

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2014

Public Authority: Herefordshire Council
Address: Brockington
35 Hafod Road
Hereford
HR1 1SH

Decision (including any steps ordered)

1. The complainant has requested information about a complaint made in relation to land that he part owns. Herefordshire Council (the council) refused to provide the requested information relying on section 14(1) of the FOIA, as it deemed the request to be vexatious. The complainant complained to the Commissioner as he is not satisfied with the council refusing his request.
2. The Commissioner's decision is that the council has correctly relied on section 14(1) of the FOIA to refuse this request
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 24 January 2014, the complainant wrote to the council and requested information in the following terms:

"...I own part of the land at [name redacted] I am now aware of a complaint which was made regarding [name redacted] on part of the land I therefore request under an FOI a copy of that complaint i [sic] appreciate i [sic] am unable to see the names but the names can be blocked out."

5. The council acknowledged receipt of the request on the 27 January 2014 and provided its response of the 21 February 2014. It refused to provide the information, relying on section 14 of the FOIA, vexatious and/or repeated request).
6. The complainant requested an internal review on 5 February 2014. The council provided its decision to the internal review on the 27 March 2014, maintaining its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 31 March 2014 to complain that the council had refused his request.
8. The council has confirmed to the Commissioner that it is relying on section 14(1) of the FOIA to refuse the request.
9. The Commissioner considers that the scope of the case is to determine whether the council was correct to rely on section 14(1) of the FOIA to refuse to provide the information requested.

Reasons for decision

Section 14(1) of the FOIA – Vexatious requests

10. 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.
11. The term “vexatious” is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*.¹ The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the

¹ GIA/3037/2011

request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

13. 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.
14. The council has provided the Commissioner with its reasons as to why it has relied on section 14(1) of the FOIA to refuse this request.
15. The council has advised the Commissioner that it refused the request as it appears that the complainant is acting in concert with another party.
16. The council has explained to the Commissioner that [name redacted] has made numerous requests for information to the council since 2012 on the subject of the [company name redacted] property. The council therefore judged it was reasonable to assume that the complainant was acting in concert based on the following:
 - [name redacted] requests have sometimes mentioned the complainant.
 - The same email address is used by the complainant and [name redacted], so would be able to view past email history.
 - The complainant and [name redacted] use the same property address and are likely to speak to each other on matters concerning the property which the requests are in relation to.
 - The requests made by the complainant are very similar in content and wording to those made by [name redacted].

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

- A pattern of behaviour is emerging whereby it appears that once [name redacted] has exhausted routes to obtain information, the complainant then begins to request the information.
17. The council submit that on this basis it would appear too coincidental for the complainant to be unaware of [name redacted] requests and not acting in concert with that person. It also states that the complainant will continue to follow this same pattern in exhausting the request process.
 18. In the Commissioner's published guidance on vexatious requests it deals with campaigns, or in this case, acting in concert. Paragraph 90 of the guidance states "*examples of the types of evidence an authority might cite in support of its case are:*
 - *The requests are identical or similar.*
 - *They have received email correspondence in which other requesters have been copied in or mentioned.*"
 19. The Commissioner points out that these are examples and will consider other evidence provided by public authorities in determining if requestors are acting in concert with one another.
 20. The council states that given the time that it has had to spend on all of the previous requests made by [name redacted], this pattern of behaviour is having a detrimental impact on its resources in complying with requests and that the pattern demonstrates that the complainant will continue to make requests on the back of [name redacted] requests, diverting its resources to deal with other people's requests for information promptly.
 21. The council has provided the Commissioner with a timeline of the contact it has received from [name redacted] and the complainant with regards to the property that this request is also in relation to.
 22. The Commissioner has viewed the timeline provided by the council, which spans from 4 April 2012 to 1 April 2014. The timeline consists of approximately 27 different information requests from April 2012 to December 2012, 7 further information requests in 2013, along with internal reviews being carried out throughout, and a case being escalated to the Commissioner from [name redacted]. Then on the 24 January 2014 the complainant made this request. The Commissioner sees that a considerable amount of time and resources would have been required by the council to deal with this correspondence.
 23. The Commissioner notes that the vast majority of this contact has come from [name redacted] rather than the complainant. However, if it is

determined that they are acting in concert, then the Commissioner considers that the contact, no matter who made it, would be considered as a whole in determining the detrimental impact being placed on the council.

