

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2014

Public Authority: Wealden District Council

Address: Vicarage Lane
Hailsham
East Sussex
BN27 2AX

Decision (including any steps ordered)

1. The complainant has requested information relating to the sheltered housing cyclical repairs programme.
2. The Commissioner's decision is that Wealden District Council (WDC) has incorrectly applied section 14(1) to the request.
3. The Commissioner requires WDC to either provide the requested information, or issue a fresh refusal notice without relying on section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 29 March 2014, the complainant wrote to WDC making a request for information. Full details of the request are in an annex at the end of this decision notice.
6. WDC responded on 2 April 2014. It refused to provide the requested information and stated that the correspondence fell within the limitations imposed by WDC's vexatious complainants' policy.

7. Following correspondence from the Commissioner, WDC provided an internal review on 6 June 2014. It maintained its original position.
8. The Commissioner wrote to WDC and advised that the refusal notice was insufficient and provided further advice. WDC then issued a further response on 24 June 2014 confirming its reliance on section 14(1) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 28 April 2014 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if WDC has correctly applied section 14(1) to the request.

Reasons for decision

11. Section 14(1) 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.
12. The term "vexatious" is not defined in the FOIA. 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. In short they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
13. 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.
14. The Commissioner's guidance suggests that, if a request is not patently vexatious, 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. In doing this 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.

The Council's position

15. WDC explained that the complainant is a shared ownership leaseholder in sheltered accommodation for the elderly. In 2010 the complainant began to make enquiries about service charges and costs charged on his property by the council.
16. The number of e-mails on these and other matters reached a point where, in order to reduce the burden on staff, in February 2011 he was asked to direct all enquiries to the PA of the Head of Housing.
17. The level of correspondence eventually led to the complainant being given the status of a vexatious and persistent complainant in 2011. This status was applied in accordance with WDC's policies on such matters and is normally subject to a 6 monthly review.
18. The status was removed in December 2011 but, in light of further ongoing repetitious correspondence, re-imposed in April 2013. The status was reviewed in November 2013, the decision being to keep the vexatious status given the level of correspondence from the complainant. A similar decision was made for the same reasons in May 2014 and at that point, in view of the long ongoing situation the status was applied for 12 months. The next review should take place in May 2015.
19. WDC stated that the complainant has made applications to the Local Government Ombudsman, two applications to the Leasehold Valuation Tribunal, numerous complaints and has since made a further application to the Residential Property First Tier Tribunal. The subject matter of the applications to the Tribunals relates to the complainant's ongoing dispute about service charges, and the Local Government Ombudsman application concerned responses to his queries largely on service charge issues.
20. WDC explained that it operates a strict procedure in dealing with correspondence from the complainant. This has been agreed in light of his ongoing vexatious complainant status and he is aware of the procedure. In sum, WDC has imposed a restriction on the amount of staff time devoted to correspondence with the complainant: one hour a month is allotted to this and his enquiries are dealt with in date order.

21. The FOI request currently under dispute was made by the complainant on 29 March 2014. In considering this request WDC was mindful of the following ICO guidance about application of Section 14 of the FOIA:

"Para 56. A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden.

Para 57. The requester's past pattern of behaviour may also be a relevant consideration. For instance, if the authority's experience of dealing with his previous requests suggests that he won't be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority."

22. WDC does not argue that answering the specific request itself would be burdensome. Providing broad answers to the 11 questions themselves would be relatively simple, although some of the figures used are not recognised and therefore a detailed response would pose difficulties. One of the questions (no.10) refers to an individual leaseholder at a specific sheltered scheme. At the time the questions were submitted it would not have been appropriate to divulge that information but that individual is no longer a leaseholder. However, it is WDC's position that the request be considered vexatious in light of its context and history.
23. WDC explained that it has been advising its sheltered shared ownership leaseholders of the major works likely to take place over the next 10 years. The FOI request for information is very closely connected with this. WDC has held a series of meetings at the various schemes from January through to March 2014, including one at Cherry Tree Court on 17 March 2014. The purpose has been to explain what works it thinks are necessary, the potential costs and how we will help those for whom this may cause hardship. The complainant asked many of the questions submitted in the FOI request, albeit not to the same level of detail, at the March meeting and these were answered at that time. The complainant also asked further questions of local councillors at a subsequent meeting at Cherry Tree Court on 15 May in respect of this matter and again answers were given verbally at the meeting.
24. Turning to the past pattern of behaviour, WDC did not consider it was appropriate to provide the Commissioner with copies of all correspondence between it and the complainant as it would require many hours to produce it.

