

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 August 2015

**Public Authority:** Sunderland City Council  
**Address:** PO Box 100  
Civic Centre  
Sunderland  
SR2 7DN

#### Decision (including any steps ordered)

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1. The complainant has submitted a request to Sunderland City Council (the Council) seeking information regarding the sale of land at the Marine Walk site. The Council explained that it considered this request to be vexatious and thus refused to comply with it on the basis of section 14(1) of FOIA. The Commissioner has concluded that the Council is entitled to rely on section 14(1) as a basis to refuse this request.

#### Request and response

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2. The complainant emailed the Council on 25 September 2014 and submitted the following request:

*'Please could I request all documents relating to the Marine Walk land sale?*

*Please reply via email.<sup>1</sup>*

3. The Council responded on 20 October 2014 and explained that this request was being refused on the basis of section 14(1) of FOIA. The Council explained that it had reached this decision given the context of the ongoing campaign against the development of the site of the former
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<sup>1</sup> The complainant also included his postal address in his request.

Jobs café (ie at the Marine Walk site) and the significant number of FOI requests it had received on this subject between 22 and 30 September 2014. The Council explained that although it would usually offer an internal review process, given that it considered this request to be one of a number of linked requests, it suggested that it was unlikely that such a review would serve a purpose. Nevertheless, the Council explained to the complainant that if he considered there to be circumstances of which it was unaware which should be taken into account as part of the review, then he should contact the Council and ask for such a review to be undertaken.

4. The complainant subsequently contacted the Council on 23 October 2014 in order to ask for an internal review of this refusal. In doing so, he explained that he was not aware of anyone else making a similar request and thus he rejected the Council's reasoning for its reliance on section 14(1) of FOIA.
5. The Council acknowledged receipt of the complainant's email on 27 October 2014 and indicated that the review should take 15 working days, albeit that he would be kept informed if this review took longer.
6. Having failed to receive any further correspondence from the Council, the complainant contacted the Council on 19 January and 4 February 2015 in order to chase a response to his request for an internal review.
7. The Council informed the complainant of the outcome of its internal review on 2 June 2015 (subsequent to the Commissioner notifying the Council that it had received a complaint about its handling of this request). The Council apologised to the complainant for the delay in completing the internal review and explained that this was due to an administrative error. The Council explained that it remained of the view that given the context of the ongoing campaign regarding the development in question, and the significant number of FOI requests on this subject it had received, it upheld its application of section 14(1). However, the Council went on to explain that:

*'We have already made an open offer to all those who requested the information of a meeting with council officers to discuss the history of this land sale. I am happy to repeat that offer here, and, given the unfortunate history of our correspondence, would be more than happy to travel to meet you to avoid you further inconvenience in attending the council offices, and also go through the documents with you. This is an unusual suggestion and does mean that, for technical reasons, I would have to formally refuse your request under FOI legislation, while providing you and only you with the information you are interested in.'*

## **Scope of the case**

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8. The complainant contacted the Commissioner on 12 February 2015 to complain about the Council's initial refusal of his request on the basis that it was vexatious and also to complain about the Council's failure to complete its internal review.
9. Once the Council had completed the internal review, the complainant contacted the Commissioner again to confirm that he still wished to challenge the Council's reliance on section 14(1). The complainant explained that he did not wish to take up the Council's offer of receiving the documents outside of FOIA.

## **Reasons for decision**

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### **Section 14 - vexatious**

10. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
11. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the 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 public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

### The Council's position

13. The Council explained that there was a significant amount of background to this case. It argued that the request had to be seen in the context of a continuing campaign regarding the development of land at Marine Walk, Sunderland.
14. The Council explained that this campaign was being conducted not only through requests for information submitted through the What Do They Know ('WDTK') website but also through a body of correspondence with the Council's development control, planning implementation and

planning enforcement teams as well as its building controls section, complaints team, a number of councillors and Chief Executive.

