

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2015

Public Authority: Cornwall Council

Address: County Hall
Treyew Road
Truro
Cornwall
TR1 3AY

Decision (including any steps ordered)

1. Following a series of earlier requests, complaints and accusations of corruption over the council and Cornwall Housing's housing policies the complainant requested details of a property which the council had advertised for let. The council applied section 14 to the request and refused to respond further.
2. The Commissioner's decision is that the council has correctly applied section 14(1) to the request.
3. The Commissioner does not require the council to take any further steps.

Request and response

4. On 16 March 2015 the complainant wrote to the council and requested information in the following terms:

"The information I request, and in the public interest, concerns the "Recent Lets" results for properties advertised between 20/12/2014 and 24/12/2014, on your website.

Specifically Homechoice Property Ref:17434, a 1 Bedroom Bungalow, Spurway Road, Liskeard, Cornwall, PL14 3DG, which was advertised without a Band or Preferences and which attracted 1 bid only.

Would you please let me know who the landlord of Property: 17434 is and where it was advertised and available to Homechoice bidders as I have no record of there being any advertised properties between 20/12/2014 and 24/12/2014 due to the xmas close-down."

5. The council responded on 8 April 2015 and provided a response to the request. It provided general information about the property and others in response to his request. The complainant however wrote back to the council on 9 April 2015 stating that the links he had been provided with did not answer all parts of his request.
6. Following an internal review the council wrote to the complainant on 8 May 2015. It stated that the request had been fully responded to and said that any further requests from the complainant on the subject would be deemed vexatious and section 14(1) applied.
7. On 12 June 2015 the complainant then requested information of the following description:

"The information I request, and in the public interest, concerns the recently advertised Homechoice property Ref: 18952, a 1 Bed Ground Floor Flat at Timber Close, St Austell, advertised between 09/05/2015 and 13/05/2015.

As you are aware I bid for this property because it was a G/F flat but I could not identify which flat it was due to the recorded information on the Council's website being totally misleading. That the photograph showed houses and the map pinpointed a house further up the estate. That despite the fact there are only 8 G/F flats within 30 feet of my front door I could not identify any G/F flat which was vacant.

Despite the Council being informed of this misleading recorded information on its website the advertisement was not corrected, and neither the Council's Simon Mansell, Cornwall Housing or my landlord have advised me of the flat number I bid for when they were each offered the opportunity.

For the sake of transparency please provide me with the number of the G/F flat I bid on.

To save time perhaps the Council would confirm if Homechoice property Ref : 19420, a 1 Bed F/F flat at Timber Close, St Austell, advertised between 21/03/2015 and 25/03/2015, and which attracted over 50 bids, and was also misleadingly advertised, was not the same flat advertised between 09/05/2015 and 13/05/2015, but wilfully and wrongly as a G/F flat.

I appreciate I would have been told had a mistake been made, and certainly during our flurry of emails in May, but it does appear at this time that myself and the public may well have been wilfully misled.

With further regard to the Homechoice properties advertised between 09/05/2015 and 13/05/2015, and in the public interest, please clarify why the advertised properties recorded on the Council's website in Monument Way, Bodmin, owned by Guinness Hermitage, and Lerryn View, Lerryn, owned by Cornwall Council were withdrawn soon after I queried property Ref: 18952."

8. He made an additional request for information on 14 June 2015 for

"I am sending you this follow up message due to yesterday's Homechoice advertised 1 Bed 1st Floor flat at Timber Close, Property Ref : 19325, which I believe is Homechoice Property Ref : 18952, and also the earlier advertised Homechoice Property Ref : 18420, which were all advertised using the same misleading picture of houses and used the same misleading map indicating a house on the estate, despite the Council being told of these "errors" in the public interest.

Please include the above directly related information with my FOI request of 12 June 2015."

9. On 15 June 2015 the council responded. It applied section 14(1) of the Act on the grounds that the request was vexatious.
10. The complainant expressed his dissatisfaction with the council's response to it on 15 June 2015. The council therefore considered his request to be a request for review and sent him the outcome of this on 6 July 2015. It upheld its position that section 14(1) applied. On 6 July 2015 the council wrote to the complainant as regards a further request for internal review and applied section 14(1).

Scope of the case

11. The complainant contacted the Commissioner on 30 June 2015 to complain about the way his request for information had been handled.
12. The Commissioner considers that the complaint relates to the application of section 14(1) by the council.

Reasons for decision

13. Section 14|(1) of FOIA states that:

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

14. The Commissioner has published guidance on vexatious requests and for ease of reference, this can be accessed here:

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

15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester where this is relevant.

The Commissioner's analysis

16. Firstly the Commissioner would like to highlight that there are many different reasons why a request may be refused on vexatious grounds, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious.

17. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them.

18. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

19. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the purpose and value of a request outweighs the impact that the request would have on the public authority's resources in providing it.

