

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 21 June 2019

Public Authority: London Borough of Lambeth
Address: 1 Ivor House
Acre Lane
London
SW2 5BF

Decision (including any steps ordered)

1. The complainant requested information that had been redacted in response to another individual's Subject Access Request (SAR). The London Borough of Lambeth ("the London Borough") refused the request under section 14(1) of the FOIA on the basis that the request was vexatious.
2. The Commissioner's decision is that the request is vexatious and the London Borough was entitled to refuse it under section 14(1). No steps are required.

Background

3. The London Borough considers the request in this case to be connected to a series of requests seeking information about an incident at a school and the decision to move a student to another school. The London Borough considers the complainant in this case ("person A") to be known or related to the individual who initially requested the SAR disclosure ("person B"). Both person A and person B are considered to be known or related to one of the students who was moved to another school ("person C").

Request and Response

4. On 8 August 2018, person A wrote to the London Borough and requested information in the following terms:

"Please supply the information contained in the redacted section surrounded by blue marker pen in the email attached to this request (FOI-A.pdf)."
5. The London Borough responded to the request on 20 August 2018. It refused the request under section 14(1) of the FOIA because it said it was vexatious.
6. Person A contacted the London Borough on 20 August 2018 and asked it to conduct an internal review of the response.
7. In their internal review response, the London Borough also considered another request submitted on 24 July 2018 by person A (ref: IR248284). The London Borough refused both requests under section 14(1) of FOIA.

Scope of the case

8. Person A contacted the Commissioner on 4 October 2018 to challenge the London Borough's refusal of his request of 8 August 2018 (ref: IR250235) under section 14(1) of FOIA. He did not wish to challenge the London Borough's refusal of the other request of 24 July 2018 (ref: IR248284).
9. The Commissioner considers the scope of the case to be whether the request is vexatious as per section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – vexatious

Was the request vexatious?

10. Section 14 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."

11. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the *"manifestly unjustified,*

inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

12. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. *Dransfield* 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. It explained that these considerations were not meant to be exhaustive and also explained 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).
14. The Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
15. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: *"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies"*.
16. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
17. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: *"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."*

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

The complainant's position

18. In his complaint to the Commissioner, person A disputes the London Borough's application of section 14(1) in response to his request. In his opinion, the London Borough has applied s14 as a "*blanket exemption*" in order to avoid disclosing the information he is seeking.
19. His request concerns information that was withheld by the London Borough in response to a SAR request submitted by person B. According to person A, the information he is seeking does not fall within the scope of previous information requests made by him and forms one half of a "hybrid request" for information not disclosed in response to a previous SAR request, ie the SAR made by person B.
20. By refusing the request, the complainant considers the London Borough to be obstructing a wider information gathering process "*in which the final piece of information sought is within sight*".
21. Referring to this process of information gathering, person A explains that a "*related party*" (ie person B) has made a number of information requests to the London Borough, one of which went to the Information Tribunal. In summary, person A explains that this case was lost due to an interpretation issue with the initial request.
22. Person A concludes that the issue at hand could have been resolved 18 months previously if the London Borough had been more cooperative and provided all of the information the complainant and the "*related party*" (ie person B) are seeking.

The London Borough's position

23. With reference to the Commissioner's guidance, the London Borough explained that it considered the request to be vexatious on the grounds of burden, unreasonable persistence, frequent or overlapping requests and the futile nature of the request. For the purpose of this decision notice the London Borough's submissions are summarised below.

Case background

24. The London Borough set out to the Commissioner that it considered person A's request to be related to a series of requests submitted by person B about an incident at a school and the decision to move a pupil involved to another school. The London Borough explained that it received the first of these requests on the 23 March 2016.
25. Prior to his request of 8 August 2018, the London Borough state that person A submitted two requests for information related to the incident at the school on 13 July 2018 (ref: IR246961) and 24 July 2018 (ref: IR248284).

26. For clarity, the request of 13 July 2018 (ref: IR246961) is as follows:

"Please supply any correspondence (including emails) between [named individual], Deputy Head Teacher of [redacted] and any of the Lambeth Schools and Education teams, relating to the single individual pupil, for whom consent for release has been provided in the attached consent document, for the period 1st December 2015 to 30th November 2016.

Please note that I, as requester, do not have any legal authority to consent to the release of personal information on behalf of the single individual pupil referred to in this request; additionally I do not have authority to make a Subject Access Request on his behalf."

