

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 September 2014

Public Authority: The London Borough of Haringey

Address: Civic Centre
High Road
Wood Green
London
N22 8LE

Decision (including any steps ordered)

1. The complainant made a series of requests to the London Borough of Haringey ("the Council") for information relating to the Bridge New Deal for Communities ("the NDC") and Housing targets for the Council.
2. The Council advised the complainant that it would not respond to the latest requests as it dealt with substantially the same issues as previous requests and correspondence. It advised that it considered the requests vexatious under section 14(1) of the FOIA.
3. The Commissioner's decision is that the Council has correctly applied section 14(1) to the request. There are no further steps to be taken.

Background

4. The complainant has sought to communicate on a regular basis with the Council about the composition and workings of the NDC and information of a general nature about many Council issues. These communications have consisted of FOIA requests over a period of years and frequent telephone contact about issues of concern to the complainant.

5. The Council provided responses to FOIA requests made between October 2012 and the beginning of February 2014.

Request and Response

6. Between 21 and 25 February 2014 the complainant submitted five requests for information. The wording of these requests can be found in Appendix A. The requests asked for information concerning the Bridge NDC, matters about individuals connected with this organisation and its finances and issues in relation to Housing targets. These requests were all received by the Council on 25 February 2014 and comprised of 30 questions in total.
7. On 18 March 2014 the Council provided its response to the requests dated 21, 22, 23, 24 and 25 February 2014. It advised that it considered the requests to be "vexatious" and that it was relying on section 14(1) of the FOIA.
8. It stated that it regarded the recent requests as being unreasonable because of the number of requests that had been submitted in a relatively short space of time, the amount of officer time that had been spent complying with these and previous requests, difficulty in determining whether the information is actually held, the fact that some of the information is already in the public domain and the fact that it does not consider some of the questions to be valid FOIA requests.

Scope of the case

9. On 5 June 2014 the complainant lodged a complaint with the Information Commissioner's Office ("the ICO") stating that he was not satisfied with the response he had received to his request. He further advised the ICO that he was not willing to request an internal review as he believed that this would not change the response of the Council. He advised that this view was based upon his previous contact with the Council.
10. On 23 June 2014 the decision was taken to investigate the response of the Council to these requests without the need for the complainant to request an internal review of the response to his five requests received by the Council on 25 February 2014.
11. The focus of the Commissioner's investigation has therefore been to determine whether the Council's application of section 14(1) of the FOIA is correct.

Reasons for decision

12. Section 14(1) of the FOIA states:

"14.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

13. When considering whether a request is "vexatious" under section 14 of the FOIA the Commissioner is mindful of his published guidance in respect of section 14 of the FOIA¹. This refers to an Upper Tribunal decision² which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.

14. This 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 public authorities should weigh the impact on the authority 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 to the request.

Background and history to this request

15. The Council has argued that the requests of the complainant should be considered in the light of the previous requests the complainant has made and also against the background of the extended history of contact with the Council.

16. As part of its arguments to the Commissioner, the Council has advised that the complainant has consistently sought to communicate with the Council about the way in which the Bridge NDC conducted itself, the way in which its finances were managed and the persons responsible for decision making within this organisation. The Council was the accountable body for this organisation until 2011 when this body ceased to exist.

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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

² *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

17. The Council has advised the Commissioner that the complainant has been in contact with it for some time to discuss concerns about this organisation. It regularly received requests for information and general contact queries whilst the organisation was in existence (pre – 2011) and also thereafter. The Commissioner has been advised that no records are held in respect of this contact pre September 2011 because the Council has changed its database in September 2011 and because of its retention schedule. However, the complainant is well known to the authority and individual officers.
18. Additionally the Council has advised that the NDC and its management was open to public scrutiny during its existence and also subjected to independent scrutiny as well.
19. In respect of recorded FOIA requests it advises that 22 FOIA requests are recorded between October 2012 and February 2014, with 9 requests being received in February 2014, five on the same day. In addition the complainant has telephoned the Council on a regular basis to discuss his requests.
20. The Council has outlined the nature of the communications which centre on the complainant's concerns about the way in which the Bridge NDC was managed and his perceived discrepancies of the way in which the finances of this organisation were managed. As part of its submissions to the Commissioner the Council has advised that the complainant engages in frequent and lengthy telephone conversations in which attempts are made to engage the staff in hypothetical and political discussions. The Council advises that these discussions are often repeated with no clear outcomes achieved.
21. In an attempt to manage the complainant's contact with the authority, the Council advised the Commissioner that several attempts have been made to give advice to the complainant about how to frame requests for information. This is because the requests for information received from the complainant quite often ask for opinions and points of view rather than being framed as a request for information. In addition the requests are frequently framed within an extensive narrative giving reasons for the request.
22. The Council has advised that by the time of the requests for information at the end of February 2014 the telephone contact with the complainant had reached a level and intensity where the Council were considering imposing restrictions under its procedure for unreasonable customers. This was due to frequency of contact, attempts to misrepresent what had been discussed on previous occasions and because the complainant had made personal comments about members of staff and members of the Council.

