

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 July 2016

**Public Authority:** Lincolnshire County Council  
**Address:** County Offices  
Newland  
Lincoln  
LN1 1YL

#### Decision (including any steps ordered)

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1. The complainant has requested information contained in Lincolnshire County Council's risk registers. Initially the Council refused to comply with the complainant's request in reliance on section 36 of the FOIA. Latterly the Council determined that it should instead rely on section 14(1) of the FOIA on the grounds that it would be vexatious to comply with the complainant's request.
2. The Commissioner's decision is that Lincolnshire County Council has properly applied section 14(1) of the FOIA. In view of this decision, the Commissioner has not found it necessary to consider the Council's previous position regarding its application of section 36.
3. The Commissioner requires the public authority to take no further action in this matter.

#### Request and response

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4. On 1 October 2015, the complainant wrote to Lincolnshire County Council and requested information in the following terms:

"Please can you send me an electronic copy of the following which your organisation may hold:

- 1) equivalent to Corporate/Strategic risk register/log/matrix  
Note; this will have all your organisations key risks included and likely be managed/reviewed by your senior management team

2) equivalent to Departmental/Team/Section risk register/log/matrix for each of the relevant departments indicated below.

Note: this will give the relevant departments risks and likely be managed/reviewed by Department management team

- a) Housing
- b) Direct Labour Organisation
- c) Call Centre
- d) Human Resources
- e) Finance
- f) Information Technology
- g) Legal
- h) Marketing
- i) Procurement and Contract management. Note; this is the department and not the contracts let by the Department. For example it may include not complying with the Public Contract Regulations 2015 which may also be a project specific risk.

3) Equivalent risk register/log/matrix pre and post procurement, for any external expenditure above £200k per annum, where the document has been produced and or reviewed beyond April 2013 (inclusive). I do not require more than 10 risk registers for this sub-request.

Note; the risk registers include all the stages of Procurement and or Contract Management and include Frameworks, Dynamic Purchasing Systems, Special Purpose Vehicles, Partnering, Teckal companies, etc."

- 5. The Council responded to the complainant's request on 20 November, under reference 28057093FOI. The Council advised the complainant that it holds information within the description specified in his request but that it was seeking to claim an exemption to its duty to disclose it under section 36(2) of the FOIA – where disclosure would prejudice the effective conduct of public affairs. The Council explained to the complainant how it considered sections 36(2)(b)(i), 36(2)(b)(ii), and 36(2)(c) applied to the information he seeks and it outlined its public interest considerations.
- 6. The complainant wrote to the Council having received its response to his request. The complainant asserted his belief that not all risks would fall under the section 36 exemption and he pointed out that no offer had been made about reducing the risks registers.
- 7. The Council conducted an internal review of its decision and wrote to the complainant on 17 December. The Council advised the complainant that it had made an assessment of the specific contents of each register identified in his request and its review therefore dealt with each part separately. The Council advised the complainant accordingly:

Part 1: Corporate / Strategic risk register/log/matrix  
The Council produces a Strategic Risk Register for Audit Committee.  
The most recent version of this was considered by the Committee in November 2015 and is available at the following website:

<http://lincolnshire.moderngov.co.uk/uuCoverPage.aspx?bcr=1>

Parts 2 and 3: Departmental/Team/Section risk register/log/matrix for each of the relevant departments indicated, and the risk register/log/matrix pre and post procurement, for any external expenditure above £22k per annum...

8. The Council apologised for not having clarified what information it holds which falls within the scope of these parts of the complainant's request and then advised him that the Council does not hold information within the terms of his request relating to Housing, Direct Labour Organisation and Marketing. The Council confirmed that it holds risk registers, both pre and post procurement for contracts with an external expenditure above £200k per annum, where that document has been produced and reviewed beyond April 2013.
9. The Council advised the complainant that its Finance risk registers are available on its website [above] and therefore this information is subject to the application of section 21 of the FOIA.
10. The Council's reviewer determined that the remaining information it holds is properly withheld in reliance on sections 36(2)(b)(i) 36(2)(b)(ii) and 36(2)(c). Additionally the Council advised the complainant that it now seeks to claim section 14(1) applies to his request.
11. The Council's rationale for its late application of section 14(1) is that it would be necessary to consider the information line by line to determine whether other exemptions would apply to the information, for example sections 31 and 43(2). It stated that this would cause "an unjustified level of disruption, which is not proportionate to the value gained by disclosing this information into the public domain".

### **Scope of the case**

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12. The complainant contacted the Commissioner on 18 December 2015 to complain about the way his request for information had been handled.
13. The Commissioner spoke to the complainant on 24 February 2016 to discuss the terms of his complaint. As a result of this conversation the Commissioner restricted his investigation to those pieces of information which the Council has confirmed it holds, and which it is withholding in

reliance on sections 14 and 36. What follows is the Commissioner's decision.

## Reasons for decision

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14. Section 14 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 where section 14(1) has been applied.
15. The term 'vexatious' is not defined by the FOIA. However, guidance on vexatious requests provided by the Upper Tribunal in *Information Commissioner and Devon County Council v Mr Alan Dransfield* (GIA/3037/2011) places emphasis on the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.
16. The Upper Tribunal judgment proposed four broad issues that public authorities should bear in mind when considering whether FOI requests are vexatious: (i) the burden of meeting the request; (ii) the motive of the requester; (iii) the value or serious purpose of the request; and (iv) and harassment or distress which the request causes. The judgment concurred with an earlier First-tier Tribunal decision in *Lee v Information Commissioner and King's College Cambridge* (EA/2012/0015, 0049 and 0085) that vexation implies an unjustified inappropriate or improper use of a formal procedure.
17. The Upper Tribunal also cautioned 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). The Tribunal stated the importance of remembering that Parliament has expressly declined to define the term 'vexatious'. Consequently, the four broad issues (above), "*should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms*".

18. The Commissioner's guidance<sup>1</sup> on the application of section 14(1) makes clear that the key question for a public authority is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The public authority should also take into account the background and history of the request where this is relevant.
19. The fact that a request 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 representations to the Commissioner*

20. The Council has clarified for the Commissioner its reasons for determining that the complainant's request is vexatious. The Council points out that in many instances the registers record information that, if disclosed, would be likely to have a prejudicial effect on the Council and/or on a third party, where the third party may be an individual or commercial entity.
21. The Council described the information contained in the risk registers as 'vast' and points out that it covers a range of subjects and issues. The information also relates to multiple departments within the Council and includes information relating to large numbers of third parties.
22. Fundamental to the Council's application of section 14 (and also to its consideration of section 36) is the fact that the registers are not in a format which is intended for public consumption.
23. The Council argues that it would need to assign two of its legal officers to review the registers in order to determine whether the information they contain should be subject to one or more of the exemption provided by the FOIA.
24. The Council estimates that the two officers would be required to spend in excess of 200 hours to review the registers, to consult with affected third parties and to determine whether the information is subject to an appropriate exemption. They would then be required to produce redacted versions of the registers in a format which is suitable for public consumption.

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<sup>1</sup> [http://www.ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

25. In the Council's opinion, to comply with the complainant's request would be a significant and unjustified diversion from its day-to-day business and would take away resources from its normal service delivery. This, it argues, is counterproductive to serving the general public interest.
26. The Council readily acknowledges that the information contained within the registers would attract support when considering reasons within a public interest test for disclosure. However, undertaking the exercise of producing a redacted version of the registers would only result in a minimal disclosure, providing little additional information to that which it already publishes.

*The Commissioner's decision*

27. Having examined the withheld registers, the Commissioner is minded to accept the Council's representations. He acknowledges that the Council would be required to review the contents of the registers with a view to determining whether certain entries should be subject to the application of one or more of the FOIA's exemptions.
28. Insofar as the Council's estimate clearly and easily exceeds the 18 hour limit set out in the Fees Regulations<sup>2</sup>, the Commissioner is minded to agree with the Council's position regarding the significant and unnecessary burden the complainant's request imposes on it.
29. The time estimate is substantially greater than the maximum 18 hours which the Regulations provide for, and the Commissioner agrees that the Council would be required to review the registers to determine what parts could be disclosed without prejudice to any commercial interest and to any duty of confidence it owes.
30. The Commissioner has no doubts that the complainant's request is made to further the public's understanding of the risks to its business and operational activities (real and perceived) which the Council has identified. These risks are by their nature significant and can affect the large numbers of people within the Council's area.
31. In this case, the Commissioner must assess the burden of the request on the local authority and must do so in terms of the disruption, irritation and level of stress which the complainant's request has or would generate. The Commissioner's assessment of the burden created by the complainant's request is that it is significant.

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<sup>2</sup> [http://www.legislation.gov.uk/ukxi/2004/3244/pdfs/ukxi\\_20043244\\_en.pdf](http://www.legislation.gov.uk/ukxi/2004/3244/pdfs/ukxi_20043244_en.pdf)

32. The Commissioner notes the availability of risk-related information already in the public domain. Through this, the Commissioner considers that the publicly available information goes a significant way in providing accountability.
33. The Commissioner must take into account the Tribunal's position in its Dransfield decision. He has adopted a holistic approach and has determined that the complainant's request is vexatious. He has noted that the complainant's request is not without merit, but to comply with his request would present the Council with a significant and unjustified burden. The burden, in the Commissioner's opinion, is such that the request can justifiably be characterised as oppressive at a time when pressure on public authority resources is great.
34. The Commissioner has decided that on balance, complying with it the request would constitute a disproportionate and significant burden. The burden is such to allow the Council to rely on section 14(1) on the grounds that it is vexatious.
35. In view of the Commissioner's decision regarding the Council's application of section 14(1), he has not gone on to consider the Council's representations made in respect of its consideration of section 36. Nevertheless the Commissioner has noted and agrees with much of what the Council has claimed regarding its previous application of section 36.

## Right of appeal

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

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

37. 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.
38. 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**