15. The Council explained that the focus of those involved in this campaign had shifted over time, which it argued suggests that once an issue is addressed as fully as the Council can, further correspondence is opened on a new topic. The Council argued that it also perceived a pattern to responses to information provided by it in that subsequent correspondence does not acknowledge or take account of explanations the Council has provided, and points are reiterated even after a full explanation has been provided.
16. The Council explained that it had proactively supplied information regarding erroneous information that is circulating online and this can be viewed on the Council website.<sup>2</sup> The Council emphasised that its website explained that any interested party wishing to view the valuation report regarding the Council's sale of land at Marine Walk, or to discuss the sale or valuation of the land at Marine Walk, was welcome to do so with representatives from the Council. However, it explained that no request for an appointment had been received to date, albeit adverse comments had continued to be posted online regarding the Council's sale and valuation of this land.
17. The Council explained that requests on this topic, submitted by different individuals, had already been the subject of three decision notices by the Commissioner.<sup>3</sup>

#### *Acting in concert*

18. The Council argued that it was justified in considering this latest request to be linked to the other requests it had received on this subject from other individuals. The Council noted that the complainant had advised that he was not aware of others making requests in similar terms to the request he submitted. However, the Council argued that in its view it was justified in concluding that the complainant had become part of the virtual campaign conducted online and also through various channels. In order to support this position the Council advanced the following points:

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<sup>2</sup> <http://www.sunderland.gov.uk/index.aspx?articleid=9894>

<sup>3</sup> FS50513687 dated 5 March 2014 (the decision upheld the Council's application of section 12 of FOIA), FS50521622 dated 9 July 2014 (the decision upheld the Council's application of section 14 of FOIA) and FS50565874 dated 8 June 2015 (this also upheld the Council's application of section 14 of FOIA).

19. The Council argued that it was stretching credulity to suggest that this request was unconnected which the various materials generated by this campaign. It noted that this request was one of 27 near identical requests received by the Council during the period 22 and 30 September 2014.<sup>4</sup> Put simply the Council argued that something must have prompted the complainant's interest in order for him to have submitted a request in similar terms to the requests on the WDTK site. (The Commissioner's understands that these other requests were also refused on the basis of section 14(1) of FOIA.)
20. The Council suggested that the terms of the request itself '*Please could I request all documents relating to the Marine Walk land sale?*' itself indicates a familiarity with the ongoing campaign against the Pier Point development. The Council argued that if the complainant was unaware of any of the materials generated by the campaign, both online and on a billboard near the site, then it is unlikely that he would consider reference to 'the Marine Walk land sale' a sufficient description of the land he was interested in, neither is it likely that he would have chosen this form of words which is the description used online and on the billboard at Pier Cottages.
21. Furthermore, the Council argued that whilst the right of access under FOIA is usually applicant and purpose blind, in the context of this case it is necessary to consider how the complainant's interest in the matter arises and the use to which the information may be intended to be put. The Council acknowledged that the complainant's interest may come from a variety of sources.
22. The Council suggested that the complainant may well have visited the Marine Walk development which is becoming an increasingly popular and thriving leisure area. If so, it is likely that he would have seen the very prominent billboard sign that the lead campaigner has positioned outside his property. The Council explained that the sign has since been changed to focus on allegations regarding the Council Leader, but previously referred to information obtained through FOI requests, and the sale of the land, with links to requests submitted through the WDTK website.
23. The Council explained that there had also been discussion about the lead campaigner and indeed the campaign itself in the local press and on

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<sup>4</sup> Copies of these requests were provided to the Commissioner and he has included a chronology of these in an annex at the end of this notice.

local social media; the Council suggested that it was likely that the complainant would have come across those sources.

24. The Council noted that it was unusual for a request to be received by email but for the requester to also provide a postal address as the complainant did. (The Council explained that it would not normally ask a requester to provide a postal address unless it had reasons to consider the request to be vexatious.) The Council suggested that the complainant's decision to include his postal address may be indicative of him having knowledge, whether from the WDTK website or otherwise, of the history of the case FS50565874, in which the Council requested the complainant provide his postal address before it responded to the request. The Council explained that a further requester submitted requests early in the campaign by email but also supplied a postal address, suggesting a common approach, which might be seen to be seeking to distance requests from the campaign.
25. Finally, the Council acknowledged that it is possible that the complainant simply wants to satisfy himself as to the circumstances of the land sale. However, the Council took the view that as the complainant did not respond to its offer made at the internal review stage, this suggested that the complainant did not have a desire to access and understand the information, so much as a wish to obtain copies. Similarly, the Council explained that its earlier offer to anyone interested in the facts (to meet Council officers and be provided with information about the land sale and development) has to date not been taken up by any individual, including the lead campaigner. The Council argued that it must draw a parallel here and suggest that if a requester has a genuine wish to understand the position, and is anxious to avoid further harassment of the Council, its Members and officers, and avoid further expense to the council taxpayer, they would welcome an offer to view the files.

