

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2015

Public Authority: London Borough of Hillingdon
Address: Civic Centre
High Street
Uxbridge
Middlesex
UB8 1UW

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Hillingdon ("the Council") broadly relating to the Council's decision to demolish his garage.
2. The Commissioner's decision is that the Council has correctly applied section 14(1) of the FOIA to the request.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 3 February 2015, the complainant wrote to the Council and requested information in the following terms:
*"there was 8 bidders who forwarded bids for the demolishing garage please can you disclose all 8 bids which were submitted?
And were they registered in the tender register?
If so please can you forward a copy via email?
Why and who chose R R Builders?
Who was the approved officer?
Also can you let me know the name of Chief Finance Officer?
What officer were present when the tenders were opened?
Please forward how many contracts for tender was [redacted name] involved in?
And how many were awarded to R R Builders?"*

When the bids were entered into the register please can you disclose when did R R builders submit theirs at the beginning or at the end? Also can you provide a copy of these entries? Please disclose the names of the registered Approved Officers for this procedure?

In the standing order 2 it states Officers shall preserve the highest standards of honesty, integrity, impartiality and objectivity. This includes compliance with the Employees' Code of Conduct.

As I have mentioned that I was told by the R R Builders company that your officer [redacted name] has been paid to make sure they get the contracts. They also told me that [redacted name] gave them a contract the one before ours they have to demolish an extension and the owner wife was so angry with officer [redacted name] she drove her vehicle straight at him to knock him down but missed him and instead run over his foot was this true?

It's also stated in the document "Where any single proposed contract variation or cumulative value of agreed contract variations is likely to exceed the value originally approved then Officers should, at the earliest opportunity, seek approval to exceed the value from the relevant Cabinet Member and the Cabinet Member for Central Services. If this exceeds 15% or more of the total contract value originally approved, a summary report shall be made to the Head of Procurement. Approval of the proposed contract variation shall be in accordance with the Standing Order 8.2 and therefore may require either approved officer approval with information written acceptance by the Cabinet Member, a formal Cabinet Member or Cabinet decision. Employees' Code of Conduct".

Also please clarify a price was submitted by R R Builders to demolish the garage was they given the contract as they were the cheapest?

Also why is it the final cost exceeds there initial bid?

Is this a common practice?

As clearly stated in the supplier instructions that a lump sum price must be given. The price to include all associated costs.

Please can you provide answer to the above and forward me the results".

5. The Council applied section 14(1) of the FOIA to the request. Following an internal review, the Council maintained its previous decision.

Scope of the case

6. The Commissioner accepted a complaint from the complainant on 16 September 2015.
7. The Commissioner has had to consider whether the Council was correct to apply section 14(1) of the FOIA to the request.

Reasons for decision

8. 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. There is no public interest test.
9. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail 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.
10. 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 authority 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.
11. 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).
12. 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.
13. 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

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

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.

The Council's position

14. The Council provided the Commissioner with some background to the request. It explained that the issue behind the request revolves around a breach of planning control regarding a Garage/Outbuilding the complainant had built. In 2011 the Council issued a Planning Enforcement Notice in respect of the outbuilding as it was not built with the appropriate planning permission. The notice required the applicant to demolish the outbuilding within three months. The complainant disagreed with the Council and submitted an appeal against the notice. In December 2011 the Planning Inspectorate rejected the appeal. The complainant then sought a judicial review.
15. The Council explained that the complainant then applied to the Council for retrospective planning permission to regularise the building. This was refused in early 2014. The complaint appealed this decision to the Planning Inspectorate which was rejected. He then sought a further Judicial Review which was also rejected.
16. The Council explained that on completion of the appeals process, the complainant had failed to comply with the original notice so the Council utilised its powers under section 178 of the Town & Country Planning Act 1990 and entered the land to effect the notice. As part of this process, the Council undertook a procurement exercise for a company to undertake the demolition. The Council confirmed that there is currently an open legal proceeding to recover the costs associated with this.
17. The Council explained that whilst the process detailed above was ongoing, the complainant submitted numerous complaints/emails to the Council making unproven and defamatory allegations against officers. The Council explained that the complainant had made allegations such as officers had lied, records had been falsified, bribes had been taken and that officers were being racist.
18. The Council confirmed that it had investigated these allegations and responded to the complaints made. The Council further confirmed that the complainant has made a number of complaints to the Local Government Ombudsman and these have all been rejected.
19. The Council considered that compliance with the request would create a significant burden in terms of expense and distraction. The Council explained that the high volume of correspondence that this matter has

generated has distracted officers from undertaking their work. The Council considers that the volume of correspondence raises repeated issues that have already been responded to by the Council or which have been considered by the appropriate regulatory bodies and the High Court. It further explained that the legal proceedings that are underway provide the complainant with a legal forum in relation to the costs the Council is trying to recover.

20. The Council further argued that the request was designed to cause disruption and annoyance. In its view, the Council considered that the volume and tone of the correspondence it has received from the complainant is an attempt to harass the Council officers into backing down from its position in regards to enforcement action and in seeking to recover monies which the complainant owes the Council. The Council also considers that any response it provides triggers further correspondence repeating the same allegations and issues resulting in further disruption.
21. The Council explained that in the request considered in this notice, the complainant repeats groundless and defamatory allegations about members of staff taking bribes. To support this, the Council explained to the Commissioner that the planning office that is referred to in the request had no role in the procurement exercise.
22. The Council considered that the request could be characterised as obsessive or manifestly unreasonable on the simple fact that the complainant repeatedly makes the same arguments that have already been dealt with by regulatory bodies and the Courts. In addition, the Council argued that there was a clear pattern of a request for information being made, it being responded to in full which prompts a further request for information.
23. To conclude, the Council argued that the request lacked serious purpose and value. It referred the Commissioner to a section of the request which states:

[redacted name] gave them a contract, the one before ours, they had to demolish an extension and the owner's wife was so angry with the Officer [redacted name] she drove her vehicle straight at him to knock him down but missed him and instead run over his foot was this true?"

24. This Council argued that this statement was evidence that the request lacked serious purpose and value.

The Commissioner's Position

25. The Commissioner notes that there is a long standing dispute between the Council and the complainant regarding a garage that was built on

the complainant's land. He considers that any concerns the complainant had regarding the Council's decision to demolish the garage have been fully investigated. This request is therefore an attempt to reopen issues that have been fully investigated and not upheld.

26. The Commissioner does not dispute that the complainant has an interest in the requested information. However, he considers that this interest does not outweigh the burden and drain on the Council's resources that would occur if it complied with the request.
27. The Commissioner has also taken into account the background and history of the complainant's contact with the Council. He considers that it is reasonable to assume that if the Council were to comply with the request, it is unlikely to satisfy the complainant and there is potential for it to lead to further correspondence and requests on the matter.
28. On this basis, the Commissioner considers that the Council was correct to apply section 14(1) of the FOIA to the request.

Right of appeal

29. 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

30. 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.
31. 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
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