23. The restriction on telephone contact was put in place in April 2014 following the concerns expressed by a number of council departments about the frequency and nature of the complainant's telephone contact with council staff. It advised:

" Council officers are busy and simply do not have the time to have repetitive and inconclusive telephone conversations with you multiple times a day.....It is not just the frequency of your calls, your expectations and comments are unreasonable. Council officers are employed to put into place the policies and decisions determined by the democratically members of the Council. It is not our role to discuss political issues and your opinions about them with you.... Your expectations of officers are not reasonable...Your comments about how you want us sacked are also unnecessary and unpleasant."

24. In this notice of restriction the complainant was also advised about the concerns in relation to the number of FOIA requests being made and advised that:

From now on, we will consider each FOI request on its own merits, but we shall take into consideration the number of requests that you have made and the content of your requests, which are very often a series of general questions that you would like an answer to, not actual requests for access to our records."

The complainant was also asked to limit his correspondence to a reasonable level to avoid further restrictions being imposed.

25. However, the Commissioner notes that, following representations of the complainant, the restriction was removed in June 2014. From the evidence provided by the Council it would appear that this was because the Council had failed to follow its own procedures in this case by not providing a written warning first before imposing a restriction rather than there being a decision that the restriction was not warranted. The Commissioner has seen evidence that the written warning is still in place.
26. Page 7 of the Commissioner's guidance, already referred to in paragraph 13 of this decision notice, states that an attempt to reopen issues can be considered an indicator of vexatiousness. Having considered the details of this case, the Commissioner is similarly satisfied that some of the requests of February 2014 represent an attempt on behalf of the complainant to revisit issues that have already been reviewed and responded to on several occasions by the Council and that this is an improper use of the FOIA.

Serious purpose or value

27. The complainant has advised the Commissioner that he does not regard his correspondence as excessive but considers that his questions should be fully answered by the Council. He maintains that his questions are valid and he continues to have concerns about the NDC and the way in which its finances were handled at the time.
28. In its arguments to the Commissioner the Council acknowledges that the complainant has a legitimate interest in the issues which are the subject of his requests. However it has also explained about the level of independent and public scrutiny this organisation was subjected to.
29. It also provided the Commissioner with details as to the efforts it had made in assisting the complainant frame his requests to be proper FOIA requests rather than request for opinion based responses and advised that steps had been taken by members of staff to ask ex members of staff about the questions raised by the complainant.
30. However it argues that in this case it has answered a considerable number of queries on essentially the same issues and that the point has been reached where it would be unreasonable to expend any further resources on dealing with further related requests for information. Additionally, the Council argues that a considerable amount of information sought by the complainant is already in the public domain and can be obtained easily.
31. Taking these factors into account and acknowledging that members of the public do have a right to scrutinise the workings of public bodies, the Commissioner is satisfied that, in these circumstances, the serious purpose and value of the request under consideration has diminished in the light of the background and history of involvement of the complainant with the Council.

Detrimental impact: workload, irritation and distress

32. The Council has provided the Commissioner with details as to the effect of the FOIA requests and general contact of the complainant upon the workings of the Council and maintains that it has been very disruptive. This has been compounded by the fact that the complainant frequently follows up any request with lengthy telephone calls where attempts are made to engage the staff in debates about hypothetical or political matters.
33. The Council has also advised that the tone of the language used by the complainant has become increasingly critical of both the organisation and individuals to whom he addresses his complaints against. This is evidenced in the letter dealing with restricted telephone contact in April

2014 which details how the Council find the behaviour of the complainant unreasonably persistent and unacceptable.

