

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2017

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
35 Wellington Street
Woolwich
London, SE18 6HQ

Decision (including any steps ordered)

1. The complainant made requests for costs incurred by the local authority relating to the policy on street trading licences. The Royal Borough of Greenwich (the Council) refused the request as vexatious under section 14(1) of the FOIA. The Commissioner's decision is that the Council has correctly applied the vexatious provision at section 14(1) of the FOIA. She does not require any steps to be taken.

Request and response

The first request (FOI-4611)

2. On 4 April 2017 the complainant made a request under the FOIA for the following information:

'Please provide full details of the costs (internal and external) incurred by the local authority in creating, implementing (including any consultation costs), enforcing and reviewing the local authority's policy to designate miscellaneous trading sites as "licence streets" from 2010 to date?'

3. The Council responded on 5 May 2017 and cited section 14(1) (vexatious request) referring the complainant to previous similar requests since 2014.
4. The complainant requested an internal review on 2 July 2017. He provided a description and rationale for each of the previous requests.

5. The Council provided the outcome of its review on 3 July 2017 and refused to provide the requested information as its position remained unchanged.

The second request (FOI-5171)

6. On 3 May 2017 the complainant made a request under the FOIA for the following information:

'Please provide full details of any internal and/or external costs either proposed to be incurred or incurred by the local authority in: (a) contemplating; (b) preparing; (c) attending; (d) claiming; (d) defending; (e) enforcing; (f) responding to and/or (g) otherwise dealing with (including a cost attributed to the time spent dealing with) any form of: (a) complaint; (b) proceeding; (c) litigation; (d) any other form of dispute resolution; (e) enforcement action and/or (f) other matter (in each case, contemplated or otherwise) (including, without limitation, any subject access request and/or freedom of information act request) arising out of or connected to the local authority and [redacted name of licence holder] from 2 February 2016 to date?'

7. The Council responded on 12 May 2017 and cited section 14(1) (vexatious request) referring the complainant to its previous letter of 5 May 2017.
8. The complainant requested an internal review on 10 July 2017.
9. The Council provided the outcome of its review on 17 July 2017 and refused to provide the requested information as its position remained unchanged.

Background

10. The Council provided the following as background. Following an appeal at Woolwich Crown Court on 16 February 2015 the Court ordered the Council to grant a street trading licence to [redacted name of licence holder] for a 6 month period from 16 February to 16 August 2015 relating to the sale of ice-cream and associated confectionary.
11. On 29 July 2015 a resolution was passed by full Council to designate certain streets within the Royal Borough as designated streets for the purposes of street trading. King William Walk was not included as a designated street. It was agreed that street trading licences shall not be granted in respect of non-designated streets except in the circumstances set out in the report to Council. (e.g. for occasional markets)

12. [redacted name of licence holder] appealed the decision of the Council's Licensing Authority to refuse to renew a street trading licence. At the appeal hearing on 1 February 2016 at Bexley Magistrates' Court, the appeal was dismissed and the decision of the Council to refuse to renew a street trading licence was upheld. The decision was appealed by [redacted name of licence holder] to Woolwich Crown Court with an appeal date of 20 May 2016. The appeal was withdrawn.
13. The complainant also provided information as background. Four Penalty Charge Notices were issued on the [redacted name of licence holder]'s ice-cream van during April and May 2016 for parking in King William Walk. These were successfully appealed as the application for a renewal of the street trading licence allowed the existing licence to remain valid (under The London Local Authorities Act 1990) until the appeal was withdrawn on 19 May 2016. The complainant states that the appeal was withdrawn as the Council had contacted the licence holder's son's employer.

Scope of the case

14. The complainant contacted the Commissioner on 23 July 2017 to complain about the way his request for information had been handled. The Commissioner considers the scope of her investigation to be whether the Council is entitled to rely on the vexatious provision at section 14(1) of the FOIA.

Reasons for decision

Section 14 – Vexatious requests

15. 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.
16. 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

¹ UKUT 440 (AAC) (28 January 2013)

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

17. The Upper Tribunal also considered four broad issues:

- (1) the burden imposed by the request (on the public authority and its staff);
- (2) the motive of the requester;
- (3) the value or serious purpose of the request; and
- (4) harassment or distress of and to staff.

The Upper Tribunal 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"

18. The Commissioner will therefore consider whether the requests are likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
19. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her 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.
20. The Council considered that the requests imposed a significant burden in terms of expense and distraction and were designed to prolong issues that had already been adjudicated upon.

