

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 August 2020

Public Authority: Liverpool City Council
Address: Cunard Building
Water Street
Liverpool
L3 1AH

Decision (including any steps ordered)

1. The complainant requested from Liverpool City Council ('the Council') information broadly concerning the arrangements relating to stray dogs. The Council refused the request under section 14(1) (vexatious requests) of the FOIA on the basis that it was vexatious.
2. The Commissioner's decision is that the request was vexatious and the Council was entitled to rely on section 14(1) of the FOIA to refuse to comply with the request. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 5 November 2018 the complainant wrote to the Council and requested information in the following terms:

"Please can you provide me with the following information from 1st January 2015 to 31st December 2015 and from 1st January 2016 to 31st December 2016:

1. *Total number of dogs collected by the dog warden or by any person or company subcontracted to provide a dog warden service by the Council.*
2. *Total number of dogs returned to owner within 7 days.*

3. Total number of dogs boarded at an establishment for the boarding of stray dogs within 7 days of being collected.

4. Total number of dogs disposed in compliance with Section 149(6) Environmental Protection Act 1990 after 7 days. If the dogs were gifted to a person, who in the opinion of the Council, would care properly for the dog, please provide the name and address of that person or persons.

5. Please provide details of the procedure adopted by the Council dog warden when forming an opinion, during the exercise of the powers conferred by Section 149(6) Environmental Protection Act 1990, as to whether the person to whom the dog is to be gifted will care properly for the dog. If there is no set procedure, please advise as to which factors are considered by the dog warden when forming any such opinion.

6. Total number of dogs euthanised within 7 days of having been collected.

7. Total number of dogs euthanised 7 days or more after collection.

8. Total number of dogs returned to, or kept by the finder of the dog, where the finder of the stray dog stated that they desired to keep the dog.

In relation to each of the above queries, please provide a separate breakdown from 1st January 2015 to 31st December 2015 and from 1st January 2016 to 31st December 2016."

4. On 12 December 2018 the Council responded and refused the request under section 14 (vexatious requests) of the FOIA.
5. On 8 January 2019 the complainant requested an internal review of the Council's response.
6. On 21 January 2019 following an internal review, the Council upheld its original position.

Background information

7. The complainant contacted the Commissioner on 24 February 2019. He complained about the Council's refusal to disclose information to three of his requests relating to stray dogs. These requests for information were held under the Council's reference numbers: 608714, 617355 and 643865.

8. Request 608714. The Council partially upheld information to part (ii) of this request. It provided the complainant with a redacted version of a contract, and the names of individuals within the document, the Council withheld under section 40(2) (third party personal data) of the FOIA. With regards to the remaining parts of the request - parts (i), (iii) and (iv) the Council withheld information under section 43(2) (commercial interests) of the FOIA.
9. Request 617355. The Council withheld some of the information under section 43(2) and to the remaining elements of information, it considered this to be exempt from disclosure and applied section 12 (cost of compliance) of the FOIA.
10. Request 643865. The Council refused this as it deemed it to be a vexatious request and cited section 14(1) (vexatious request) of the FOIA.
11. Within the Council's internal review response to the complainant, it refused to provide information to request "633685" (a typo by the Council – should read 643865) and to subsequent information requests. The Council supplied the complainant with a table which listed his requests for information and which were received during May 2018 to November 2018. This list included the above three requests. The Council stated to the complainant that taking into account the extent and number of requests received from him on the same subject matter (arrangements relating to stray dogs), the Council considered *"that the application of section 14(1) of the FOIA appropriate in these circumstances."*
12. Following an investigation of the complaint and which was held under case reference FS50856542, this was progressed to a decision notice and served on 2 December 2019. The Commissioner's decision was that the Council failed to provide sufficient evidence or arguments to support its assertion that the request was vexatious, and that the request does not engage section 14(1) of the FOIA. Therefore, the Council was required to issue a fresh response to the request.
13. The complainant contacted the Commissioner on 21 December 2019 and raised a concern that the decision notice - FS50856542 was only related to one of his three requests – 643865. He considered the remaining two requests – 608714 and 617355 which preceded request 643865 had not been addressed within the decision notice. The complainant asked for an investigation of these two requests for information.

14. Further to the decision notice¹ in which the Commissioner required the Council to take steps to ensure compliance with the legislation, on 6 January 2020 the Council provided the complainant with a fresh response to his request – 643865 and disclosed the information requested. The complainant subsequently agreed for this part of his request to be closed.