*Purpose and value of the request*

26. The Council explained that it holds two files on this land sale, a property services file and a legal services file. A contemporaneous valuation is not held. It explained that a retrospective valuation has been undertaken and demonstrates that the Council more than obtained market value for the land. Furthermore, the Council explained that this information (but not the valuation itself) has been made available on its website. It argued that the file documents, while on the face of it uncontroversial, being the papers routinely prepared in relation to a land sale, are as open to being misconstrued by the lay person, as was ostensibly uncontroversial information previously released. Moreover, the Council argued that release of the file documents (some of which may remain legally privileged) would do no more than confirm the purchase price (which is already in the public domain) and the procedures followed in

finalising the sale to a company that has since changed ownership. Consequently, in the Council's view there was a limited value in disclosure of the requested information.

*Burden*

27. The Council explained that it had been engaged in correspondence through numerous routes and addressed all questions on this subject up to the point where it became evident that release of information was simply generating unfounded allegations leading to further and wider correspondence with the lead campaigners and those attaching themselves to that campaign, which was, in the main, being conducted on social media. Since that time correspondence has been limited to more reasonable proportions. The Council was of the firm belief that release of further information to the campaign (as would be the case if the requested information is released to the complainant, this being publication to the world at large) will inevitably re-instigate the campaign of misinformation and result in further excessive demands on Council resource in addressing and correcting mis-apprehensions.
28. Furthermore, the Council argued that it was legitimate to consider the burden which it had already faced in dealing with correspondence on this topic from these other individuals given the link it believed existed between this request and those submitted by others.
29. The Council explained that when it had provided the Commissioner with submissions in relation to case reference FS50513687 on 28 February 2014 it had estimated that the work involved in responding to the request in that case – along with requests on that topic and associated correspondence - had amounted to in excess of 200 hours, at a conservative estimate. This estimate had not included an allowance for the involvement of councillors, and neither had account been taken of those officers who have spent time responding to single pieces of correspondence on single issues related to Marine Walk and connected issues. The Council estimated at that time (ie 18 months ago) that this represented a loss of value to the citizens of Sunderland in terms of work in excess of £16,000. The Council explained that it had, at that time, also incurred the cost of over 40 hours spent on the administration and coordination of FOI responses on top of those estimates.
30. Furthermore the Council explained that the campaign against the Marine Walk/Pier Point development continues and has taken on new momentum with the submission of a further planning application by the landowners to develop a further stretch of the site to the side of the existing development and directly opposite the Pier Cottages owned by the lead campaigner. The Council explained that it is already in receipt of further correspondence from this individual regarding this application



and this is subject of a formal complaint by him. This reinforces, the Council argued, its view that in making documents regarding the land sale public at this point, the previous pattern of excessive and inaccurate correspondence will inevitably take off again, putting council resources and individual officers under intolerable strain.

### The complainant's position

31. The complainant has explained that he was unaware that numerous other individuals had submitted requests to the Council similar to his own. However he suggested this was because his request was in the public interest and other people want the document in question. With regard to the Council's invitation to examine the requested information outside of FOIA, the complainant explained to the Commissioner that he had a number of concerns about this approach, eg such a disclosure would presumably be made without an audit trail and he would not be able to challenge the legitimacy or accuracy of any records should he have any concerns about their content.

### The Commissioner's position

32. The Commissioner's guidance on section 14(1) explains that 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. The guidance notes that a public authority will have to substantiate any claim of a link between the requests before it can go on to consider whether section 14(1) applies on these grounds. Some examples of the types of evidence an authority might cite in support of its case are:

- The requests are identical or similar.
- They have received email correspondence in which other requesters have been copied in or mentioned.
- There is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time.
- A group's website makes an explicit reference to a campaign against the authority.

33. However, the Commissioner's guidance cautions that it is also important for public authorities to bear in mind that sometimes a large number of individuals will independently ask for information on the same subject because an issue is of media or local interest. Public authorities should therefore ensure that that they have ruled this explanation out before



arriving at the conclusion that the requesters are acting in concert or as part of a campaign.