24. The council point out that this request has already been dealt with by the Commissioner under reference FS50487648 as a result from a request by [name redacted] who the council consider the complainant is working in concert with. To re-run this process would have no further value and be of little benefit to the wider public as the request concerns a personal matter.
25. The council states that in its internal review dated 27th March 2014, the complainant was advised, other than it being vexatious, that a response had been given previously to [name redacted] and the position has not changed:

"The Council's position regarding the release of the information concerned has not changed since response to the other requester in August 2013.

The Council originally considered that releasing any part of the complaint could lead to the identity of the complainant being revealed. Following a review by the Information Commissioner (Ref: FS50487648), the Council changed its' view and conceded that revealing the date and time of the complaint would not lead to the identity of the complainant being revealed."

However, providing a redacted copy of the complaint would enable you to derive the means by which the complaint was made. This could in turn allow you to identify who made the complaint. Also, information given in the complaint itself could identify the complainant, so to disclose the complaint with just the name and address redacted could result in a breach of the Data Protection Act by revealing other information that would establish the identity of the complainant."

26. The council has told the Commissioner that this pattern of behaviour, of when a request is refused, to ask for a review and complain to the Commissioner, whilst is the right of the requester, to then repeat this process again for the same request would not represent good use of officer time or public money and is rather an abuse of the system. The council considers that to not deem this request vexatious would send a message that if a request is refused and upheld by the Commissioner, they need only ask another person to make the request again to get it re-examined.

27. The Commissioner is of the view that if this is the case, then it would be, to a large extent, an abuse of the use of the FOIA creating an unnecessary and unjustifiable detrimental burden on the council's resources and time in having to respond to the same request again, especially when there is an established route of appeal through the information tribunal. The Commissioner notes that the request made by [name redacted] under ref FS50487648 – which is the similar request to this case - was not disputed to the information tribunal.
28. The council, on considering the history and pattern of requests on the subject of the property, and the likelihood that this pattern of requesting will continue on similarly refused requests, considers that the impact on it is unjustified and disproportionate when viewed in context.
29. The council concludes that this request raises repeat issues which have been fully considered by the council, ignores the independent findings of the Commissioner, and is pursuing a highly personalised matter which has very little benefit to the public, and therefore wasting resources that could be better utilised on other requests which have more public value.
30. The complainant has told the Commissioner that [name redacted], who the council has told him has made this request, has not passed it on to him. He has stated that they live separate lives at separate addresses.
31. The complainant has explained to the Commissioner that his daughter does all of his paperwork, and also all of [name redacted]'s paperwork as she is employed by both of them at two separate locations and uses her own email address with regards to both parties.
32. The complainant states that he has no contact with [name redacted] but they both own part of the land in relation to this request and he has made this request as an individual who has not made a request for this information in the past and he would not be able to force [name redacted] to hand over any documents she may have received from the council and therefore states that his request is not vexatious.
33. The Commissioner notes, from viewing the timeline provided by the council, that the complainant has made a previous request that is similar to another of [name redacted] on the 7 December 2012. These requests wanted to know whether two council employees were related to one another. [Name redacted] request was escalated to the Commissioner to consider under ref FS50487647.
34. The Commissioner considers that this other similar request adds support to the council's conclusions of the two acting in concert with one another.

35. It does appear, to the Commissioner, that the requests are in relation to a personal topic and that for very similar worded requests to have been made, it seems more probable that the complainant and [name redacted] are acting in concert with one another, and he therefore accepts the council's conclusions on this.
36. The Commissioner considers that the value to any public interest is minimal if any, as it appears to be in relation to ongoing personal matters that have little, if any, benefit to the wider public.
37. The public interest is more about how much time and resources have had to be used by the council in having to continue to respond to these personally motivated requests and it seems likely, on viewing the history, further requests of a similar theme will be made no matter the response from this request.
38. On considering all of the above, the Commissioner is satisfied with the council's reasons as to why it considers this request to be vexatious, demonstrating the disproportionate and unjustified pursuit of a personal matter, and therefore considers that the council was correct to rely on section 14 of the FOIA to refuse to provide a response.
39. As the Commissioner considers the council has correctly relied on section 14 of the FOIA in this case, he does not require the council to take any steps.

Right of appeal

40. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

41. 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.
42. 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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