

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 March 2017

**Public Authority:** Cromer Town Council  
**Address:** North Lodge  
Overstrand Road  
Cromer  
Norfolk  
NR27 0AH

#### Decision (including any steps ordered)

---

1. The complainant has submitted a request recorded information from Cromer Town Council. The ambit of the complainant's request is particularly wide since it relates to litigation between the Council and Hoyl Group Limited concerning the right of access to the basement flat at North Lodge. The Council refused the complainant's request in reliance on section 14(1) on the grounds that the request is vexatious.
2. The Commissioner's decision is that Cromer Town Council has properly applied section 14(1) to the complainant's request. She finds that the complainant's request for information is vexatious and consequently the Council is not obliged to comply with the provisions of section 1 of the FOIA.
3. The Commissioner requires the public authority to take no further action in this matter.

#### Request and response

---

4. On 2 September 2015, the complainant wrote to Cromer Town Council and requested information in the following terms:

"...please provide me with copies of the following:

All meeting minutes, all communications (letters, emails, etc) and all voting records where the issue of right of access to the basement flat located at North Lodge Park are mentioned, conveyed or concerned."

5. The Council acknowledged its receipt of the complainant's request on 2 September and on 25 September it sent him its response.
6. The Council advised the complainant that all minutes of its meetings and voting records are available on its website and therefore it refused to supply this information in reliance on section 21 of the FOIA.
7. The Council also advised the complainant that trial bundles, relating to *Hoyl Group Limited v Cromer Town Council* (Norwich County Court claim 3SA00472) and the Court of Appeal case (B2/2014/3348) contain all the relevant disclosable information.
8. This information is comprised of 839 pages, including 30 colour pages and 3 large plans, and therefore the Council issued a fees notice, asking for payment of £131.52 to cover copying and VAT.
9. On 6 October, following his receipt of the Council's response, the complainant wrote again to the Council and asked, "will the issue of the basement flat access court case be discussed and if so when?" He pointed out to the Council that its website only allows access to minutes of council meetings for the last three years – at that time August 2012, and that the issue of access to the basement flat goes back to 2007.
10. The complainant expressed his concern that the issue of the basement flat does not seem to have been discussed or to have been put on any agenda or minutes. He stated that, "this is most odd when you consider the "business end" of this matter has all transpired with the last year, and the information [...] should be easily located within the agenda section of the Town Council website. The complainant therefore asked, "How were the decisions reached to go to court, how were the judgements discussed and the press release agreed?" He asked the Council to confirm that the issue concerning access to the basement flat and the court case have not been discussed.
11. The complainant also expressed his belief that the Council had not properly addressed the second part of his request. He referred the Council to the wording of his request and asserted that, while the court bundle will contain a good portion of the information he requires, they were unlikely to contain the "real communications", thoughts and advice.
12. The complainant asked the Council to deny whether it had set up a working group or committee to deal with matters relating to the basement flat and whether this group or committee was "off books". He then asked the Council to address issues which concern the two court cases.
13. On 15 October 2015, the Council's solicitors wrote to the complainant addressing each of the points he raised in his email of 6 October: The

Council advised the complainant that copies of the Council's minutes are kept in minute books which are kept at the Council's offices, and that they could be inspected by appointment. Therefore, the solicitors confirmed the Council's application of section 21 of the FOIA.

