Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **13 August 2014**

Public Authority: **Chelmsford City Council**
Address: **Civic Centre**
Duke Street
Chelmsford
CM1 1JE

Decision (including any steps ordered)

1. The complainant requested Chelmsford City Council's ('the Council') Management Team meeting minutes.

2. The Council refused to provide the requested information relying on section 14(1) of the FOIA.

3. The Commissioner's decision is that the Council has correctly applied section 14(1) of the FOIA.

4. The Commissioner does not require the Council to take any steps.

Background

5. The request in this case flows from the complainant's earlier request for a copy of a report commissioned by the Council. The Royal Society for the Prevention of Accidents ('RoSPA') was commissioned to test, evaluate and improve the use of Public Rescue Equipment (more commonly known as life rings/buoys) to ensure appropriate levels of safety along the rivers within the borough and at specific locations. The

Management Team meeting referred to in the request detailed in this Notice is a meeting at which the RoSPA report had been considered. The Council confirmed this to the complainant in January 2011 and provided a copy of the report on 3 February 2011. On 26 March 2013 the complainant requested information on the Management Team meeting of January 2011, clarified as 26 January 2011. The Council refused the request under section 14(1) of the FOIA.

Request and response

6. On 13 October 2013 the complainant wrote to the Council and requested information as follows:

   "Could I have the full details of the "management team" meeting on January 26th 2011 please. I have been informed that this should be available under Publication Scheme requirements.

   There are meetings under different headings but not the management team meetings which were held once a month at that time."

7. The Council wrote to the complainant on 8 November 2013 refusing the request as it was considered to be vexatious.

8. The Council provided an internal review on 14 January 2014 maintaining its reliance on section 14(1).

Scope of the Case

9. The complainant wrote to the Commissioner on 18 February 2014 to complain about the Council's handling of his request. He advised the Commissioner that he has a "council registration as vexatious" which has been on-going for several years. The complainant considers that the Council was influenced by this registration in its response to his request in this case.

10. The Commissioner considers the scope of this case to be whether the Council was correct to refuse the request under section 14 of the FOIA

Reasons for decision

11. Section 14(1) states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious

12. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the recent case *of The Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011)* and concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of a formal procedure."

13. The Dransfield case identified four factors that are likely to be present in vexatious requests:

    - the burden imposed by the request (on the public authority and its staff)
    - the motive of the requester
    - harassment or distress caused to staff
    - the value or serious purpose of the request

14. The Upper Tribunal decision referenced above established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious. The Commissioner considers that the key question to ask in consideration of whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear the Commissioner considers that a public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will inevitably need to take into account the wider factors such as the background and history of the request.

15. The Council and the complainant have described in detail the background and history to the request, which dates back to August 2010.

Disproportionate or unjustified level of disruption, irritation or distress.

16. The Council has explained to the Commissioner that it considers that the request is vexatious when considering the history of its dealings with the complainant. The Council has estimated that it receives approximately 40 contacts from the complainant each month. These 'contacts' are not

all FOIA requests but comprise correspondence on various topics concerning the Council's maintenance of parks. The Council has taken into account the disproportionate effort in dealing with this correspondence and has registered the complainant as a 'vexatious and persistent complainant'. This status has been reviewed and reinstated each year since 2011. This status does not inhibit the Council from responding to FOIA requests.

17. The Council considers that the effort expended in responding to the complainant is disproportionate in the allocation of the Council's resources in staff time and costs. The Council considers that these resources could be more effectively used in service delivery.

18. The Council has undertaken a costing exercise to evaluate the complainant's impact on its resources. This estimated cost is £216,745 over the last 5 years. The Council provided the Commissioner with a copy of the sampling exercise undertaken which included the estimated hours spent by various staff officers in handling contacts with the complainant. Although the Commissioner considers the estimate to be somewhat generous it nevertheless indicates the significant impact and disproportionate cost to the Council.

19. The Commissioner notes that the Council has referred to the complainant's aggressive behaviour in approaching Council officers in the field. It explained that Parks Services' officers have been verbally abused and obstructed from completing their work with the result that the Council has considered sending Parks Officers to work in pairs rather than alone. The Council has also explained that individual officers have been tracked on social media websites with the complainant subsequently commenting inappropriately.

20. The Commissioner found that the resources needed to comply with the complainant's requests and communications would create a significant burden for the Council which impacted on its ability to deal with other business. He did not find the tone of the complainant's requests to be abusive or aggressive. However, although the Commissioner has not witnessed any menacing behaviour, he considers that the volume of contacts alone could create irritation and distress to those officers involved.

