

References:

FS50561428, FS50550297, FS50550298, FS50550301,  
FS50550300, FS50557315, FS50582071, FS50582072,  
FS50582090, FS50550299, FS50585129

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 October 2015

**Public Authority:** Scarborough Borough Council

**Address:** Town Hall  
St Nicholas Street  
Scarborough  
YO11 2HG

#### **Decision (including any steps ordered)**

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1. The complainant has submitted multiple requests for information to Scarborough Borough Council (the Council) and it relied on section 14(1) not to comply with them.
2. The Commissioner's decision is that the Council's reliance on section 14(1), not to comply with the requests, was correct.
3. The Commissioner requires the Council to take no steps to ensure compliance with the legislation.

#### **Request and response**

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4. This notice refers to requests for information made by the complainant to the Council on the following dates:

FS50561428 - 9 March 2014  
FS50550297 - 3 April 2014  
FS50550298 - 8 April 2014  
FS50550301 - 11 May 2014  
FS50585129 - 27 May 2014  
FS50550300 - 27 May 2014  
FS50550299 - 18 June 2014  
FS50557315 - 2 July 2014  
FS50582072 - 20 July 2014  
FS50582071 - 15 August 2014  
FS50582090 - 15 August 2014

References:

FS50561428, FS50550297, FS50550298, FS50550301, FS50550300, FS50557315, FS50582071, FS50582072, FS50582090, FS50550299, FS50585129

5. The content of these requests has been reproduced in the annex to this notice.
6. On 4 July and 20 August 2014 the Council informed the complainant that the said requests were vexatious and it relied on section 14 of the FOIA not to comply with them.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 12 November 2014 and subsequent dates to complain about the way each of his requests for information had been handled.

### **Reasons for decision**

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8. Section 1 of the FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
  - the duty to inform the applicant whether or not requested information is held and, if so,
  - the duty to communicate that information to the applicant.
9. 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.
10. In its letter to the complainant dated 4 July 2014 the Council explained its reliance on section 14 not to meet his requests. It said, amongst other things, as follows;
  - *Your involvement and active participation in the activities of a campaign group, whose stated aim is (inter alia) to cause nuisance and disruption to the Council, has been taken into account,*
  - *Articles, stories and other contributions to the websites used by yourself and the campaign group raise personal attacks against Council Officers, Elected Members, and others associated with Scarborough Borough Council. The content is often offensive, accusatory, defamatory, and partial.*

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- *The collective requests and correspondence from those who participate in this campaign group have over a number of years caused disruption, irritation and distress, as well as having a significant impact upon the Council's already stretched resources.*
11. In order to assess and evaluate the above assertions of the Council, the Commissioner asked the Council (letter dated 24 January 2015) to provide him with a detailed submission and any evidence that supported the same.
12. The Council, on 12 May 2015, supplied the Commissioner with further details of its case as he had requested. In summary it said as follows;
- *The complainant is an active and key member of a group who call themselves the 'North Yorks Enquirer' (NYE) <http://nyenquirer.uk/>.*
  - *For a sustained and prolonged period of time this group have caused this Council, its Officers and Elected Members significant disruption, nuisance and distress. Substantial amounts of time and public money have been expended in dealing with them. The group's coordinated and collective requests have impacted upon the day to day business of the Council, and the ability to provide services in a timely and effective manner. In turn this has impacted upon the residents of the Borough, having a more pronounced impact in recent times due to ever dwindling resources. The group have previously openly stated that their aim is to cause the Council nuisance and disruption, and they have actively encouraged others to 'bombard' the Council with FOIA requests as part of their activities. They routinely target specific individuals, including senior and junior Officers, and Elected Members (in some instances collectively and relentlessly hounding individuals over the space of years). The Council maintains that the complainant and NYE have succeeded in their aim of disrupting the Council, with many other significant negative effects too.*
  - *As stated previously, requests and correspondence received from the complainant and his colleagues place a significant burden upon limited Council resources. They cause distress, disruption and irritation, and are disproportionate and unjustified. Historically, where the Council has responded and/or provided information, this leads to further requests and correspondence. This is so even where Senior Management (and various Elected Members) have met personally with members of the campaign group to discuss their issues.*

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- *It is also worth noting that in terms of volume of FOIA/EIR requests to the Council, the complainant presently sits third in the table of highest number of requests (some 22 requests ahead of 4th place). Positions one and two are occupied by fellow contributors to the NYE.*

### **The Commissioner's assessment**

13. The term 'vexatious' is not defined in the legislation. In Information Commissioner vs Devon County Council & Dransfield<sup>1</sup>, 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.
14. In further exploring the role played by circumstances and whether the request has adequate and proper justification, the Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure." (paragraph 27).
15. The decision clearly establishes that that 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
16. As the Upper Tribunal observed;  
  
