

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2015

Public Authority: Cambridgeshire County Council
Address: Shire Hall
Cambridge
CB3 0AP

Decision (including any steps ordered)

1. The complainant has made 3 separate requests for information in relation to a community transport service provider being used by Cambridgeshire County Council (the council). The council has refused to provide the information to these 3 requests, relying on section 14(1) of the FOIA as it deemed the requests to be vexatious.
2. The Commissioner's decision is that the council has correctly relied on section 14(1) of the FOIA to refuse the 3 requests.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 7 May 2014, the complainant wrote to the council and made the following two information requests:

"At the beginning of 2013 in addition to FACTS annual £40000 grant they were also awarded £11750. Under an FOI please could you therefore supply me with the following information? Minutes of the meeting this where this grant was approved, a copy of the grant application and all other information attached to this application".

And:

"Under the FOI Act please could you supply me with the following information?

1 A copy of all invoices for bus pass concession payments from FACT from Jan 2012 to present date including all breakdown figures that are attached to these invoices.

2 A copy of all invoices for bus pass concession payments from HACT from Jan 2012 to present date including all breakdown figures that are attached to these invoices."

5. Then on the 15 May 2014 he also requested:

"Reference all types of passenger transport i.e School contracts, Social Services and any other body for which transport is organised by Cambs County Council involving the Taxi Trade or Community transport groups. Please could you submit the following for the last 3 months.

- (a) Duration of contract (1 day, 1week, 1 year etc)
- (b) Type of contract
- (c) How many organisations/companies invited to tender for the job, and who they were.
- (d) Who won the job
- (e) Daily price
- (F) Contract number and details."

6. The council responded on the 5 June 2014. It refused to provide the information for the three requests, relying on section 14(1) of the FOIA as it considered the requests to be vexatious.

7. The complainant requested an internal review on the 12 June 2014 and the council provided its review on the 28 July 2014 maintaining its decision.

Scope of the case

8. The complainant contacted the Commissioner on the 30 August 2014 to complain about the council refusing his requests.

9. The Commissioner considers the scope of the case is to determine whether the council was correct to rely on section 14(1) of the FOIA to refuse the 3 requests.

Background

10. The Commissioner's understanding is that FACT and its sister company HACT are community transport service providers being used by the council.
11. There is a campaign group, to which the complainant is part of, that have strong concerns about the way this service is being operated, in terms of legality, and also the impact that this competing service is having on them as taxi drivers.

Reasons for decision

Section 14(1) of the FOIA – Vexatious requests

12. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
13. The term "vexatious" is not identified 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.
14. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. 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

¹ GIA/3037/2011

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

contains one or more of these indicators will not necessarily mean that it must be vexatious. All circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

16. The council has provided the Commissioner with its reasons as to why it has relied on section 14(1) of the FOIA to refuse the 3 requests.
17. The council has told the Commissioner that the complainant has been in contact with the council over an extended period of time, requesting access to information under both formal and informal processes. It has also stated that the complainant and his colleagues have attended meetings with council officers and have sent in a high volume of correspondence, some being aggressive and accusatory in nature.
18. It has informed the Commissioner that up until these 3 requests, it has tried to respond to the complainant and his colleagues in a timely fashion and that every opportunity has been taken to provide as much information as possible. But the complainant's response to any communication from the council has been to submit further correspondence, requests and complainants which is contributing to the burden being placed on its resources, including staff to respond and carry out its other public duties.
19. The council has also explained to the Commissioner that its team who is responsible for passenger transport contracts is a small team, 12 officers, with limited resources and because of the nature of school and social care transport contracts, there is a lot of information held in many different locations.
20. It has said that this team has been dealing with the complainant ever since the requests for information began and they have worked hard to provide as much information as possible and also met with various members of the group to discuss the released information and the way the contracts operate, where necessary.
21. The council has stated to the Commissioner that it accepts that the concerns of the campaign group are valid and the FOIA is a valid way to gather information to enable those concerns to be looked at. However, it has explained that this continuous flow of requests on top of its day to day business has placed an incredible amount of extra stress on the team involved, not only in dealing with the requests, but also the follow up correspondence. Whether that is requests for meetings or complaints including complaints that have escalated to the Commissioner and the First Tier Tribunal.

22. The Commissioner notes from the complainant's internal review request, that he mentions that the Commissioner had to serve an Information Notice on the council in order to get it to respond to his enquiries to cases FS50511196 & FS50510473.
23. The Commissioner sees that this would add to the complainant's frustrations in getting a resolution to the requests in a timely manner. The Commissioner also notes that the council's reasons for the delay was due to it having to deal with the overall correspondence it was receiving about this issue as a whole.
24. The council has provided the Commissioner with a spreadsheet chronology of the requests made. This is made up of 36 requests over approximately 19 months, between October 2012 and May 2014. The last 3 being the ones refused in this case as vexatious.
25. This equates to almost 2 requests per month for just over 1 and a half years all in relation to the continuing issue that these 3 refused requests are related. The Commissioner notes that every month did not have a request, but at the same time other months contained greater amounts of requests.
26. The Commissioner sees that an average of 2 requests in a month, generally would not be considered disproportionate or burdensome, but does see that receiving requests over an extended period of time, such as in this case, would start to create a strenuous workload for the officers involved and begin to have a detrimental impact on their other duties in having to continually reply to these requests.
27. The council has explained to the Commissioner that from these requests it has provided paperwork, including applications, terms, conditions and agreements in relation to the Community Transport Fund – the only grant funding available from the council. It has released information about payments made to FACT by the council, details of all contracts that are currently and have been fulfilled by FACT, information detailing financial reimbursement to FACT for bus concessions, invoices, arrangements for the acceptance of bus passes by FACT, a list, including the purpose, of all funding awarded to FACT, permit 19 information, applications and licenses in respect of FACT, and ridership statistics for Dial-A-Ride services.
28. But with the releasing of all this information, which has been made available on the council website, the council sees that no matter how much or little information the council provides in response to the requests, it does not seem to satisfy the complainant or the other members of the campaign group and further requests are made.

