

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 December 2016

Public Authority: Darlington Borough Council
Address: Town Hall
Darlington
DL1 5QT

Decision (including any steps ordered)

1. The complainant has requested information in relation to postal votes. Darlington Borough Council (the council) refused the request under section 14(1) of the FOIA as it considered it to be vexatious.
2. The Commissioner's decision is that the council are able to rely on section 14(1) of the FOIA to refuse the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 18 May 2016, the complainant requested the following information from the council:

"A, In total how many postal votes in the recent Police and Crime Commissioner (PCC) elections were discounted due to some "irregularity" (whatever it may be) for want of a better description within the postal part of the voting process?"

B, Of that total number in response to QA, how many were discounted like mine for what your letter (16th May 2016) describes [sic] as "the signature on the postal voting statement did not match the signature you previously provided"[sic]?"

C, If there are any other reasons that postal votes are discounted (ie; forgot to sign) please could you give me a full and concise breakdown of all these numbers and reasons for rejection as I am sure there will be a difference between the total number

discounted in the answer to QA, and the lesser number in response [sic] to answer to QB?"

5. On the 19 May 2016 the complainant amended his request as follows:

"Having slept on this I have realised that I have actually had 2 postal votes lately could you clarify which one was discounted the Police and Crime Commissioner (PCC, 1 vote) or our Parish elections (a potential of 12 lost votes). Then apply the original request to which ever was discounted."

6. The council responded on the 14 June 2016 refusing the request under section 14 of the FOIA as it considered it to be vexatious.
7. On the same day the complainant requested that the council undertake an internal review of its refusal of the request.
8. The council provided its internal review response on the 23 June 2016 upholding its decision to refuse the request.

Scope of the case

9. The complainant contacted the Commissioner on 23 June 2016 as he was not satisfied with the council refusing the request.
10. The Commissioner considers the scope of the case is to determine whether section 14(1) of the FOIA is engaged.

Reasons for decision

Section 14(1) of the FOIA – Vexatious requests

11. Section 14(1) 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.
12. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*¹. The Tribunal commented that
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¹ <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

vexatious could be defined as the *"manifestly unjustified, inappropriate or improper use of a formal procedure."* The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

13. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance². 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.
15. The council has provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA. In doing so, it has considered the history and context leading up to this request being made.
16. The council provided the Commissioner with a First Tier Tribunal (FTT) decision, dated 19 January 2016, which upheld section 14(1) against a previous request of the complainant's. The council has told the Commissioner that although it has considered this latest request on its own merits, it also considers that the FTT decision highlights and supports the burden that the complainant is continuing to place on the council.
17. The complainant considers that the council is relying on this FTT decision to deny his information rights and it will use the same excuse for every request he submits in the future. He has told the Commissioner that this request is in the public interest and not vexatious as he has never asked this question before.

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http://ico.org.uk/for_organisations/guidance_index/~ /media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

18. The Commissioner notes at paragraphs 31 and 32 of the FTT decision, it found:

"31. However, considered in the context of multiple requests made over a number of years and [complainant's name redacted] apparent intention to disrupt DBC as expressed to others, the Request seems to us to be part of a course of conduct amounting to manifestly unjustified, inappropriate or improper use of FOIA.

32. On the basis of the evidence before us we find that the Request is vexatious. The number of requests, particularly in the year prior to the Request, has clearly been a heavy burden on DBC and there is no indication that this will stop or reduce in the future. [Complainant's name redacted] seems to be bent on a course of action designed to disrupt the Council's business. DBC is entitled to say "enough is enough"."

19. The council has told the Commissioner that on the 31 December 2015, the complainant made a request for information, and even before the council had made a decision on it, the complainant's partner re-submitted the same request to the council on the 4 January 2016 – less than a week later. The council provided the Commissioner with a copy of these emails.
20. The council has highlighted to the Commissioner that the complainant has done similar before. When it refused another request from December 2014 as vexatious, instead of the complainant then appealing the decision through the appropriate FOIA appeal process, the council believes that he attempted to obtain the information by asking another individual to submit the same request. Again, the council has provided copies of the email chain which shows that the other individual simply forwarded the complainant's request on to the council.
21. In the Commissioner's view, this behaviour alone demonstrates that the complainant appears to be continuing to burden the council and supports the FTT's view that he *"...has clearly been a heavy burden on DBC and there is no indication that this will stop or reduce in the future. [Complainant's name redacted] seems to be bent on a course of action designed to disrupt the Council's business. DBC is entitled to say "enough is enough"."*
22. On the argument that the complainant has never requested the information in his latest request before, the Commissioner notes that the FTT decision stated at paragraph 22 that his previous requests had been on different subject matters.

23. The Commissioner is of the view that making requests on different subject matters does not reduce the impact or burden on a public authority in having to deal with those requests. Where relevant, it can be legitimate for a public authority to use these requests on different topics in support of demonstrating the overall burden of having to deal with them.
24. The Commissioner is therefore of the view that, in this case, any legitimate interests in the information being sought is outweighed by the disproportionate burden being continuing to be placed on the council in having to deal with this request. Therefore the Commissioner upholds the council's refusal of this request.

Right of appeal

25. 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

26. 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.
27. 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
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Cheshire
SK9 5AF