*'There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.'*
17. 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

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<sup>1</sup> Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)

References:

FS50561428, FS50550297, FS50550298, FS50550301,  
FS50550300, FS50557315, FS50582071, FS50582072,  
FS50582090, FS50550299, FS50585129

- Unfounded accusations
  - Intransigence
  - Frequent or overlapping requests
  - Deliberate intention to cause annoyance
18. The fact that a request or requests contain one or more of the above 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.
19. The Commissioner is struck by the frequency and number of requests for information that the complainant himself complains about the Council not meeting. There are ostensibly 11 requests between 9 March and 15 August 2014. This equates to nearly one every two weeks from the complainant himself. However this does not tell the whole of the narrative as some requests in fact themselves contain multiple requests for information.
20. To example the above paragraph, the Commissioner notes that two (amongst others) ostensibly single requests in fact contained numerous requests for items of information; these are as follows;

FS50550301 - 11 May 2014

*During last year, campaigners hoping to save the Futurist Theatre in Scarborough have spent their spare time amassing a 6,600+ petition in order to bring the matter before full Council, to enable further debate on the matter with the hope of the theatre being saved.*

*Reports emanating from the Council suggest the Council wanted to stop any further debate in the Council chamber about the Futurist.*

*The Council attempted to discredit the validity of the petition by trying to whittle down the number of genuine signatories on the petition to under 5,000, a level at which the matter is not brought before full Council, but the Council failed in their attempt to discredit the petition.*

*Please provide the following information.*

*How many hours of Officer time were spent verifying the validity of the petition?*

*What is the cost of those hours to the tax payer?*

*Was the Electoral Roll used to verify the petition?*

*How many other petitions has the Council attempted to verify?*

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*Which SBC Officer gave the order to verify the petition?*

*Does the SBC Officer have the legal power to spend public money verifying petitions?*

FS50550300 - 27 May 2014

*How many seats did Apollo Leisure allocate to Scarborough Borough Council for the June 2011 Elton John Concert?*

*Scarborough Borough Council offered those seats for sale to staff, local business persons and VIPs.*

*How many of the seats were bought by staff?*

*How many of the seats were bought by local business persons?*

*How many of the seats were bought by VIPs?*

*How many of the seats were bought by Councillors?*

*Please describe the process the Council undertook to offer the seats to staff. How did the Council select the staff to offer the seats to?*

*Please describe the process the Council undertook to offer the seats to local business persons. How did the Council select the local business persons to offer the seats to? Does the Council maintain a list or database of local business persons in the area?*

*Please describe the process the Council undertook to offer the seats to VIPs. How did the Council select the VIPs to offer the seats to? Does the Council maintain a list or database of VIPs in the area?*

*Was the former Freeman of the Borough, Jimmy Savile, offered a seat or seats by the Council for the Elton John Concert?*

21. The key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. This should be judged as objectively as possible. In other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority?
22. In any series of events, there has to be a "first" occurrence. The Commissioner does not take issue with the Council delineating the information request of 9 March 2014 (FS50561428) as the "first" occurrence of these (when viewed collectively) vexatious requests. This particularly permissible when it is quickly followed by further requests

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over a relatively short period of time, as occurred here. (It is also permissible in the context of considering group to which it is asserted that the complainant is involved, as considered later on in this notice, and of any relevant knowledge regarding the complainant's previous conduct.)

23. Therefore the Commissioner's view is that a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. The Commissioner has little hesitation in considering that these multi-limbed requests all emanating from a single source (the complainant) are placing a significant strain on an authority's resources by being a series of frequent requests so close together in time.
24. The Commissioner considers that they were collectively burdensome in terms of both expense and distraction and could be reasonably seen to occasion disruption and annoyance to the Council and its staff. The volume of multi-limbed requests, over a relatively short period of time, is therefore persuasive evidence to contribute to a finding that they constituted a "manifestly unjustified, inappropriate or improper use of a formal procedure" as referred to in paragraph 14 above.
25. In making this finding the Commissioner takes cognisance of the Information Tribunal in *Independent Police Complaints Commission v Information Commissioner (EA/2011/0222)* (at paragraph 19) where it remarked<sup>2</sup>:  
  
"Abuse of the right to information under s.1 of FOIA is the most dangerous enemy of the continuing exercise of that right for legitimate purposes. It damages FOIA and the vital rights that it enacted in the public perception. In our view, the ICO and the Tribunal should have no hesitation in upholding public authorities which invoke s.14(1) in answer to grossly excessive or ill-intentioned requests and should not feel bound to do so only where a sufficient number of tests on a checklist are satisfied."
26. However, the Commissioner considers that even where a request or requests could be viewed as unduly burdensome on a public authority, this can be mitigated if there is an overwhelmingly serious purpose

