

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 June 2016

**Public Authority:** Derbyshire County Council  
**Address:** County Hall  
Matlock  
Derbyshire  
DE4 3AG

#### Decision (including any steps ordered)

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1. The complainant has requested information concerning the sickness absence records and claims of gross misconduct of staff at specified care homes in Derbyshire. Derbyshire County Council refused to respond to two of the complainant's requests in reliance on section 14(1) of the FOIA.
2. The Commissioner's decision is that the complainant's requests are vexatious and therefore the Council is entitled to refuse them in reliance on section 14(1) of the FOIA.
3. The Commissioner does not require the Derbyshire County Council to take any further action in this matter.

#### Request and response

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4. The complainant has complained to the Commissioner about Derbyshire County Council's refusal of two requests for information which he made via the WhatDoTheyKnow website.
5. **Request 1** (submitted on 20 November 2015):  
"Could you please tell me, since 2008, how many "Gross Misconduct" charges (or similar) have been given to staff members at the following Home for Older People:  
  
[a specified care home]"

6. The Council acknowledged the complainant's request on the day it was received and it informed him that he would receive the Council's response on 18 December.
7. On 18 December, the complainant wrote to remind the Council of its duty to respond to his request within twenty working days of its receipt. This was followed by a further two emails which concerned the failure of the Council to respond to his request.

8. **Request 2** (submitted on 23 December 2015)

"Can you please tell me how many "sick days" members of staff have had since 2010 at the following Homes for Older People:

Goyt Valley  
The Glebe  
Hazelwood  
Southlands  
Gernon Manor  
Ladycross"

9. The Council responded to both of the complainant's requests on 24 December, advising him that his requests are refused under section 14(1) of the FOIA, on the grounds that they are considered vexatious. The Council's letter stated:

"The Context of your requests and communication with the Council has also been taken into account and it is considered that the request is intended to cause unjustified level of irritation and distress. The request does not have adequate or proper justification and is an improper use of the formal request procedure."

10. On 29 December 2015, the complainant asked the Council to conduct an internal review of its decision to refuse his requests.
11. The Council wrote to the complainant on 25 January 2015 to advise him of its final decision. The Council's reviewer explained that he had taken account of the wider context of the requests and the Information Commissioner's guidance. He had looked at the history of the complainant's requests since 8 October 2015 and the information which had been posted on the WhatDoTheyKnow website: In particular a comment posted on 23 October 2015 and a police incident – reference 232/221215.
12. The Council noted that that complainant has made a number of requests of a similar nature, which appear to be targeted at a particular member of staff at [a specified care home] and that your requests seem to be a way of pursuing a grudge against a Council employee.

13. The Council informed the complainant that it was satisfied that his most recent requests are intended to cause an unjustified level of distress and that it had decided that section 14(1) had been appropriately applied.

### **Scope of the case**

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14. The complainant contacted the Commissioner 30 January 2016 to complain about the Council's refusal to answer his two requests.
15. The complainant asserted that the Council had given spurious reasons for not answering his requests, pointing out that he had searched his comments of the WhatDoTheyKnow website and had not found anything, and that, whilst the manager of [a specified care home] had reported him to the police for harassment and intimidation, the police had informed him that there was no case to answer and that the case was closed.
16. The Commissioner has investigated whether the Council is entitled to rely on section 14(1) on the grounds that both of the complainant's requests are vexatious

### **Reasons for decision**

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17. Under section 14(1) of FOIA, a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
18. The term 'vexatious' is not defined in the legislation, however in *Information Commissioner v Devon County Council & Dransfield*<sup>1</sup> 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.
19. 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.

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<sup>1</sup> UKUT 440 (AAC) (28 January 2013)

20. In the Dransfield case, the Upper Tribunal also found it instructive to assess 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.
21. However, 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).
22. 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. He considers there is in effect a balancing exercise to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.
23. 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 requests<sup>2</sup>. 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*

24. The Council has referred the Commissioner to his decision notice in case FS50502086: That notice concerns a request made by the complainant for information which relates to a disciplinary investigation of a council employee working in a home for older people. The Commissioner's decision in case FS50502086 was that the Council was entitled to rely on section 40(5) of the FOIA, where confirming or denying whether the requested information is held would contravene one or more of the eight provided by the Data Protection Act.

