

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2014

Public Authority: Knowsley Metropolitan Borough Council

Address: PO Box 24
Archway Road
Huyton
Liverpool
Merseyside
L36 9YZ

Decision (including any steps ordered)

1. The complainant has requested information relating to the appointment of an employee of the council in 2004 which he considers was potentially improper. The council refused the request on the grounds that it was vexatious under section 14 of the Act.
2. The Commissioner's decision is that the council has correctly applied section 14(1) of the Act.
3. The Commissioner does not require the authority to take any steps.

Request and response

4. On 28 January 2014 the complainant wrote to the council and requested information in the following terms:

"Please provide a copy of the application form and New Deal Action Plan referred to in the Whistleblowing Report you have released under enquiry reference F2013.08.2029.

There is a clear public interest in providing these documents so that readers of the report will be able to confirm that the Whistleblowing Panel's assessment of them was correct.

I appreciate you will have to redact names and personal information as appropriate under the Data Protection Act."

5. The council responded on 13 February 2014. It stated that due to previous correspondence with the complainant over the issue it had applied section 14 to his request (Vexatious).
6. Following an internal review the council wrote to the complainant on 13 March 2014. It upheld its earlier decision to apply section 14.

Scope of the case

7. The complainant contacted the Commissioner 11 April 2014 to complain about the way his request for information had been handled.
8. The Commissioner considers that the complaint is that the council has applied section 14 to the request.
9. Subsequent to the refusal a redacted copy of the New Deal Action Plan was disclosed to the complainant following him writing to the council providing confirmation from the Department of Work and Pensions that they had no objection to the disclosure of the redacted document. The council however reiterated that it continued to consider that the request was vexatious and that section 14 is therefore applicable.

Reasons for decision

Section 14 – 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. There is no public interest test.
11. The term vexatious is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield UKUT 440 (AAC)*, (28 January 2013) 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.' The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
12. 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 requests. 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.
13. The Commissioner's guidance suggests that the key question the public authority must ask itself 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 of the request upon it and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
14. The councils central argument is that complainant has made a number requests over this issue following the initial complaint which he made about the issue in 2012 which it considers was fully investigated.
15. The complainant used to work for the authority and states that he was forced to take early retirement when he raised his allegations with his direct management at that time. The allegation is that a number of years ago a job was created to provide employment to a relative of the chief executive under the 'New Deal Agreement' program run by the Department of Work and Pensions. The individual was provided with a

place under the program however the complainant alleges that the individual did not meet the criteria to qualify for this and did not apply at the right time.

16. An investigation was carried out by the council into the allegations in 2012. It found no evidence which corroborated the allegations. The 'whistleblower report' also said that it had found no evidence that the complainant had been coerced into taking early retirement by his managers. It found that there was no record of him bringing up his allegations regarding the issue at the time and that the evidence suggested that he had taken early retirement willingly.
17. A copy of the whistleblowing report was provided to the complainant in response to the complaint when it reported in 2012, and other correspondence took place between the complainant and the council at that time. Further information was provided in response to requests for information from the complainant in 2013 via the whatdotheyknow website.
18. The complainant argues that he has found a number of irregularities within the appointment. He says that these were not identified by the council's investigation, or reported in the whistleblowing report, but says that they have all have been exposed through queries and requests for information that he subsequently raised. He says therefore that it is wrong of the Council to claim that this request is vexatious. He argues that once the Council realised that his previous requests have revealed damning information in the form of the copy of the job offer letter, it refused to respond to any more queries. He believes this is because, the Council realised that by doing so, it would be providing more and more evidence that proves the appointment was improper.
19. It is clear that the complainant is pursuing the actions of those he considers acted improperly by creating a role for the individual. In effect however the continual raising of this issue and the publication of the responses on the whatdotheyknow website had led to a significant amount of personal information relating to the individual being published on the council website. The Commissioner notes that the information which has been disclosed has been redacted however the identity of the individual is not difficult to establish and the complainant is clearly already aware of his identity. The disclosure of the information therefore places a significant degree of private information about the individual into the public domain which would normally have been likely to have been protected under the requirements of the Data Protection Act 1998.
20. The continued raising of the allegations via the whatdotheyknow website has led to the allegations being published, and the council says that it has had to take steps to ensure that some of the information published

was removed from the site to protect the individuals concerned. The council has also had to deal with a number of similar requests from other people via the website. It says that at one point it offered to meet with the individuals to discuss their concerns however nobody took this offer up.