34. In the Commissioner's opinion the question as to whether the complainant can be seen to be part of acting in concert with others in submitting FOI requests to the Council on this topic is a very finely balanced one.
35. On the one hand, the complainant has asserted that he was unaware that other individuals had submitted similar requests to his own. Furthermore, the Commissioner recognises that the topic in question has clearly attracted local interest both at the site in question, in the local press and on social media. As the Council has suggested, it seems likely that the complainant has seen at least some of this material. However, this does not in the Commissioner's view equate to the complainant automatically becoming part of the campaign group simply because he has submitted a request along the same lines as other campaigners and requests. It could be argued, as the Commissioner's guidance envisages, that this is a case where an individual has independently asked for information on the same subject as other requesters because the issue is of media or local interest. This is of course the point made by the complainant.
36. On the other hand the Commissioner accepts that, to use the Council's language, it would be stretching credulity to ignore the similarities between this request and the other requests received by the Council concerning Marine Walk. The complainant submitted his request – which seeks the same information – as 26 other requests submitted to the Council over an eight day period in September 2014. Furthermore, the language of the request and the way in which it is framed certainly suggests some awareness on the part of the complainant of the ongoing campaign. The Commissioner is therefore persuaded that there is some commonality between this request and the previous requests the Council has received regarding Marine Walk.
37. Consequently, and as with his findings in decision notice FS50565874, although the Commissioner would be hesitant to accept that the complainant's request demonstrates the complainant acting in an organized campaign along with other individuals against the Council, given the broader context of this request he accepts that there are clearly some links between his request and the previous requests and correspondence the Council has received on this matter.
38. The Commissioner is persuaded, albeit by somewhat of a narrow margin, that such links provide a legitimate basis for the Council to conclude that this request is evidence of an organic campaign the apparent intention of which is discredit the Council's, and certain

individuals, credibility in respect of the Marine Walk development and/or to re-open associated issues that have been dealt with by the Council previously. Therefore, in considering whether this particular request is vexatious the Commissioner accepts that the Council can take into account the disproportionate or unjustified level of disruption, irritation or distress in answering the request in the broader context of the previous requests the Council has received on this subject.

39. When doing so, the Commissioner is persuaded that this request is vexatious. His basis for reaching this decision echoes, in part, the reasoning set out in the decision notice FS50521622 in which he found that section 14(1) was engaged, in particular paragraphs 31 to 35 of that notice.
40. In summary, that notice concluded that the volume and pattern of the requests made by individuals acting in concert had placed such a significant burden on the Council and that it was clear that they would not let matters lie to the point that they were pursuing the Council on this topic to an unreasonable level. The Commissioner is persuaded that in light of the further proposed developments at the Marine Walk, it seems likely that disclosure of the requested information could well result in such correspondence being reignited.
41. Furthermore, the Commissioner is not persuaded, as the complainant suggests that there is a compelling public interest in disclosure of this information given the amount of information that the Council has already disclosed about the sale of the land at Marine Walk.
42. The Commissioner has therefore concluded that the Council is entitled to refuse to answer the complainant's request of 25 September 2014 on the basis that it was vexatious.

## Right of appeal

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43. 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)

44. 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.
45. 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**

## Annex

Table of requests received by Council in September 2014 about the Marine Walk development.

<b>Date</b>	<b>Time</b>	<b>Email provider</b>
22 September 2014	12.39	WDTK
	12.51	WDTK
	13.00	WDTK
	14.02	WDTK
	14.04	WDTK
	14.06	WDTK
	14.48	WDTK
	14.49	WDTK
	15.04	WDTK
	16.55	WDTK
	17.18	WDTK
	17.31	WDTK
	17.37	WDTK
	18.17	WDTK
	18.29	WDTK
	19.04	WDTK
	19.14	WDTK
23 September 2014	14.53	WDTK
	15.03	WDTK (postal address provided)

24 September 2014	18.37	WDTK
	19.27	WDTK
	20.05	WDTK
	21.53	WDTK
25 September 2014	07.56	WDTK
	09.10	Gmail.com (postal address provided)
	18.18	WDTK
28 September	20.12	@mail.com (postal address provided)
30 September	16.31	WDTK