27. His request of 24 July 2018 (ref: IR248284) requested the following information:

"Please supply any correspondence (including any correspondence contained within emails) between any member of staff at [redacted] and any of the Lambeth Schools and Education teams, relating to the single individual person, for whom consent for release has been provided in the attached consent document, for the period 1st December 2015 to 31st July 2016.

Please note that I, as requester, do not have any legal authority to consent to the release of personal information on behalf any individual person referred to in this request; additionally I have do not have authority to make a Subject Access Request on their behalf."

28. The London Borough add that the "consent document" referred to in the above requests is a document signed by person C and appears to consent to the release of some of their personal information under the FOIA. The London Borough also explain that this "consent document" had previously been used by person B to request person C's personal data.

Burden on the authority

29. The London Borough submits that responding to the request of 8 August 2018 would not impose a significant burden on its resources. However, given the nature of the complainant's previous requests, the authority argue that responding to the request "would be likely to result in further similar requests being made to the council".

Unreasonable persistence

30. Prior to person A's request, the London Borough explain that they received a number of requests from person B concerning events at the school and the decision to move a student to another school. These

requests included requests for the release of some of person C's personal data under the DPA.

31. In light of this, the London Borough consider person A to be furthering an issue which has already been subjected to a previous decision by the Information Commissioner (FS50662928)² and the Information Tribunal (appeal number: EA/2017/0235).
32. It is not required to repeat the history of the above referenced case for the purpose of this decision notice. However, the London Borough refer to this case in order to illustrate unreasonable persistence on the part of person A by requesting information under FOIA "*that the Information Tribunal decision ruled was not the correct way to access the information*". The London Borough argued that the complainant should be aware that the information he was seeking was not disclosable under FOIA and that continuing to apply for it appears to be intransigent.

Frequent or overlapping requests

33. The London Borough add that person A submitted three requests within short succession. They consider person A to have submitted requests for information that overlapped and repeated.

Futile nature of request

34. By seeking information that has not been disclosed in response to another individual's SAR, the London Borough consider person A to be attempting to access information under the FOIA which cannot be accessed using this method. This is because even if section 14(1) did not apply to this request then the information would be exempt from disclosure on the basis of section 40(2) (personal data) of FOIA.
35. According to the London Borough, the complainant is seeking information under FOIA that is useful to him but does not serve any wider public interest.

Commissioner's Decision

36. The Commissioner's position is that the request is vexatious.
37. The London Borough has provided ample evidence to show that the complainant's request is part of a wider series of requests seeking information about an incident at a school and the decision to move a student to another school.

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2172559/fs50662928.pdf>

38. Through their access to the redacted SAR disclosure, their previous requests relating to events at the school, and their reference to the "consent document" in previous requests (IR246961 and IR248284), it can be assumed that person A and person B are acting "in concert" and therefore the actions of person B are relevant to the section 14(1) decision in this case.
39. In light of the above, the Commissioner considers person A to be aware of her decision in connection with a previous request submitted by person B in relation to the incident at the school. In decision notice FS50662928 the Commissioner makes it clear that requests relating to these events have been addressed by the London Borough and are of little wider purpose or value:

"The Commissioner cannot see any particular weighty public interest in providing confirmation or denial although she acknowledges the compelling personal interest that the complainant has in finding out more about the alleged events." (paragraph 38)

40. The Commissioner has not changed her position in relation to this request and struggles to see the "overriding public interest" which person A believes applies to the information he is seeking. The requested information is very minimal in nature and the Commissioner cannot see any wider or more general public interest in the disclosure of this information.
41. According to person A *"there is no intention to make any further FOIA requests of Lambeth Council"*. Given the wider context and history to their request of 8 August 2018, the Commissioner finds this unlikely and struggles to see how complying with the request in this instance would not lead to further requests in the future. Therefore, whilst complying with this particular request may not prove to be burdensome in the Commissioner's view the likelihood of similar requests being submitted should this request be complied with does present a risk of placing a burden on the London Borough.
42. Furthermore, the Commissioner agrees with the London Borough that this request can be one that can be correctly classified as demonstrating unreasonable persistence given that in light of the previous Information Tribunal decision the complainant was likely to be aware that FOIA would not provide a route to access this information.
43. The Commissioner thus concludes that the request is vexatious and the London Borough was not obliged to comply with it.

Right of appeal

44. 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

45. 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.
46. 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

Jonathan Slee
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