentary copies demonstrating:

1. *That I (i.e. "You will be invoiced by East Sussex County Council") have any liability for such payment.*

6. Further to this, again on 12 September 2013, by separate letter the complainant requested:

"as [name redacted] capital assets are in excess of the capital threshold of £23,250 she will be required to pay the full cost towards her care.

[name redacted] will be self funding from 20 December 2011, the start of her care"

I also now consider it necessary to ask as a formal Freedom of Information Request that you provide the documentary evidence you rely upon to support this.

In this I refer to any agreement or contract entered into by my Wife (or, legally, on her behalf) that demonstrates

1. *the nature, cost and responsibilities the Council are obligated to in respect of such payment of cost*
2. *any agreement to meet such payments by (or on behalf) of my Wife.*
3. *that her obligation to the Council commenced from 20th December 2011*
4. *my Wife's mental competence to have requested or entered into any such agreement or contract*

7. The council responded on 5 September and 16 September 2013 stating that section 17(6) applied. It said that:

"The County Council will not respond to any further requests relating to [name redacted], her ongoing care, the Safeguarding Investigation and the Court of Protection Proceedings or your complaints in respect of

these matters. I remind you that, in accordance with section 17(6) of the FOIA, the County Council shall not be issuing to you any further refusal notices or undertaking any further internal reviews in respect of requests for information relating to the matters set out above

Scope of the case

8. The complainant contacted the Commissioner on 20 September 2013 to complain about the way his request for information had been handled. He considers that the information requested does not relate his wife's ongoing care, the Safeguarding Investigation and the Court of Protection Proceedings or complaints in respect of these matters". He also considers that he has not requested information that has been previously provided. In addition, he said that the information is required for submission in evidence for court proceedings.
9. The Commissioner considers that the complainant's complaint is therefore that the council has refused to provide him with the information which he has requested or to respond to his requests properly as required by section 1 of the Act.
10. The Commissioner notes that the information essentially relates to the complainant's wife. The complainant previously had Lasting power of attorney for his wife however he no longer has this. He does not therefore have legal powers to act on her behalf. His request is therefore essentially that of an individual asking for information about the care and financial details of the care provided to a third party.
11. Having said this, because the third party is his wife and there appears to be some element of joint ownership of property concerned there may be legal rights for the complainant to have access to some of the information he has requested. For instance he may have rights to some information under subject access rights under section 7 of the Data Protection Act 1998. This does not mean however that the complainant has a general right to such information under the FOI Act.
12. When requests are made under the Act the authority (and the Commissioner) must consider the request as if it has been made by any member of the public. The authority cannot take into account any personal legal rights or private interests which the requestor might have when considering responding to the request. The fact that the complainant is the individual's husband, and that he may have a personal interest cannot be taken into account when the council is

considering whether the information which has been requested should be disclosed under the Act.

13. The Commissioner does however accept that at least one of the requests relates in part to the financial details of the care being provided to the complainant's wife, and that this may impact upon his own financial situation. The council may seek to claim part of the property which he part owns in order to pay the costs for his wife's care. The Commissioner does not dispute that this will obviously impact upon the complainant and that he may have legal rights to some information given that impact. In this respect the application of section 17(6) may appear to be harsh in that it fails to take into account the financial impact of the actions of the council upon the complainant. However the personal interests of the complainant are not a consideration under the Act. Private personal interests may be catered for in other rights or legislation, or through the courts, but the authority (and the Commissioner) is not able to take these into account in their decision in this case.
14. Additionally it should be noted that disclosures under the Act are considered to be to the whole world. Essentially therefore if the council were to respond to the complainant providing the information to him in response to his request it would effectively be considered to be publishing this information to the whole world. A disclosure of the information to the whole world would be likely to be unfair for the purposes of the first data protection principle.
15. The majority of the information requested would therefore also be likely to be exempt under the Act under the exemption in section 40(2) and potentially section 40(1) of the Act. It is personal data relating to the complainant's wife, and potentially some of it to him.
16. The Commissioner also notes that it would be likely that a disclosure of the information requested may also breach the individual's right to confidentiality.
17. The council has not claimed any of these exemptions and the Commissioner has not made a decision as to their application. He has highlighted the potential for exemptions to be applicable in the hope that this will provide a further explanation to the complainant as to why his continued requests under the Act are unlikely to provide the information he wishes to receive. In essence the council cannot take into account his personal private interests when making the request, and it must consider whether a disclosure of the information to the entire world would be appropriate, rather than just a disclosure to him personally.