14. The Council's solicitors referred the complainant to "information relating to the case which is covered by legal professional privilege" and they advised him that this information is not available to the general public being exempt from disclosure by virtue of section 42 of the FOIA. The solicitors also confirmed that the Council had set up a sub-committee to deal with the day-to-day management of the case and that, "for obvious practical reasons", matters of legal professional privilege are exempt by virtue of section 42 of the FOIA.
15. The solicitor's letter ended by referring the complainant to section 14(1) of the FOIA, making clear that the Council does not have to comply with a request for information which is vexatious. The letter made clear to the complainant that an application of section 14 would be an option should he complain to the Information Commissioner, particularly in view of the "unwarranted criticism and intemperate language" he has directed towards the Town Council's Clerk.
16. The complainant responded to the Council's solicitors in an email dated 19 October. In that email, the complainant challenged the Council's reliance on section 42 of the FOIA, asserting that its applicability is limited to the period of sub-judice, and that its use by the Council was an attempt to conceal.
17. The complainant referred to a pack of all the papers in the case which was distributed to councillors at a public meeting in March 2015 and therefore, the complainant's opinion, this constituted a public disclosure. The complainant advised the solicitors that the Council might elect to waive privilege where it may reasonably be apprehensive of charges of wilful concealment or acting against the general expectation of transparency
18. Additionally, the complainant noted the Council's confirmation of the existence of the sub-committee and he asked the solicitors to confirm whether the minutes of this sub-committee are available for inspection or whether they were subject to a claim of legal privilege. The complainant then went on to comment in detail on the remaining parts of the solicitors' response, and in particular to the possibility of the Council's future reliance on section 14(1), which he termed "a vague and spurious construction" and a "threatening bluster".
19. On 21 October, the complainant wrote to the Council to ask how he could obtain a copy or inspect the Council's "standing orders prior to the amendments made in May 2015".

20. On 10 December 2015, the Council's solicitors wrote to the complainant about its concerns regarding of his unwarranted criticism an intemperate language directed at the Town Clerk.
21. The complainant immediately responded to this letter by raising several points in rebuttal of the Council's position.
22. On 16 December 2015, the complainant wrote to the Council's chair of its Personnel Committee. This email was followed by another email dated 30 December. Both of the complainant's emails concerned allegations made about his behaviour which are referred to on the Council's solicitors' letter of 11 December.
23. On 30 December 2015, the complainant wrote to the Council to complain about the Town Clerk. The complainant expressed his concerns about alleged falsehood and dishonesty on the part of the Town Clerk, which the complainant stated are derived from the letter sent to him by the Council's solicitors dated 11 December.
24. Also on 30 December 2015, the complainant wrote to the Council's solicitors. He pointed out that the court bundles he had received were incomplete and asserted that they are "clearly old spares left over from litigation". He asked for reimbursement of the fee he paid on the grounds that "it is illegal to make charges for cost not actually incurred.
25. The complainant went on to ask the solicitors to confirm that Cromer Town Council was advised by solicitors and a barrister from 2007 to 2015, and to make comments about the contents of the solicitors' letter of 11 December. Some of the complainant's comments concerned a picture of the Town Clerk which had previously appeared on the Town Clerk's Facebook page. He stated that, "it is the sort of picture that used to appear in the "reader's wives" sections of soft porn magazines of our grandparents generation". The complainant also referred to the "considerable concern and distress" referred to by the Council's solicitors and asserted that this had been manufactured for the purpose of this correspondence. He further asserted that the solicitors' allegations were misdirected and that the Clerk's concern and distress were the consequences of her own actions and lack of judgement.
26. On 11 January 2016, the complainant wrote to the Mayor of Cromer Town Council about the minutes of the Council's meeting of 18 December 2015. He asked for the minutes to be removed from the public domain. This email was followed by a further email on 13 January.
27. Following the correspondence listed above, Norfolk Constabulary served a Police Information Notice ("PIN") on the complainant in respect of "various email correspondence sent to [a] victim, which had caused distress and anxiety".

28. Following a complaint from the complainant, the Constabulary determined that the PIN had been inappropriately served and it was rescinded.
29. On 15 March 2016, the Council wrote to the complainant and advised him that contact with him would be terminated. This decision was taken under the Council's Dignity at Work Policy.

### **Scope of the case**

---

30. An associate of the complainant contacted the Commissioner on 23 June 2016 to complain about the way the complainant's request for information had been handled.
31. The Commissioner investigated whether the Council has handled the complainant's request in accordance with the provisions of the FOIA and in particular to whether the Council is entitled to rely on sections 14(1) and 42 of the FOIA.