25. WDC further explained that officers have constantly sought to provide the complainant with responses to his queries. There is a pattern of asking questions repeatedly, asking similar questions of different members of staff and a refusal to accept answers given.
26. As supporting evidence WDC provided the Commissioner with;
1. The Council's unreasonably persistent or vexatious complaints policy
 2. Log of correspondence from September 2011
 3. Local Government Ombudsman decision dated 27 September 2011
 4. Letter to complainant dated 30 September 2011
 5. One trail of e-mails dated 12 October 2011 to 19 October 2011
 6. Southern Rent Assessment Committee decision dated 17 January 2013
 7. Leasehold Valuation Tribunal decisions dated 29 April 2013 and 21 May 2013
 8. Letters to complainant dated 10 December 2012, 23 April 2013, 5 November 2013 and 9 May 2014 regarding his vexatious complainant status
 9. Letters from complainant dated 2 January 2014, 5 January 2014 and 16 January 2014 regarding service charges and response dated 28 March 2014.
27. WDC explained that the purpose of the evidence is to:
- give a flavour of the volume and type of communications;
 - demonstrate the efforts WDC has made to try and accommodate the complainant (the Local Government Ombudsman comments and subsequent letter to the complainant 30 September 2011);
 - show the manner in which the complainant chooses to communicate with WDC (Southern Rent Assessment Committee decision paragraph 16; the trail of e-mails, particularly the e-mail sent 12/10/11 at 12:32);
 - indicate the complainant's refusal to accept information and record of continuing arguments (trail of e-mails, dated 13/10/11 and letter contained dated 19 October 2011; Leasehold Valuation Tribunal decision dated 21 May 2013 paragraphs 5, 6 and 7; Leasehold Valuation Tribunal decision dated 29 April 2013 paragraph 7 (xiii), paragraphs 17, 18 and 37);
 - show the demands placed on WDC by the complainant's requests for information (letters dated 2, 5 and 16 January 2014 and the response dated 28 March 2014; this has been followed by an application to the Residential Property First Tier Tribunal and what is anticipated to be lengthy proceedings).

28. WDC emphasised that this was not an exhaustive list of correspondence: it is merely a sample to demonstrate the previous course of dealings characterised by, in its view, a lack of proportionality on the complainant's part.
29. WDC stated that as mentioned above, the amount of information asked for in the FOI request is not sizeable in itself, nor, if it has understood the detailed questions correctly, would it involve a great deal of time in order to comply with the request.
30. However, it considered that the content of the information requested and the identity of the requester meant that, taking into account the context and history of the request, it falls to be considered as vexatious.
31. WDC considered that dealing with the request is likely to cause a disproportionate and unjustified level of disruption, irritation or distress given the language used in previous correspondence, and the likelihood that further information and clarification will be sought.
32. WDC is of the opinion that if it was to respond to the request, the complainant would only use this to make further demands causing distress and increase the already significant burden that has been placed on WDC's resources. WDC consider that the request is an inappropriate, unjustified, and improper use of the statutory right to access information under the FOIA when viewed in the context of the history of previous dealings with the complainant. WDC estimates that it has cost between £30,000 and £40,000 in officer time responding to his requests for information since 2011.
33. In conclusion therefore, WDC considered it was appropriate to refuse to deal with the complainant's FOI request of 29 March 2014 as it falls under the provisions of Section 14(1) of the Freedom of Information Act 2000.

The Commissioner's position

34. It should be stated that the Commissioner advised WDC that it could not refuse a request for information under the FOIA by invoking its own 'vexatious complainant's' policy. Although WDC is entitled to have such a policy, this falls outside of the FOIA as it is designed to deal with complaints **not** FOI requests.
35. Section 1(1) states that:

"Any person making a request for information to a public authority is

entitled –

a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

b) if that is the case, to have that information communicated to him.”

This is the right of access to information which is at the heart of the Act.

36. However, 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”.
37. The term ‘vexatious’ is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield* (the “Dransfield case”), 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).
38. The decision clearly establishes that the concepts of ‘proportionality’ and ‘justification’ are central to any consideration of whether a request is vexatious.
39. 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) harassment or distress of and to staff.
40. 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 dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).
41. 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. He considers there is in effect a balancing exercise to be undertaken,

weighing the evidence of the request's impact on the authority against its purpose and value.