21. The Commissioner has no doubts that the individual officer concerned would feel harassed and pursued by the complainant following the complainant's allegations that he obtained his post through improper means. He is also likely to be distressed that the allegations have been publicly made about him and information published on the whatdotheyknow website.
22. The council considers that it has fully investigated the complaint and has found no evidence of the allegations which the complainant made. It therefore considers that the continued requests are trying to reopen a matter which it considers fully investigated and complete. It has directed the complainant to take his concerns to the police and the Local Government Ombudsman on the basis that his allegations amount to claims of corruption in public office by the Chief Executive and other senior managers at the council.
23. Despite the complainant's arguments there is little value or purpose in allowing the complainant to continue to try to prove his case through this request. The Commissioner notes that his allegations could have been taken to the police or the Local Government Ombudsman who could have thoroughly investigated the case. This would be the appropriate way forward for him have his allegations investigated.
24. The council sent examples of previous correspondence between the complainant and the council to support its claims. The Commissioner notes that the complainant's continued persistence in asking questions over the issue, raising what he considers to be new and significant evidence (which the council disputes), and the continuance of the allegations he has made would have led to the Deputy Chief Executive also being harassed. It would also have caused significant irritation to council officers who dealt with his requests. When the council has provided information to the complainant it has resulted in further correspondence and further allegations being made of a 'cover up'.
25. Additionally the council argues that the time it has spent dealing with the complainant's previous requests over this issue has already significantly exceeded the appropriate limit under section 12 of the Act. This provides that local authorities can refuse a request if it requires work over £450 (at £25 per hour) or 18 hours responding to the request.

26. The Commissioner considers that when taken as a whole, the complainant's allegations, requests, correspondence and publication of these, which have in turn led to other third party requests, has caused the council a significant degree of disruption at senior management level. Whilst the council initially investigated the complaint and has provided information to the complainant in response to his requests it is clear that he does not accept the conclusions of the report, and that he will not stop making further requests for information to try to prove his allegations unless the council agrees he is correct. The council however considers that it has fully investigated the complaint and is satisfied that there are no grounds to support the allegations or to take further action. It seems clear to the Commissioner that if the council responded to this particular request this would not end the matter for the complainant; further requests for information would then be made.
27. It is not the Commissioner's role to investigate the wider issues in this case. Whilst the complainant does not believe that the council's investigations have been thorough or appropriate the Commissioner must simply take into account the above factors and the background to this case and make a decision as to whether the application of section 14 was correct or not. The complainant has provided the Commissioner with his evidence which, he suggests, proves that the employment of the individual was improper. It is not however the Commissioner's role to consider this.
28. Even if the complainant's allegations are true the correct authorities to investigate this further are the police of the Local Government Ombudsman. The complainant has been provided with details of these and has been told that these may be able to take his allegations forward. The Commissioner has seen no evidence that the complainant has taken his allegations or evidence to them.
29. The Commissioner also notes that the complainant waited a number of years before putting his allegations to the council. He alleges that he was made to take early retirement after first making his allegations in 2008, but the complaint which led to the whistleblowing report was not then made until 2012. The initial employment of the individual under the New Deal agreement occurred in 2004.
30. The council has provided the complainant with a significant amount of information, has carried out a review of the allegations and has answered questions about both of these to the complainant when asked to do so. The review which was carried out in response to the complaint was carried out by an independent person and found no evidence to support the complainant's allegations. It has admitted that it did find some discrepancies in relevant the dates for the application letter and the job offer but said that it holds no further information which could

shed light on that. The complainant has in turn raised issues with the findings of the report.

31. The Commissioner notes that in response to some of the previous requests the council clarified that it no longer held some information (relating to how the council became involved with the New Deal Program in the first instance). The council simply said that this is unsurprising given that this information would have been created 10 years ago. The complainant has not made a complaint about this and this case does not require the Commissioner to consider it further given that his investigation relates simply to whether section 14 was correctly applied to this request or not. However the failure to provide the information to the complainant does provide some background as to why he may have continued to request information. The lack of information would have added to his suspicions.
32. After considering the evidence however the Commissioner's decision is that the council has correctly applied section 14 to the complainant's request.

Right of appeal

33. 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

34. 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.
35. 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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