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

21. The Council stated that there had been long standing dealings pertaining to applications for a street trading licence. In addition to the litigation from 2015/16 detailed in the background above (paragraphs 10-12) there had been 9 FOIA requests broadly relating to the same or similar matters i.e. the street trading application, street trading licensing and street trading licensing policy.
22. Both the Council and the complainant have provided tables listing the 9 previous FOIA requests which the Commissioner briefly summarises below:

2014 – 1 request in May - Licencing conditions of Duke Humphrey's Road

2015 – Nil requests

2016 – 7 requests from February to July – correspondence on the designation of King William Walk as a "licence street"; litigation costs from 2013 to date; residential complaints about King William Walk provided to the Full Council meeting when deciding on the designation of streets for trading; covert surveillance on the named licence holder's ice-cream vehicle; any complaints about the named licence holder; all correspondence between a named Councillor and others about the street trading licence or vehicle of the named licence holder.

2017 – 1 request in February – the Council's policy to designate certain streets as 'licence streets'.
23. The 2 requests from April and May 2017 for the costs incurred by the Council relating to the policy on street trading licences that form this complaint to the Commissioner are FOIA requests 10 and 11 to the Council.

Are the requests designed to cause disruption or annoyance? Do they have the effect of harassing the public authority?

24. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
25. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other

independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.

26. In this case, the Council accepted that requestors are fully entitled to make requests for information but stated that *'a line must be drawn where a requestor continually makes requests for information on the same or similar matters.'*
27. The Council considered that the purpose behind the requests was intrinsically personal: the *'requests emanate from some sense of grievance or alleged wrongdoing on the part of the Council regarding the refusal to renew a street trading licence and the designation of certain streets within the Royal Borough as designated streets for the purposes of street trading. The Council believes that the requester's motive is to air a grievance against the Council. The Council considers that it is not the purpose of the FOIA to assist requesters in placing undue pressure on a public authority'*.
28. The complainant has explained that the purpose behind the requests was not personal. He sought information to understand the decision by the Council to exclude King William Walk as a designated licensable street; information that was not adjudicated at Court; and information *'to create transparency in the Council's decision making, spending patterns and processes'*.
29. He stated that any follow-up correspondence was because the Council's responses were unclear, ambiguous or appeared to be incomplete or conflicted with other information that he held.
30. The complainant also stated that the *'number and nature of the information requests that I have made is reasonable and proportionate considering the circumstances, particularly: (a) the history of my dealings with the Council, especially with a long-standing Councillor and the former chief executive; and (b) the hostile, adversarial and contentious nature of those dealings from 2013 to date.'*
31. In his request for an internal review, the complainant stated that: *'Whilst the purpose may not have been self-evident to the Council, I have reasonably justified each information request that I have made and provided additional background information which the Council has never sought itself to request. It is highly conceivable and likely that: (a) in the context of my dealings with the Council; (b) the confirmation bias held by a long-standing and influential Councillor from the outset; and/or (c) the acts and/or omissions of the Council in its Policy Decision to exclude King William Walk from the list of designated licensable streets, the Council is concerned about the consequences of releasing*

requested information or the possible prejudice that may arise from the disclosure of information, whether now or in the future.'

32. The Council asserts that the requests have placed an unnecessary pressure on the Council and could reasonably be described as a burden on the Council. *'The requestor is attempting to reopen issues that have already been comprehensively addressed by the Council in its responses to earlier requests. ... The purpose behind the requests does not justify the level of disruption, time and resources required to provide the information sought.'*

The Commissioner's decision

33. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. She also recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
34. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if he uses FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.
35. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
36. The Commissioner has considered all the correspondence presented to her by both the Council and the complainant, and has taken into account the context and background to the requests from 2013.
37. In this case, the requests are for information that can be summarised as surrounding the decision to exclude King William Walk (where the licence holder operated) as a designated licensable street. The Commissioner understands that this had a direct effect on the named street trader's licence application and his livelihood.
38. Although there is some purpose and value in understanding the transparency of the Council's decision making process on the issue of street trading, the Commissioner's view is that the private interests of the complainant would appear to override the public interest in the general transparency of the Council's decision making on this issue.

39. The pattern of requests do demonstrate a level of persistence. As previously mentioned these requests were the 10th and 11th requests made to the Council by the requester. This level of persistence could be viewed as unreasonable given that the licence holder has already received a Court decision on the application for a street traders licence.
40. The Commissioner has considered the purpose of the request in the context of the other correspondence and taking into account the persistence of the complainant, finds that the effect is to harass the public authority and cause distress to members of staff.
41. The Commissioner notes the concern of the complainant that the Council may be concerned about the possible consequences of disclosing information (paragraph 31 above), but the Commissioner has not seen any evidence to support this.
42. In conclusion, the Commissioner has considered both the Council's arguments and the complainant's position regarding the information requests. 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. She has balanced the purpose and value of the request against the detrimental effect on the public authority and is satisfied that the request has the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

43. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

44. 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.
45. 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

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