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<sup>2</sup> Cited with approval in *Information Commissioner v Devon CC and Dransfield*

[2012] UKUT 440 (AAC) at paragraph 35



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FS50561428, FS50550297, FS50550298, FS50550301,  
FS50550300, FS50557315, FS50582071, FS50582072,  
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behind the request. This can be both in terms of a wider public interest in the information, as well as a genuine need for the information by the requester in pursuing a legitimate aim. To this end, deciding whether a request is vexatious is ultimately a balancing act between the impact of the request on the public authority, and the serious purpose of the request.

27. As can be viewed in the annex to this Decision Notice the information requests from the complaint seek diverse and comprehensive information. They seek information regarding the remuneration of the Council's chief executive, criminal convictions of councillors, the recording of FOIA requests, investigation of alleged financial impropriety by councillors, expense claims of senior staff and alleged largesse with council funds.
28. The Commissioner notes that individually the subject matter of these requests are ostensibly sensibly connected to, and concerned with, local government and democracy. However this apparent sensibility is, in the Commissioner's view, seriously undermined by the volume of multi-limbed requests over a relatively short period of time.
29. On this, the Commissioner has determined that any 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 respond and consider these multi-limbed requests over a relatively short period of time. Answering the requests would have a disproportionately negative effect on the Council's ability to carry out its other day to day public duties.
30. The Commissioner is satisfied, for the reasons given above, that in all the circumstances the public authority was entitled to find the requests vexatious.
31. Notwithstanding that the Commissioner's view is that the requests, that form the subject matter of this notice, were vexatious in their frequency and volume the Commissioner also considered the Council's assertions that the complainant was acting in cahoots with others to harass the Council, its members or staff.
32. If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious.



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33. The Council's assertions, as laid out in paragraph 12 above, were put to the complainant. The complainant replied by saying (amongst other things): "The North Yorks Enquirer was created to give a voice to people whom the local press would rather not be heard. The North Yorks Enquirer accepts single submissions or regular submissions from anyone who wishes to hold their local authority or elected members to account. We've had a number of successes".
34. The Commissioner notes from the remarks of the complainant that he sees himself as being part of a group whose objective is to hold "their local authority or elected members to account". The Commissioner further notes (as described by the Council) that the complainant's number of requests to it markedly increased after a member of the group reduced the number of requests he made once he was deemed vexatious by the Council in 2010.
35. On balance the Commissioner is satisfied that the complainant was acting in conjunction with others to make FOIA requests to the Council. He is further satisfied – from evidence supplied to him by the Council - that the campaigning group's FOIA requests were also exerting a collectively disproportionate and unreasonably onerous burden on the Council. The Commissioner also accepts the Council's assertion that the nature of these requests and of the group's statements and wider activities has caused significant harassment and distress to the Council's staff and members. The Commissioner is strongly of the view that this adds even further weight to his decision that section 14(1) was correctly engaged in respect of the requests considered here.
36. The Commissioner is satisfied for the reasons discussed above, that the complainant's requests are ones that can fairly – and readily - be found to be vexatious for the purposes of section 14(1) of the FOIA.

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FS50561428, FS50550297, FS50550298, FS50550301,  
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## Right of appeal

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37. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

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**Annex – Text of requests submitted**

FS50561428 - 9 March 2014

Please could you let me know how much money the Chief Executive has received over the following financial years:

2005-6  
2006-7  
2007-8  
2008-9  
2009-10  
2010-11  
2011-12  
2012-13  
2013-14

I would like to know how much the Chief Executive has received in the following areas:

Salary  
Employer Pension Contributions  
Returning Officer Payments  
Compensation  
Other Monies Received

FS50550297 - 3 April 2014

Please provide the names of all Scarborough Borough Councillors who voted to accept Peter Jaconelli as an Honourary Alderman of the Borough of Scarborough.

FS50550298 – 8 April 2014

A letter was received by Webfusion Ltd in March 2013 alleging that contributors to the Real Whitby website had committed criminal acts with regard to articles that had been published about the Council. The letter was signed by the Council's Monitoring Officer.

The letter goes on to state that the Council is aware that a number of Councillors have made Police reports regarding articles on the website.

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FS50550300, FS50557315, FS50582071, FS50582072,  
FS50582090, FS50550299, FS50585129

Please disclose the identity of those Councillors.

Please disclose any further information the Council holds about the complaints made to the Police.