18. Having made this clear, the Commissioner however considers that the council should also bear in mind the impact which the financial aspects of this case may have on the complainant. It should therefore consider whether the complainant has any legal rights to information under other legislation, and should inform the complainant if that is the case. The fact that a complainant has previously had a request declared to be vexatious under the FOI Act does not prevent him obtaining information by other legal means where he has a right to do so.

Reasons for decision

19. Section 17(6) of the Act states that

"Subsection (5) does not apply 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."

20. Subsection 5 requires 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."

21. The council's response to the complainant was that it refused to respond to the request given that it had previously found the complainant vexatious over requests made over the same issues and had previously warned him that it would not respond to requests about the same issues.
22. The complainant had previously made a number of complaints to the Commissioner in respect of issues he has with the council regarding the care provided to his wife and details of who is entitled to take responsibility for her. In decision notices FS5046985 and FS50466468, available at http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs_50466468.ashx the Commissioner has agreed with the council's application

of section 14 as regards 2 separate requests which he had made over similar issues. The reasons for his decision are provided within the decision notice.

23. The reasons outlined in the above decision notice provide a very substantial argument that the complainant is seeking to have his issues with the authority reopened and to continue his questioning of the council as regards the issues he has with the council concerning his wife.
24. The Commissioner's approach to considering vexatious requests has changed somewhat following a decision by the Upper Tribunal in *The Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC)*. This is available at <http://www.ossccsc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>.
25. Nevertheless the Commissioner notes that many of the factors identified by the Tribunal are equally applicable in this case. He considers that the decision would have been no different using the Tribunal's new approach, and that the reasons outlined within the decision notice remain relevant.
26. The Commissioner has therefore taken the arguments provided in that decision notice into account when considering the application of section 17(6) by the council in this instance. He has also taken into account the context of the current requests made by the complainant. In essence these are that the council is making a financial claim against property he part owns with his wife, and that he is seeking evidence (which he says he has already seen) relating to a complaint he made about the care being provided to his wife.
27. The Commissioner has outlined the reasons why the complainant's continued requests and correspondence was vexatious in the above decision notice. However the complainant has sought to continue with his approaches to the council over the same issues and for the same reasons. Whilst the complainant argues that the information requested is not the same as information which he has requested previously the issues surrounding the requests are the same. That he is unhappy with the care provided to his wife, and the issues surrounding this.
28. The council is providing care to the individual and as part of that process is now seeking payment in respect of that care. The complainant's request still relate to the provision of care and legal issues and rights surrounding the provision of care.
29. The Commissioner can say that the Act is not particularly an appropriate tool to seek detailed information on the care being provided to a third

party. The Commissioner recognises that the complainant may have legal rights to some information where the provision of the above impacts upon him personally, however those personal rights are not catered for under the FOI Act.

30. Where a complainant continues to make requests of a vexatious nature section 17(6) provides that the council is no longer under a duty to respond explaining its reasons for refusing the request where it would be unreasonable to expect it to do so. To do so would allow a complainant to continue to create a significant burden on an authority, undermining in part the reason for section 14 in the first instance.
31. From his previous requests to the council the complainant will be fully aware of his rights under The Data Protection Act 1998, and will be aware that as part of the court procedures some information may be available through the rules of disclosure. Other legislation may also be applicable.
32. The Commissioner considers that it would be unreasonable to expect the council to continue to provide detailed explanations for concluding that further requests by the complainant over the same or similar issues are vexatious in this instance. The council has provided substantial arguments to the complainant previously which fully explained its reasons for declaring the requests vexatious, and the Commissioner has considered and accepted the validity of those arguments.
33. Whilst the complainant's rights as regards information which clearly will impact upon him give his request greater value and purpose these, are dealt with under other legislation and other rights. The information sought would be inappropriate to disclose to the world via a response under the FOI Act. The majority of the arguments considered in previous decision notice would be equally applicable to the requests in this instance.
34. The Commissioner therefore considers that the council was correct to apply section 17(6) in this instance.

Right of appeal

35. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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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