Unreasonable persistence

21. The Council illustrated the frequent and overlapping nature of the complainant's requests citing the example of October 2013, the month

in which he made the request set out in paragraph 6. In this month the complainant's 39 other contacts referred to various topics but centred around the safety of parks and included further reference to the Management Team minutes of 26 January 2011. The Council explained that of the 40 contacts 12 information requests related to tree maintenance in parks.

22. The 'vexatious complainant' status restricted the complainant to the use of one email address plus the FOIA/EIR request email address. Despite this the complainant continued to use multiple channels to contact the Council including contacting the Chief Executive by email and telephone.

23. The Commissioner acknowledges that the complainant considers that his concerns are of the utmost importance. His zeal in pursuing matters of safety in public parks is manifest. However, although the Commissioner accepts that his intentions may be public spirited, the consequence of his persistence is a public authority compromising its service delivery to deal with one individual.

Purpose and value of the request

24. The Council explained that it takes its responsibilities in the management and safety of its rivers and parks very seriously, evidenced by the commissioning of the RoSPA report. It therefore considers that the complainant's concerns are already being addressed.

25. The complainant has explained to the Commissioner that he has great concerns about how the Council had conducted itself over several years in response to his correspondence, answering his questions and why it had not taken the actions he considered to be important for the safety of individuals using the local parks and rivers. As previously stated, the Commissioner is aware how earnest the complainant is in pursuing these concerns. However, he is also aware of the impact of the complainant's concerns on the Council's finite resources.

26. The Commissioner accepts that the complainant's requests in general have a serious purpose and notes that complying with the specific request in this case would not represent a significant burden on the Council.

27. However, the Council explained to the Commissioner that the minutes requested record decisions on topics which the complainant has previously raised extensively. It went on to explain that it considered that there was no 'further information' to assist the complainant held in

the minutes, as he was already in possession of the RoSPA report and further information regarding the actions to be implemented as part of the report's recommendations in response to a request from the complainant on 2 February 2011. The Council explained in its response that "the provision of throw lines to lifebelts was not considered to be feasible or practical in providing an effective and reliable solution". The Council also explained that the suggested adaptation would not be implemented. At that time the Council also suggested meeting with the complainant in West and Admirals Park to explain and demonstrate the proposed changes. The complainant did not respond to the Council's suggestion.

28. The Council also explained to the Commissioner that the RoSPA report went through a significant process of consultation, with the 'River Users Group' being the key consultation group. The recommendations were agreed and communicated both through the report and to the User Group. The User Focus Group is still active in the discussions around the management and maintenance of rivers within Chelmsford and has the opportunity to raise any concerns. The Council informed the Commissioner that no concerns with regards to the RoSPA report have been raised by the Group.

29. The Commissioner would point out that the complainant is under no obligation to explain why he is making a request for information. However, the Council has previously addressed the issues of concern to the complainant in the RoSPA report and his request for the minutes of the Management Team meeting where the RoSPA report was considered by the Council to revisit matters already addressed.

Conclusion

30. It is clear to the Commissioner that the complainant is not satisfied with the Council and how it conducts itself. He understands that the complainant has his reasons for pursuing the Council, which appear to be altruistic. However, the Commissioner recognises that if the Council responded to the request in this case the complainant is unlikely to be satisfied and would more than likely continue to make further requests about the city parks. This would lead to the continuation of the burden already placed on the Council which is impacting on its service delivery.

31. After considering the arguments put forward by both the complainant and the Council, together with the context in which the request was made the Commissioner's decision is that the request is vexatious.

Consequently the Commissioner is satisfied that the Council has correctly relied on section 14(1).

Other matters

32. The Council has stated that it holds the "full minutes of the management team meeting held on 26 January 2011". The complainant has explained that the minutes of Management Team meetings are not available on the Council's website and he considers that they should appear alongside the other meeting minutes as part of the Council's Publication Scheme.

33. The Commissioner notes that under section four of the Council's Publication Scheme "How we make decisions", monthly calendars indicate the meetings held from January 2012 to the present day. The Commissioner questioned the Council regarding the absence of the Management Team meetings. The Council explained that all major policy decisions are made by elected Councillors at Committee Meetings. The outcome of these meetings is then delegated to its senior members of staff for the day-to-day running of the Council. Recommendations formed at Management Team meetings are passed to Committee Meetings for approval. The decisions made at the Committee Meetings with the minutes taken are subsequently published on the Council's website.

34. The Council does not proactively publish Management Team meeting minutes or other internal meeting minutes. The Council explained that it considers that the Management Team meetings provide an opportunity for free and frank exchange of views and debate which could be inhibited if minutes of these meetings were routinely published. As there is no statutory requirement for public authorities to publish all forms of meetings' minutes, this is a decision for the Council. The Commissioner accepts that this practice is in line with his guidance.

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 .....

Alexander Ganotis
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