### **Reasons for decision**

---

32. The Council, through its solicitors, has made clear to the Commissioner that it is relying on the provisions of section 14(1) of the FOIA for its refusal to comply with the complainant's request. Notwithstanding this position, the Council has advised the Commissioner that it maintains its original reliance on the exemptions to compliance/disclosure provided by sections 12, 21 and 42 of the FOIA.
33. The Commissioner has decided to consider the Council's reliance on section 14(1) in the first instance.

### **Section 14 – Vexatious requests**

34. Under Section 14(1) of FOIA a public authority is not obliged to comply with a request for information where the request is vexatious.
35. The term 'vexatious' is not defined in the Act. The Commissioner has therefore adopted the Upper Tribunal's approach taken in *Information Commissioner v Devon County Council & Dransfield*.<sup>1</sup> In the Dransfield case the Upper Tribunal defined a vexatious request as, the

---

<sup>1</sup> UKUT 440 (AAC) (28 January 2013) paragraph 27

"...manifestly unjustified, inappropriate or improper use of a formal procedure" and in making this decision the Tribunal determined that the concepts of 'proportionality' and 'justification' should be central to any consideration of whether a request is vexatious.

36. In the Dransfield case, the Upper Tribunal 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.
37. The Upper Tribunal stressed that the considerations listed above were not exhaustive and 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).
38. Following the approach taken by the Upper Tribunal, the Commissioner has considered whether the complainant's request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to its serious purpose and value. In the Commissioner's opinion a balancing exercise is required which weighs the impact of the request on the Council against its purpose and value.

#### *The Council's representations*

39. The Council has drawn the Commissioner's attention to case FS50635012 which concerns a complaint by [a named person] and which is also the subject of the Commissioner's decision.
40. The Council points out that there is a close association between the complainant in this case, with [a named person] and with Hoyl group Limited – the party involved in the litigation referred to by the complainant.
41. The Council's position in this case is essentially the same as its position in respect of case FS50635012. The principal arguments advanced by the Council concern the wide-ranging scope of the complainant's request; the complainant's joint enterprise with [a named person] and the complainant's conduct in matters associated with his request.

*The scope of the complainant's request and its manifestly unreasonable nature*

42. The Council argues that the complainant's request has to be set in the context of the amount of information held by its solicitors on behalf of the Council.
43. The class of documents caught by the description "*all communications*" where the issue of rights of access to the basement flat is mentioned covers everything held by the Council in respect of its dispute with Hoyl and also communications relating to the granting of the lease to the basement flat in 2007. The Council assures the Commissioner that the information which falls within the scope of the complainant's request is likely to exceed 10,000 documents which relate to the Hoyl v Cromer litigation and the original granting of the lease.
44. Most of this information is not held in electronic format and that which is held electronically cannot be accessed quickly and identified by sophisticated search functionality. This is especially the case where documents are held in PDF format.
45. The Council asserts that the complainant's request is obviously framed to encompass as wide a class of documents as possible. This being the case, the Council considers that complying with the request would be grossly disproportionate and costly and therefore would be manifestly unreasonable.
46. The Council points out that it only employs two staff and that the complainant knows this. Additionally, the complainant knows that the information he seeks concerns a legal case which commenced in 2013. The complainant would have been aware that the Council had been advised throughout this period by solicitors and by counsel, and that the case had been unsuccessfully appealed to the Court of Appeal.
47. The Council asserts that a reasonable person would know that the documentation generated by a complex legal dispute would be very substantial and that a request for 'all' of this documentation would be manifestly unreasonable, inappropriate and improper use of a formal procedure.
48. To support its position regarding the manifestly unreasonable nature of the complainant's request, the Council referred the Commissioner to the Tribunal's decision in Independent Police Complaints Commissioner v the Information Commissioner EA/2011/0222.
49. In that case, the IPCC had to review 438 reports, requiring IPCC staff to be diverted from their core functions for such a period of time to render the request as "grossly oppressive". Here, the Council asserts that it is self-evident that the resources available to the Council are more limited than those of the IPCC.

50. The Council estimates that it would take in excess of fifty hours of work for its two staff to comply with the complainant's request and consequently there would be no obligation to comply with that request by virtue of section 12 of the FOIA – where the cost of compliance would exceed the appropriate limit prescribed by the Fees Regulations.