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<sup>2</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. The Council has pointed out that the complainant's requests of 20 November and 23 December 2015 are linked to the request which the Commissioner considered in case FS50502086, and that during the period 8 October to 23 December 2015, the complainant has made 11 requests for information which relate to [a specified care home] or its manager.
26. An overview of the complainant's requests reveals that they target a specific individual and reveal an on-going grudge against the manager of [a specified care home]. The tone and content of the complainant's requests and his general behaviour have led the Council to conclude that he is pursuing issues which involve the complainant's partner and a Council disciplinary proceeding from 2013.
27. During 2013 the complainant submitted 9 separate requests for information which were connected to the Council's disciplinary proceeding.
28. The requests have been made via the WhatDoTheyKnow website: In choosing to submit his requests in this way, the complainant has been able to make serious allegations against an individual, whom he has named, and these allegations are now in the public domain and freely accessible. The effect of the complainant's requests is that the manager of [a specified care home] has suffered unwarranted stress and anxiety.
29. Additionally, since the focus of the complainant's requests is [a specified care home] members of its staff have been distressed and concerned about their safety. This has required the Council to provide these staff members with necessary support.
30. The complainant has submitted 9 requests during 2013 and a further 11 requests between October and December 2015. The frequency, focus and overlapping nature of these requests, together with the tone and content of the complainant's additional correspondence is suggestive that the purpose of his requests is to cause annoyance, irritation and harassment to the Council and its employees. This is exemplified by the contents of the complainant's email of 23 August 2013, in which he makes a number of unsupported allegations about the managers of council-run care homes.

*The Commissioner's conclusions and decision*

31. The Council has provided the Commissioner with a schedule of the complainant's requests during 2013 and 2015. The schedule indicates that the Council has previously endeavoured to accommodate and satisfy the complainant's requests, particularly where they concern different care homes to the one specified in his first request (above).

32. It is clear to the Commissioner that the Council has disclosed information to the complainant on numerous occasions or it has properly applied an appropriate exemption. The Commissioner notes that the complainant appears to have been satisfied by the information disclosed to him in respect of most of his requests, on the grounds that he did not pursue his right to seek an internal review.
33. In this case, the complainant has tasked the Commissioner to determine whether his requests of 20 November and 23 December 2015 are vexatious. To do this, the Commissioner is obliged to consider the wider context of these requests and to apply his own guidance<sup>3</sup>.
34. The evidence supplied to the Commissioner is persuasive: It is clear to the Commissioner that the complainant is pursuing a personal grudge against a particular care home and its staff. He has chosen to do this by submitting requests made under the FOIA rather than submitting genuine concerns to the Council so that they may be properly investigated under its recognised procedures.
35. The complainant has seen fit to name an individual in his requests and also to name that person's place of work. He has published these details on the WhatDoTheyKnow website and has effectively been able to make unsubstantiated allegations against that person to the world at large. In choosing this course of action, the complainant has denied this person the same right of anonymity which the Commissioner has given to him.
36. The complainant has submitted a significant number of requests over a short period of time. The number and frequency of these requests cannot be overlooked: It is not difficult for the Commissioner to conclude that the complainant's requests are unreasonably persistent and that they have been submitted with the deliberate intention of causing annoyance to the Council and its staff.
37. This is particularly evident from the complainant's email of 23 August 2013, where he makes unfounded allegations about 'protecting bullies and criminals, castigating whistle blowers', and where he copies this to 9 separate officers within the Council.
38. Whilst this email cannot be described as abusive, it is certainly sarcastic in tone, and in the Commissioner's opinion, it demonstrates the

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

complainant's purpose of harassing the Council rather than raising sustainable concerns.

39. When considered in the context of the complainant's previous correspondence and requests, the Commissioner is in no doubt that the two requests considered in this notice are vexatious. It is clear to the Commissioner that the complainant has crossed a line whereby any reasonable person would consider his requests only serve to harass the Council.
40. For the Council to respond to these requests would present a disproportionate and unjustified burden, particularly where the information which the complainant seeks is of limited public interest.
41. In view of the above, the Commissioner's decision is that the complainant's requests of 20 November and 23 December 2015 are vexatious. He finds that Derbyshire County Council is entitled to rely on section 14(1) of the FOIA.

## Right of appeal

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42. 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)

43. 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.
44. 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**  
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**SK9 5AF**