29. The Commissioner accepts that the council has made efforts to make as much information available as it can, barring anything that has been exempt from disclosure, and also sees that, from the length of time the requests have been continually received, there appears to be no end to the requests being made. If the requests continued on this frequency, with no sight of an end, then the Commissioner sees that there would be a continued detrimental impact placed on the council's resources in continually having to respond to the requests whilst carrying out its other day to day duties.
30. On top of the requests received and responded to, the council has advised the Commissioner that it has been dealing with correspondence from the complainant and taxi drivers outside of the FOIA. However, the Passenger Transport Department has not kept a record of all this further correspondence but has drafted a summary for the Commissioner to give a sample of the types of contact there has been between the passenger transport team and the taxi drivers, including the complainant.
- *"Meeting with [name redacted] MP - attended by the Head of Passenger Transport and the Council's Social and Education Transport Team Manager and associated correspondence, both before and after the meeting. The meeting alone took around 5 hours of officer time.*
 - *Emails received from taxi companies to the Head of Passenger Transport - included follow up with media and ad-hoc actions briefing members and senior colleagues. It also required a Social and Education Transport Team briefing to discuss issues raised and the Team's response. It is estimated that for the emails that were included in the Council's previous response to the ICO, around 19 hours of officer time was spent dealing with the emails and follow up contact and issues.*
 - *The Council's Head of Passenger Transport has also met Mr Patrick separately, at approximately one hour of officer time plus follow up conversations and contacts.*
 - *Two officers of the Passenger Transport Team have spent four hours meeting with the police as part of the Constabulary's investigation."*
31. The Commissioner considers that being able to provide actual records or copies of correspondence as evidence of contact generally carries a greater weight for his considerations in the application of section 14 of the FOIA. But he considers that it seems plausible that such communications, as explained above, would have taken place given the

length of time and nature of this ongoing issue. This contact outside of the information requests, is more than likely going to contribute to the overall time spent by the council in dealing with the issue as a whole and would in turn contribute to the overall impact placed on its resources.

32. As well as all of the above, the council has also informed the Commissioner that the complainant has publically made allegations against the manager of FACT/ HACT, including fraudulently operating outside of the remit of a community transport provider, committing malpractice and mismanagement of funds for personal gain. To which these have all been investigated independently and it was found there was no case to answer.
33. The council has provided the Commissioner with a letter dated 14 May 2014 from the Traffic Commissioner stating that following an investigation carried out by Driver and Vehicle Standards Agency (DVSA) no further action was considered necessary.
34. It has also provided a copy of an audit carried out by the audit committee of Fenland District Council of FACTs operations and found that FACT was operating in line with the relevant permits.
35. The Commissioner, in consideration that other bodies have looked into the issues that the complainant has with regards to FACT/ HACT, that had it found that the company had been involved in wrong doing, then there may be a greater weight added in the complainants favour in justification in making continued requests. But the bodies did not see it this way so, in the Commissioner's view, lessens the weight in justifying the burden being placed on the council's time and resources in having to continue to respond to the requests being made.
36. The complainant has advised the Commissioner that the requests were sent in relation to a very long ongoing investigation into FACT/ HACT regards possible fraud and corruption which is now in the hands of the police.
37. The complainant has also stated that he believes that officers of the council have intentionally blocked him and his group from obtaining possible evidence against FACT/ HACT and possibly themselves.
38. The complainant has provided the Commissioner with a short email chain between himself and a police officer dated 11 August 2014. It does appear that there is a case being dealt with by the police, and an interview under caution took place due to allegations being made around FACT/ HACT. But it does state that an arrest no longer became necessary or legal.

39. This email, to the Commissioner, shows an allegation has been made, by the complainant, regarding FACT/ HACT but at the same time, no arrest has been deemed necessary or legal. The Commissioner sees that this email is not a conclusion to the police case, but also it does not confirm any wrong doing.
40. On considerations of the above, the Commissioner recognises that the complainant has a valid reason for making the requests, as it is in relation to his and the group's livelihoods and so understands why they are pursuing the matters.
41. However, he also has to take into account the impact that this continual correspondence is having on the council's resources, that being staff and time, in its ability to be able to carry out its other duties for the general public. Also, weighing this up with the fact that two other bodies have found no wrong doing with FACT/ HACT does suggest that the complainant is continuing to pursue an issue that has been looked into and shows an unwillingness to accept the findings of these independent bodies, which in the Commissioner's view lessens the value of the requests in terms of the justification and burden being placed on the council in having to respond. This is also referred to as an indicator for considering whether a request can be deemed vexatious in the Commissioner's guidance on vexatious requests at paragraph 47.
42. The Commissioner has considered the fact that a case has been brought to the police, however he has not been provided with any independent view or outcome finding wrong doing by FACT/ HACT.
43. The Commissioner also considers that even if the council were to respond to these 3 requests, it is very probable it would continue to receive further requests which would add to the burden already being placed on its resources.
44. On this, the Commissioner has determined that the noted validity and purpose of the requests does not carry enough weight to justify the overall burden and impact being placed on the council in having to continue to respond and considers that it is now at a point where the requests have become disproportionate in affecting the council's ability to carry out its other day to day public duties.
45. Therefore, the Commissioner finds that the council was correct to rely on section 14(1) of the FOIA to refuse the 3 requests.

Right of appeal

46. 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

47. 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.
48. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF