

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2016

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information regarding equality impact assessments in respect of grants received by the museum service since 2011. The Commissioner's decision is that Leeds City Council has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Request and response

2. On 24 December 2015, the complainant wrote to Leeds City Council ('the council') and requested information in the following terms:

"All equality impact screening tools and/or equality impact assessments completed in respect of grants received by the Museum Service since 2011."
3. The council responded on 26 January 2016 and refused to provide the requested information citing the vexatious provision at section 14(1) of the FOIA.
4. The complainant wrote to the council on 1 February 2016 expressing his dissatisfaction with the response and offered to pay for officer time to retrieve and forward requested the information.
5. On 2 February 2016, the council informed the complainant that it will not respond to further correspondence on the issue.

Scope of the case

6. The complainant contacted the Commissioner on 2 February 2016 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether the council has correctly applied section 14(1) of the FOIA to the request for information.

Reasons for decision

8. 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. There is no public interest test.
9. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹, 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. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central 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 and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. 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).

¹ UKUT 440 (AAC) (28 January 2013)

11. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
12. 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 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
13. As way of background to the issue and in order to provide context and history, the council explained that the complainant was successfully appointed to a position at a council museum in April 2013. Shortly into his employment with the council, due to concerns with his performance and conduct, the complainant had a probationary hearing which resulted in his dismissal. A probationary appeal hearing in December 2013, chaired by the Chief Officer for the Culture and Sport service, did not uphold the appeal.
14. The council informed the Commissioner that towards the end of his employment with the council, the complainant began to make information requests in respect of his employment and matters he considered pertinent to his dismissal. The council answered these requests in full.
15. After being dismissed by the council, the complainant began to make a number of allegations against the authority suggesting, in particular, that the Chief Officer for the Culture and Sport, who had taken up his role in 2012, after previously being the Regional Director of Arts Council England in Yorkshire, was corrupt. These allegations were based on the fact that the complainants' position at the council was funded by an Arts Council grant that was agreed whilst the Chief Officer for the Culture and Sport was in their employment. The council explained that the complainant deemed this to be a relevant factor in his dismissal.
16. The council said that in 2014, the complainant began to make information requests with specific regard to the appointment of the Chief Officer for the Culture and Sport, and any declared conflicts of interest. He also made requests for information on the interview panel which had

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

appointed the Chief Officer for the Culture and Sport, and any conflicts of interest that they, themselves, had declared during the interview process. The council answered these requests in full.

17. In total, the complainant has submitted 6 FOIA requests and 6 Subject Access Requests to the council since October 2013 and before the request in this case. The council provided the Commissioner with a copy of its responses to these requests.
18. The council further explained that in the summer of 2015, the complainant began to make comments in respect of his allegations both on the internet and to partners who worked with the council and that this included emailing parties involved with Leeds' bid for European Capital of Culture 2023 (for which the Chief Officer for the Culture and Sport is the lead officer). It said that officers within the council also began to receive anonymised emails³ (which included a link to an internet forum post in the complainant's name) which used extremely offensive language with regard to the Chief Officer for the Culture and Sport. The complainant also emailed the Chief Officer for the Culture and Sport directly, again, using derogatory language.
19. In January 2016, the complainant directly emailed the Chief Officer for the Culture and Sport making personal comments about his daughter who, it appears, he had located on social media. The email stated the following:

"Does [name redacted] suspect what a hypocritical, underhand, nasty little [redacted] you truly are? Or is her wide-eyed idealism as phony as you are? How do you imagine the eager little Corbynista will cope when the truth about how Daddy funds her easy liberal lifestyle emerges? Perhaps stealing from the dispossessed, the poor and the excluded isn't a victimless crime after all - now that would be an interesting discussion point to tweet about. Yawn."
20. The council also understands that an anonymous letter with essentially the same content was sent directly to the Chief Officer for the Culture and Sport's daughter (care of her university). The letter was not sent in the complainant's name but the council is of the view that, given the content, on the balance of probabilities, it was written by him.

³ The Commissioner notes that the email addresses were named 'exploiting communities', 'sick and tired' and 'crooked[redacted]'.

21. Whilst the council was already at a stage where it considered the complainant's requests were becoming vexatious in nature, it was of the view that this behaviour was simply unacceptable, and that the personal vendetta that the complainant appeared to have was now becoming deeply unpleasant in nature.
22. In January 2016, officers and councillors within the council also received email communication purporting to be from the Chief Officer for the Culture and Sport (but sent from a gmail account which included his first initial and surname) which levelled corruption charges. The council is of the view that, given that it makes reference to the same information the council has disclosed to the complainant under FOI, and to the complainant's own employment, on the balance of probabilities, it was written by him. This email included comments such as:

"I would be obliged if in future all instances of scheming hypocrisy, turd polishing, self serving, underhand double dealing, blatant cronyism, or ruthless backstabbing could be referred to as 'doing a [Chief Officer for the Culture and Sport's name redacted]'".
23. The council also informed the Commissioner that it is aware, from correspondence the complainant has shared the council, that the complainant has also written to Arts Council England, the Department for Culture, Media and Sport, and the National Audit Office with regard to the Chief Officer for the Culture and Sport. Whilst it is not party to the results of any investigations that they have undertaken, the council said that it would appear, from his correspondence, that these bodies have not upheld the complaints and allegations.
24. As stated in paragraph 12, the Commissioner needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
25. In relation to the disruption and distress caused by the request, the Commissioner considers that the abusive and derogatory language used in correspondence to the council would have a distressing effect on the recipients. He was provided with examples of language which he has chosen not to reproduce in this decision notice due to its offensive nature. Although not all the examples given are written in the complainant's name, the Commissioner agrees with the council that, in the circumstances, they appear to come from the complainant. He has also been provided with examples of unacceptable language directly from the complainant. The Commissioner considers such language to be far beyond the level of criticism that a public authority or its employees should reasonably expect to receive.

26. The Commissioner considers that the council has demonstrated that the complainant has a personal vendetta against the Chief Officer for the Culture and Sport which appears to have stemmed from the complainant's dismissal. The complainant appears to have contacted the Chief Officer for the Culture and Sport's daughter and the Commissioner considers that this would cause significant distress. The Commissioner appreciates that the letter sent to the daughter was anonymous but does not consider that this would lessen the distress and anxiety this would cause.
27. The council has said that the complainant's requests place a significant burden on it. It said that a conservative estimate is that it has spent over 30 hours of officer time responding to his information requests and in doing so, it has provided 111 pages worth of information under the FOIA and 1035 pages of information responding to subject access requests, as well as approximately 4 hours of audio recordings. The Commissioner considers that to continue responding to related requests would increase the burden already imposed on the council.
28. Turning now to the serious purpose and value of the request, the complainant has said that he requires the requested documents to support his claim that he had reasonable belief that wrongdoing was occurring, as he requires other Equality Impact Assessments to test the official explanation that the apparently fraudulent one was completed in simple-minded error. The council has said that the complainant's allegations in respect of these matters have been addressed by both the council (under its grievance process) and the Arts Council England ('ACE') and that it has also provided all relevant information requested by the complainant with regard to his concerns. It explained that the complainant did not raise his whistleblowing concerns on the awarding of the grant with the council but with ACE. It said that it has not been party to the full details of his allegations, or the work undertaken by ACE with respect to this matter but it was asked by ACE if it would undertake some investigation on their behalf to address elements of the allegations that were specific to records held by the council. This included the appointment of the Chief Officer for the Culture and Sport and the accuracy of performance data submitted by the council following award of the grant.
29. The complainant also said that the previous requests he has submitted have confirmed the following:
 - "1) The Equality Impact Assessment completed by the museum service head at the time of a £5m Arts Council grant award flatly contradicts the terms of that grant;

- 2) That the Chief Officer for Culture & Leisure (who was responsible for my dismissal) did not declare a conflict of interest in relation to being signatory with monitoring responsibility for that £5m grant whilst in his previous position of regional director of Arts Council England at the time when he made his application for the post of Chief Officer, which had delivery responsibility for the same award;
- 3) That the Chief Officer for Culture & Leisure did not meet the person specification for the post of holding a (relevant) degree;
- 4) That the Chief Officer for Culture & Leisure did not declare a conflict of interest in hearing my final appeal for dismissal (alone) despite being signatory for the grant I had claimed misuse of whilst in his previous position as regional director of ACE;
- 5) That at least 4 of the 6 independent stakeholder panel who recruited him to the post had undeclared conflicts of interest in relation to £6m of grants received from ACE, past employment at ACE, or current contractual business arrangements with ACE;
- 6) That this panel was selected by the same director who recruited the Chief Officer, and who refused to investigate my whistleblowing submission, in breach of policy."

Although it is not the Commissioner's remit to adjudicate on the complainant's allegations, he asked the council to comment on the above and the answers provided do not cause the Commissioner to consider that the information requested in this case is necessary to prove the complainant's allegations.

30. The council said that whilst it has, in the past, endeavoured to be as helpful and transparent as possible in answering the complainant's requests, it is clear that they are now made only with the purpose of continuing a personal dispute. It said that furthermore, the allegations put forward by the complainant have already been addressed by the council, as well as by other outside bodies as referenced in paragraph 24, and that it is difficult to see, given this fact, what public interest there would be in continuing to expend officer time locating further information.
31. The complainant's internal review request mentions him paying for officer time in relation to this request and claiming back the fees via an Employment Tribunal or the ICO. The Commissioner considers that this adds weight to argument that the complainant is pursuing a personal matter, stemming from his dismissal, rather than solely attempting to demonstrate that the council has acted inappropriately in wider areas. He also notes that if an Employment Tribunal takes place there is likely

to be ways, other than the FOIA, in which the requested information could be obtained if necessary.

32. Given the context of this request, the Commissioner considers that there is no reasonable prospect that the information requested would support the finalisation of this matter. Conversely, he considers that the complainant may use the requested information to create further points of dispute which at best would be tangential to the core issues.
33. When considered in isolation, the request in this case could appear to have serious purpose and value, that being to establish if the council has acted appropriately in relation to equality impact screening in respect of grants received by the Museum's Service since 2011. However, when considered in the context and history of the case, including the existence of vexatious 'indicators' as detailed in the aforementioned guidance on vexatious requests (such as abusive or aggressive language, burden on the authority, personal grudges, unreasonable persistence, unfounded accusations, futile requests), the fact that the complainant appears to be primarily pursuing a private matter arising from his dismissal, and that the allegations have been considered by a range of bodies in addition to the council, the Commissioner does not consider that the purpose of the request justifies the distressing and disproportionate effect on the council. He acknowledges that the request itself does not appear to be difficult to comply with, but considers that the provision of the requested information is likely to cause further harassment and distress to staff as it would appear to be a means of furthering the complainant's grievance with the council and the Chief Officer for the Culture and Sport in particular. This can be considered as an inappropriate use of information rights under the FOIA. Taking into consideration the findings of the Upper Tribunal in Dransfield, that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the council was correct to find the request vexatious. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in these instances.

Right of appeal

34. 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

35. 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.
36. 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
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