

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 November 2016

**Public Authority:** Eastbourne Borough Council  
**Address:** Town Hall  
Grove Road  
Eastbourne  
East Sussex  
BN21 4UG

#### Decision (including any steps ordered)

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1. The complainant has requested information from Eastbourne Borough Council ("the Council") about a specific Council officer. The Council refused the request under section 14(1) of the Freedom of Information Act ("the FOIA"). The complainant subsequently contested the Council's refusal.
2. The Commissioner's decision is that the Council has correctly applied section 14(1) to refuse the request.
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 22 March 2016 the complainant made a request for:  
*In the interests of transparency I would like to see terms of all contracts that exist between [redacted business] and Eastbourne Borough Council and vice versa.*
5. On 10 April 2016 the complainant made a second request for:

*I would like to make a Freedom of Information request to ask what information [redacted name] has disclosed to the Council regarding his own offshore accounts and those of his private company, [redacted business) and what information does the Council hold of [redacted name]'s offshore accounts and any offshore accounts and interests of [redacted business].*

6. On 13 April 2016 the Council refused these requests under section 14(1).
7. On 13 April 2016 the complainant requested an internal review.
8. On 11 May 2016 the Council provided the outcome of its internal review. In this it maintained its position.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 11 May 2016 to complain about the Council's response.
10. The Commissioner considers the scope of this case to be the determination of whether the Council has correctly applied section 14(1).

### **Reasons for decision**

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#### **Section 14(1) – Vexatious requests**

11. Section 14(1) states that:

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

12. The Commissioner has published specific guidance<sup>1</sup> on vexatious requests.
13. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

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 when this is relevant.

#### The complainant's position

14. The complainant has provided limited contextual information to the Commissioner about the purpose and value of the requests. However it is understood that the complainant's requests relate to a Council officer who also operates a business that provides services to the Council, and that the complainant believes a conflict of interest exists that has not been addressed by the Council.

#### The Council's position

15. The Council considers that the complainant's request relates to an ongoing personal grievance against the officer, and has stressed that the continuing nature of the complainant's requests and correspondence (which includes unsubstantiated allegations against the officer) has caused the officer significant distress as a result.
16. The Council has previously addressed the complainant's concerns through a Stage 2 investigation in February-March 2012, in which no evidence of inappropriate conduct was identified. The Council further upheld these findings in a subsequent review in May 2012, and advised the complainant that any further appeal must be made to the Local Government Ombudsman. As part of the Stage 2 investigation and review, the Council compiled a chronology of communications with the complainant, of which a copy has been provided to the Commissioner.
17. Information requests relating to the officer and their business were subsequently made on 12 December 2013, 22 February 2016, and 23 February 2016, and were responded to by the Council. The two latest requests, as refused under section 14(1), also relate to the officer and their business. Information requests were also made prior to the Stage 2 complaint, and whilst direct copies are not available, the basic details of these which are contained within the chronology compiled by the Council. The Commissioner understands from reviewing this chronology that that complainant started to submit correspondence and information requests to the Council from c. 2009 onwards.

#### The Commissioner's analysis

18. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, 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. 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. 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 value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

*The purpose and value of the requests*

20. The purpose and value of the requests has not been clearly defined by the complainant. However it is understood by the Commissioner that they have been made as part of the complainant's long-running concern about a conflict of interest and the expenditure of public monies. Although such a matter may have public interest attached to it, it is also evident to the Commissioner that the Council has investigated the complainant's concerns and not found any evidence of inappropriate activity, and that any appeal against this must be submitted to the Local Government Ombudsman.
21. There is also evidence that suggests the requests are related to a personal grievance against the officer. Although the exact circumstances of this are not referred to by either party, the Council's chronology suggests that the complainant's first contact with the Council was caused by a professional disagreement between the complainant and the officer in which the complainant was caused financial loss.

*The burden on the Council*

22. Whilst only a relatively small number of the requests have been submitted by the complainant since 2012, it is noted that these (including the two refused requests) are intrinsically related to the complainant's concerns. These concerns have resulted in a significant

amount of correspondence and actions (spanning from c. 2009 onwards) in which no findings of inappropriate activity have been identified.

*The Commissioner's conclusion*

23. There is limited evidence available to the Commissioner that suggests a public value in the requests. The complainant's concerns about the officer have been considered repeatedly by the Council with no grounds for further action being identified. The complainant has also had the opportunity to refer the matter to the Local Government Ombudsman (although it is not known whether he has chosen to do this). There is also evidence that suggests the complainant's actions may be based in a personal grievance against the officer, and that the rights afforded by the FOIA are being inappropriately used to pursue this.
24. The Commissioner further recognises that compliance with the requests would divert and use public resources, and does not consider there to be sufficient public value to warrant this.
25. On this basis the Commissioner considers that section 14(1) has been correctly applied.

## Right of appeal

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26. 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)

27. 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.
28. 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**