*Joint enterprise*

51. The Council argues that the complainant's request and actions demonstrate that he is acting in concert with [a named person].
52. The Council has provided the Commissioner with list of correspondence from the complainant and [a named person] which the Council suggests supports its contention that they are engaged in a joint enterprise with regards to their requests.
53. The Council notes that [a named person] is acting as the agent for the complainant in raising his complaint with the Information Commissioner. Likewise, the Council notes that the complainant and [a named person] jointly paid for the court bundles which the Council's solicitors provided.

*The complainant's conduct*

54. The Council draws the Commissioner's attention to the words and phrases used by the complainant in his correspondence with the Council, which the Council considers amounts to vexatious conduct. In two instances the Council considers the phrases are libellous.
55. The Council characterises the complainant's correspondence as containing "unwarranted criticism and intemperate language [...] directed at [the Town Clerk] in pursuance of [his] requests" and that they demonstrate "yet another example of a course of conduct targeted on [the Town Clerk] and designed to undermine, harass and discredit her in the eyes of her employers and the public generally".
56. The Council directs the Commissioner to the accusation made by the complainant against the Town Clerk, of "malicious falsehood and gross dishonesty".
57. The Council's solicitors have advised the Commissioner that the complainant's accusations and behaviour have caused the Town Clerk enormous distress and harassment and this has prompted her to seek separate legal advice.

*Lack of serious purpose of the complainant's request*

58. The Council submits that no serious purpose can be served by providing the complainant with the huge disclosure of documents which he seeks. It points out that the case is a matter of public record where the



judgments have already been made available to the complainant and where the matter has been covered by the local press.

59. The arguments used by the Council's lawyers in the Court of Appeal have been provided to the complainant and the Council believes that the complainant has received a substantial disclosure of documents relating to the litigation from Hoyl Group Limited.

*The complainant's behaviour*

60. The Council submits that the complainant's request, together with those made by [a named person] in case FS50635012, amounts to a concerted campaign to disrupt the proper administration of the Council.
61. This campaign is similarly attested to by the complainant's and [a named person's] behaviour at Council meetings and by their abusive and defamatory notices which they have displayed to the public in their respective premises.
62. The Council advise the Commissioner that there have been threats of civil and criminal litigation.

*The Commissioner's considerations and decision*

63. The Commissioner accepts the Council's assertion of joint enterprise on the part of the complainant and a [named person].
64. The joint enterprise of the complainant and [a named person] leads the Commissioner to conclude that their purpose in submitting their requests was to cause substantial inconvenience to the Council. This inconvenience represents a significant burden in terms of the Council's available time and resources and the requests serve to place excessive stress on the Council and its officers.
65. The Commissioner has no reason to doubt the extent of the information held by the Council; She recognises the huge task that would be required of the Council to comply with the complainant's request and she has no doubt that the amount of work required for compliance would likely exceed the fifty hours which the Council asserts.
66. Clearly the complainant seeks a significant amount of information within the ambit of his request. The Commissioner considers that a great deal of the information covered by the request would likely engage one or more of the exemptions provided by Part II of the Act.
67. The Commissioner notes the absence of evidence which supports any allegation of wrong-doing or malfeasance on the part of the Council. She is particularly concerned about the correspondence the complainant has sent the Council in support of his request. This correspondence has been

highly personalised and derogatory towards the Town Clerk to a point which cannot be ignored and the Commissioner readily accepts that the complainant's request has caused unwarranted harassment.

68. Taking all of the above into consideration, the Commissioner has decided that the Council is entitled to rely on section 14(1) in respect of the complainant's request. For the avoidance of doubt, the Commissioner finds that the complainant's request of 2 September 2015 is vexatious.
69. Having found that section 14(1) has been properly applied to the complainant's information request; the Commissioner is not required to consider the Council's alternative position in respect of sections 12, 21 and 42 of the FOIA.

## Right of appeal

---

70. 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)

71. 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.

72. 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**