34. Whilst the Commissioner accepts that public sector employees should be prepared to accept a level of scrutiny and criticism in their role, having considered the information provided in this matter the Commissioner considers that in this case the level of criticism goes beyond what would be deemed reasonable in the circumstances.
35. Having considered the number of requests received by the Council, the Commissioner is satisfied that this does represent a notable but not necessarily considerable amount. However the Commissioner is aware that the overall level of contact the complainant has with the Council both in respect of FOIA requests and general enquiries is of significance in this instance.
36. Overall, taking into account the volume and nature of the correspondence received together with the level of direct telephone contact which the complainant has sought with the authority, the Commissioner considers that compliance with the request which is the subject of this decision notice would have a detrimental impact upon the Council in terms of workload.
37. Whilst not particularly onerous in itself these requests are one of many received by the Council from the complainant. The Commissioner is therefore satisfied that, in the context of the Council's previous dealings with the complainant, compliance with the request would result in a disproportionate burden on the resources of the Council.
38. The Commissioner is satisfied that the Council has evidenced the complainant's general refusal to accept that contact with the Council should be at a reasonable level. For this reason the Commissioner is satisfied that responding to these request is likely to cause an unjustified level of irritation and disturbance to the Council.
39. Therefore the Commissioner is satisfied that responding to this request is likely to cause a disproportionate burden upon the Council.

Conclusion

40. The Commissioner has considered the arguments put forward by the Council and by the complainant in light of the Upper Tribunal's view of the importance of 'proportionality' and 'justification' and has balanced this against the purpose and value of the request. The Commissioner has also taken into account wider factors such as the background and history to the request and the nature of the complainant's prior involvement with the Council.
41. The Commissioner considers that the Council was correct in its approach in these circumstances. Having considered all the evidence provided, the Commissioner is of the view that section 14(1) of the FOIA applies in this case. Therefore the Council was not required to comply with the request. No further action is required on the part of the Council.

Right of Appeal

42. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

43. 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.
44. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix A

Request of 21 February 2014:

"In 2006 the local media reported an audit was carried out on the Bridge NDC by auditors.

- 1. Who are the auditors?*
- 2. What process was used to appoint them?*
- 3. Who appointed them?*
- 4. How much did they get paid in total?*
- 5. Is their report in the public domain?*
- 6. When was the joint Bridge NDC and LB Haringey Seven Sisters neighbourhood Plan 2010-2025 adopted?*
- 7. Who adopted it?*
- 8. What was the process?*
- 9. How much did it cost in total?*
- 10. Can you please send me a copy of the Bridge NDC document – "10 years of achievement"?"*

Request of 22 February 2014:

Preceded by a page of narrative –

"Q1 What's going on, why did the NDC pay over its cost?

Q2 Who was responsible for negotiating the lease who had oversight?

Q3 Is it a matter for the district auditor or the Police?"

Request of 23 February 2014:

- 1. When did Councillor Diakides join the Bridge NDC board?*
- 2. When and why did he resign from the Board?*
- 3. Is his resignation letter in the public domain and can I please have a copy of it?*
- 4. From its inception how many chief executives/directors has the Bridge NDC had?*
- 5. What are their names & how long did they do their job?*
- 6. Who appointed them, what was the process used to appoint them, & what were they paid in total money & other benefits?*

7. *The Bridge NDC's projects were appraised by Urban Futures, when was Urban Futures appointed & what was the process used to appoint them?*
8. *How long was Urban Futures appraising the Bridge NDC's projects for, & what were they paid in total?*
9. *What type of company/organisation is Urban Futures & did any council officer, councillor or Bridge NDC employee or residual board member have any connection with it?*
10. *Did any other body appraise NDC projects, who were they, & what were they paid in total, any connection to the Council or the NDC?*

Request of 24 February 2014:

"The Draft Further Alterations to the London Plan proposes Haringey's yearly housing target is increased from 820 units to 1,502. I recall negotiation in the past between London's Mayor & the Council over Haringey's housing target e.g UDP 2006.

Can you please state what Haringey's housing target was when it was formed in the 60s, who set the target & how was it agreed?

What were the housing targets for Tottenham, Wood Green and Hornsey before the formation of Haringey, who set them & how were they agreed?

Since Haringey's formation, how many times have housing targets been set, when were they set, which body proposed them & how many times were they renegotiated?

Can you please state what the housing net additions are corresponding each to each year since Haringey's formation?

What were Tottenham's, Wood Green's & Hornsey's housing net additions the year before the borough of Haringey was formed?"

Request of 25 February 2014:

" Q1 At the full council meeting on 18 Nov 2013 Cllr Joe Goldberg during his presentation on the Third Annual Carbon report (agenda item 12) referred to 92,000 households in Haringey. What did he mean by 92,000 households in Haringey?

Q2 During its lifetime how many deputations did the Bridge NDC make to a council body, which bodies/committees were they, when were the deputations made & why were the deputations made?*

**Bridge NDC meaning officers, board members partners and others."*