20. The council has provided arguments that the complainant's request is vexatious due to his history of requests with the council over the issue of housing and other matters. It also argues that his behaviour regarding individual council staff has clearly intended to cause annoyance and distress to council employees.
21. The council said that the complainant has been in regular contact with both Cornwall Council and Cornwall Housing (an arm's length management organisations of the council) over the 'Homechoice Register'. It provided the Commissioner with a brief history of recent requests made by the complainant to demonstrate this.
22. It said that the requests started following a complaint made to the Local Government Ombudsman which related to the application of the homechoice policy to the complainant and his late wife. The Commissioner is not aware of the specific details of the complaint or of the LGO investigation. The council informed the Commissioner however that the LGO found that the council had determined the complainant's housing applications in accordance with its Homechoice policy, although the Commissioner is aware that an apology was issued by the council over part of the complaint. The Commissioner is not aware of any further details relating to this apology but it is not relevant to his consideration of this complaint. The LGO also concluded that there was no evidence that the council had shared information with the complainant's landlord.
23. The council explained that whilst it is the council's view that matters related to the Homechoice were a matter for Cornwall Housing, the complainant refuses to deal directly with this company because he has stated that it is 'corrupt to the core'. It also said that the complainant will not now deal with the LGO because he considers that the Ombudsman has exercised 'perverse discretion' in its decision following a complaint from him determined in March 2014.
24. The council said that since the decision of the LGO the complainant has taken to personally attacking officers of the council and the housing organisation should they disagree with him or refuse his requests. In evidence of this, it pointed out that the complainant has his own website which includes links which lead to a variety of topics and which include derogatory comments about council officers. One section, entitled 'Perverse Professional Parasite Profiles' provides a photograph of a council officer who had had correspondence with him over his complaints, and makes derogatory comments about him.
25. The council also provided the Commissioner with screenshots of the complainant's twitter feed. The feed included photographs of council

officers who he has had dealings with and directly accuses them of protecting Cornwall Housing.

26. The council therefore argues that unless it complies fully with his requests for information then the officers become the subject of blogs and/or named as corrupt on his twitter feed. It argues that these have the effect of harassing the council and its council officers.
27. The council also argues that there is evidence to demonstrate that the requests themselves are designed to cause disruption and annoyance. It argues for instance that one of the more recent requests which it applied section 14(1) to dated 19 June 2015 related to issues which were largely dealt with by the LGO during its investigation of his previous complaints.

The Commissioner's analysis

28. The Commissioner has considered the above. The primary argument submitted by the council is clearly very strong. It has provided evidence that responding negatively to the complainant's requests results in direct and personal comments being published about council officers, and which includes photographs of them, presumably with the intention of helping members of the public to identify them or to provide additional pressure to coerce them into responding positively to his requests in the future.
29. The Commissioner agrees with the council that this is antagonistic and is clearly intended to harass council officers. This is strong evidence that the complainant's request is vexatious.
30. Following on from this, it is also clear that the central aspect of the complainant's requests are to air a grievance against Cornwall Housing and/or the council for issues relating to his previous dealings with them. These dealings have been investigated by the LGO and its findings published, however the complainant has seemingly refused to accept the findings. He has subsequently criticised the LGO in the strongest of terms.
31. A further strong indicator of a vexatious request is when an issue has already been investigated by an independent organisation and the requestor continues to question the outcome or to reopen an issue which has been closed. A failure to accept an independent investigation of an issue therefore provides the council with further evidence that the complaints demonstrate obsessive behaviour. When combined with the aggressive actions of the complainant as regards council officers the Commissioner is satisfied that the complaint is made with a clear intent

to harass, annoy and continue a line of argument which has already been considered and closed.

32. Whatever purpose or value the complainant's requests and complaints may have had in the initial stages of his dealings with the council, the complaints have been investigated and considered by the LGO. Any value which the complainant's issues may have had initially have been investigated, considered and subjected to independent scrutiny.
33. The Commissioner notes that whilst there may be a public interest in allowing the public to access details of how housing is allocated to ensure that the process is fair and without reproach, this cannot justify allowing individuals to act in an aggressive and/or abusive manner towards identifiable council staff.
34. Whatever the merits of the complainants purpose in this respect, seen in the context of the past history of complaints and events between the parties these are overwhelmingly outweighed by the duty of the council to protect the welfare of its employees against public attempts to humiliate, pressurise and distress them.
35. Whilst the Commissioner would generally consider the value and purpose of the requests in more detail and balance these against the arguments for applying section 14(1), in this case the Commissioner considers that the complainant's actions are so clearly intended to harass, cause irritation and distress that he does not consider any value or purpose surrounding the issue of housing which the complainant initially had with the council could outweigh the council's arguments for the application of section 14(1) in this instance, particularly as the LGO has already considered his complaints in this respect.
36. The Commissioner therefore considers that the council was correct to apply section 14(1) in this instance.

Right of appeal

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 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

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