42. When making the assessment, he has also taken into account the context and history of the request, ie the wider circumstances surrounding the request.
43. WDC has provided an extensive chronology of correspondence with the complainant and although not included the specific correspondence it does contain some details of the correspondence.
44. The Commissioner notes that much of this correspondence relates to requests for repairs and maintenance issues, as well as fly-tipping, missed bin collections and shared owners meetings. In addition, there is correspondence relating to inspecting invoices for service charges. However, none of this has been dealt with under the FOIA.
45. The Commissioner acknowledges WDC's position and the time it has taken to try and respond to various correspondence and requests from the complainant.
46. WDC consider that the complainant's language in his correspondence is inappropriate. However, in the Commissioner's view, it is not of such magnitude or severity to make the request a vexatious one. Public authorities, of course, routinely deal with members of the public. Whether through frustration, or some other reason, the language used by a member of the public may sometimes be "challenging" and less than jovial.
47. The Commissioner considers however that those holding a public position should be accustomed to a certain amount of criticism but accepts that there is obviously a boundary of what is or is not acceptable. However, though the language of the complainant may not be pleasant, in this case the Commissioner does not consider it has crossed that boundary.
48. With regard to the purpose and value of the request, the Commissioner considers that an individual who is subject to service charges is entitled to know how that money is being spent and how that charge is calculated. He therefore considers that there is a serious purpose behind the complainant's request.
49. Having considered all the circumstances of the case, the Commissioner does not consider that WDC has provided sufficient grounds to deem the request vexatious. It therefore follows that he finds that WDC incorrectly applied section 14(1) to the request.

50. The Commissioner requires WDC to either provide the information requested, or issue a fresh refusal notice without relying on section 14(1).

Right of appeal

51. 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

52. 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.
53. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF

Annex

Request 29 March 2014

The Sheltered housing cyclical repairs programme appears to exclude the following refurbishment or remodelling work programme.

- Grants Hill House – 2015/18 - £5,500,000
 - Buxted Court – 2015/17 - £725,000
 - Joan Hughes Court – 2015/19 - £4,180,000
 - Streatfield House – 2018/19 - £50,000
 - Elizabeth Court – 2016/17 - £150,000
- i. Please explain why the planned 2015/25 programme of works at CTC is not included in the cyclical repairs programme in the HRA budget (shown above) recommended to the council by the WDC cabinet?

The Sheltered housing cyclical repairs programme has been allocated the following amounts of funding from the HRA budget.

Sheltered housing cyclical repairs programme

- 2014/15 - £349,000
 - 2015/16 - £358,000
 - 2016/17 – £301,000
 - 2017/18 - £183,000
 - 2018/19 - £151,000
- ii. Between 2015/19 there has already been funding of £10.605 million pounds allocated from the HRA budget for refurbishment or remodelling to 5 sheltered schemes (shown above). Please explain if the proposed CTC 10 year work programme forms part of the cyclical repairs programme from 2014 to 2019 that has been allocated £993000 from the HRA budget or not and also provide information on what the cyclical repair programme involves for the years in question.
- iii. 2014/15 HRA proposals – Capital expenditure of £200,000 being charged to revenue to finance the sheltered schemes update and represents leaseholders contributions towards the scheme under S20

(paragraph 40). Is the programme of works at CTC included in this HRA funding allocation?

- iv. The HRA account shows money being allocated to the Major Repairs Reserve, ie to meet the cost of depreciation. In light of the WDC's intention to refurbish or renew at CTC please explain what constitutes depreciation if it is not renewal or refurbishment?
- v. 2012/13 HRA 30 year Business Plan – 9(e) Remodelling and modernising sheltered schemes. With a Contribution to the Sheltered Housing Fund of £801,000 in 2011/12 and estimated charge of £408,000 for 2012/13. Where has this funding now been allocated?
- vi. What interest has been applied to the Cherry Tree Court sinking fund balance in the last decade?
- vii. Why has the WDC allocated only 50% of the current sinking fund balance when once the programme of works has been completed there will be little work remaining to be carried out at the scheme?
- viii. Why is this potential expenditure being considered only for the CTC leaseholder to pay their share of the possible cost rather than for all of the sheltered service charge payers under sheltered dwellings general to pay a share of the costs involved?
- ix. What works are being programmed at Buxted Court in 2015/17 that has been allocated funding of £7250000 from the HRA budget are leaseholders also being asked to pay their share of the work costs and if so what will their contribution be?
- x. What are the proposed works at Wade Court and what is the leaseholder's share of the work being scheduled?
- xi. In the HRA budget proposal for 2014/15 the following contribution amounts are shown as coming from leaseholders. Please explain what leaseholders are referred to in the HRA proposals?

2013/14	2015/15	2015/16	2016/17	2017/18	2018/19
Estimate	Submission	Submission	Submission	Submission	Submission
0	6000	73000	20000	29000	22000