FS50550301 – 11 May 2015

Please could you disclose if any elected members of Scarborough Borough Council have, since the 1st January 2014, been reported for or investigated for benefit fraud.

FS50585129 - 27 May 2014

Does the Council disclose all of the FOI requests made in the Council's disclosure log?

If not, what criteria does the Council use for deciding whether an FOI request is reprinted in the Council's disclosure log?

FS50550300 – 27 May 2015

How many seats did Apollo Leisure allocate to Scarborough Borough Council for the June 2011 Elton John Concert?

Scarborough Borough Council offered those seats for sale to staff, local business persons and VIPs.

How many of the seats were bought by staff?

How many of the seats were bought by local business persons?

How many of the seats were bought by VIPs?

How many of the seats were bought by Councillors?

Please describe the process the Council undertook to offer the seats to staff. How did the Council select the staff to offer the seats to?

Please describe the process the Council undertook to offer the seats to local business persons. How did the Council select the local business persons to offer the seats to? Does the Council maintain a list or database of local business persons in the area?

References:

FS50561428, FS50550297, FS50550298, FS50550301,  
FS50550300, FS50557315, FS50582071, FS50582072,  
FS50582090, FS50550299, FS50585129

Please describe the process the Council undertook to offer the seats to VIPs. How did the Council select the VIPs to offer the seats to? Does the Council maintain a list or database of VIPs in the area?

Was the former Freeman of the Borough, Jimmy Savile, offered a seat or seats by the Council for the Elton John Concert?

FS50550299 - 18 June 2014

On Friday the 6th June 2014 at 13.54 I sent what was essentially a whistle-blowing email to 49 of the 50 Councillors on the Council. It is now becoming clear that not all Councillors have received that email.

Information emanating from the Council suggests the email was manually removed from Councillors email boxes without their knowledge by Officers of the Council. The IT Manager appears to know all about the episode, but has refused to divulge the name of the Council Officer who gave the order to remove the email when questioned by an elected member of the Council.

Please could you identify the Officer responsible for giving the order to remove the email.

Please could you identify the Officer or Officers responsible for carrying out that order.

Please could you explain the reason why this email was manually removed.

For each of the last three financial years and for the current year to date, how many emails has the Council manually removed from Councillor email boxes in the same fashion?

FS50557315 - 2 July 2014

Please could you disclose if any elected members of Scarborough Borough Council have, since the 1st January 2014, been reported for or investigated for benefit fraud.

FS505829072 - 20 July 2014

Please could you supply a list of allowances and expense payments

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paid to Councillors and any Co-Optees for financial years 2012/13 & 2013/14.

You have previously published these figures on your website, but for some reason you have neglected to do so for the last couple of years.

FS50582090 -24 July 2014

For each of the five current senior officers, please can you let me know how many miles they've claimed for on Council business during the last four financial years?

2013/14  
2012/13  
2011/12  
2010/11

For each of the five current senior officers, please can you let me know if the Council paid those senior officers a one off payment as part of the Council's Officer Car Allowance Scheme during the last four financial years?

2013/14  
2012/13  
2011/12  
2010/11

FS50582071 – 15 August 2014

In financial year 2011/12 a payment of £100,285 was made to a member of staff to terminate their employment. Please could you disclose the role this was paid to. Please disclose how much was for compensation and for pension.

In financial year 2011/12 payments totalling £131,661 was made to three members of staff to terminate their employment. Please could you disclose the roles this was paid to. Please disclose how much was for compensation and for pension for each role.

In financial year 2012/13 a payment of £105,748 was made to a member of staff to terminate their employment. Please could you disclose the role this was paid to. Please disclose how much was

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for compensation and for pension.

In financial year 2012/13 a payment of £92,434 was made to a member of staff to terminate their employment. Please could you disclose the role this was paid to. Please disclose how much was for compensation and for pension.

In financial year 2012/13 a payment of £66,220 was made to a member of staff to terminate their employment. Please could you disclose the role this was paid to. Please disclose how much was for compensation and for pension.

In financial year 2012/13 payments totalling £179,364 was made to four members of staff to terminate their employment. Please could you disclose the roles this was paid to. Please disclose how much was for compensation and for pension for each role.

In financial year 2013/14 a payment of £65,867 was made to a member of staff to terminate their employment. Please could you disclose the role this was paid to. Please disclose how much was for compensation and for pension.

In the draft statement of accounts for financial year 2013/14, section 31, Officers' Remuneration 2013/14, payments of £51,558 for compensation and £55,190 for pension were made to Strategic Director 1 to terminate employment of that role. Those do not appear in section 32 Termination Benefits under 2013/14. Please explain why.