Scope of the case

15. The complainant contacted the Commissioner on 13 January 2020 to complain about the way his request for information had been handled. He specifically had concerns about the Council's position that the two remaining requests - 608714 and 617355 and any subsequent requests on the same matter to be treated as vexatious under section 14(1) of the FOIA.
16. The complainant argued that *"it is for the ICO to determine firstly whether they were right to ignore my requests for information altogether, and secondly whether they were right subsequently to treat my requests as vexatious without any notification to myself."*
17. The Commissioner clarified with the complainant that her investigation was to determine whether the Council handled the two specific requests (608714 and 617355) in accordance with the FOIA – section 14(1).
18. The following analysis focuses on whether the requests 608714 and 617355 were vexatious by virtue of section 14(1) of the FOIA, and whether the Council was correct to rely on this section to refuse to comply with these requests.

Request - 608714

19. On 10 July 2018 the complainant requested information under the FOIA of the following description:

"Please can you provide me with a copy of the contract between Liverpool City Council (and, if such exists, other local authorities including Sefton, Knowsley and Halton) and Animal Wardens Ltd and / or any other contractor or subcontractor to provide

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616543/fs50856542.pdf>

- (i) a collection service for stray dogs,
- (ii) (an out of hours collection service for stray dogs,
- (iii) a kennelling facility for stray dogs which have been seized under Section 149 Environmental Protection Act 1990 and
- (iv) any other services relating to stray dogs.

If you consider that any part of that contract is exempt information, please provide those sections of the contract which you do not consider to be exempt.

Please also advise when that contract is due to be retendered.

Please advise as to the name of the individual or company which provides kennelling facilities for stray dogs which have been seized (whether or not this is under a contract) and please advise as to the location of those kennels."

Request - 617355

20. On 13 August 2018 the complainant requested information under the FOIA of the following description:

"Animal Wardens Ltd holds a collection and kennelling contract with Liverpool City Council. A copy of that contract was requested on 9th July 2018 but has not yet been provided.

In 2016, according to information published on Liverpool City Council's website, Liverpool City Council paid Animal Wardens Ltd £132,054.16 for the kennelling of animals. This consisted of four quarterly payments in excess of £16,000 and miscellaneous other monthly payments.

In 2017 Liverpool City Council paid Animal Wardens Ltd £76,204.63 for the kennelling of animals and for the control of stray dogs. This consisted of two payments in excess of £16,000 and miscellaneous other lower monthly payments.

Please can you provide a breakdown of which services the above payments were for. Please provide specifically a breakdown as to which of those payments related to the kennelling contract and which related to the collection contract.

Please also provide details of any payments under £500 which are not recorded on the Council website."

21. During the Commissioner's investigation and on 3 April 2020, the Council maintained its position and application of section 14(1) of the FOIA to the two requests – 608714 and 617355.

Reasons for decision

Section 14(1) – Vexatious requests

22. 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.
23. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*² (GIA/3037/2011). The Tribunal commented that 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.
24. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is vexatious by considering 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.
25. The Upper Tribunal did, however, also caution 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*" (paragraph 45).
26. In the Commissioner's guidance, she suggests that 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.

² <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

27. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests, which are set out in her published guidance on vexatious requests³. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.
28. 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.
29. The task for the Commissioner is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal. In doing so she has taken into account the representations of the Council and the evidence that is available to her. In this decision notice, the Commissioner will also refer to her published guidance on defining and dealing with vexatious requests.

The complainant's position

30. The complainant previously confirmed that there is a serious purpose to his requests. He explained that having carried out research for some time and as a result of several FOI requests submitted to various local authorities, he said that he had established numerous facts and specific figures regarding arrangements for stray dogs which he finds concerning.
31. The complainant said that he has been investigating [name redacted] dogs Home and its ownership by the company [name redacted] for over 18 months. He considered that the facts are complex and require an understanding of the stray dogs legislation and of the interaction between the local authorities, [name redacted] and the charity [name redacted]. He also said that the basis for his request for information was to establish whether there were similar issues for the years in question.

³ <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

32. The complainant considers that there is a public interest in these matters, and believes there is a public interest in providing greater transparency on the situation concerning unclaimed stray dogs and the Council's dealings with particular dog's homes.
33. The complainant disputes the Council's position that his request is vexatious. He said that as the Council had treated all of his requests relating to stray dogs as vexatious, he does not have means of establishing from the Council whether or not it holds information relevant to his requests.

The Council's position

34. The Commissioner explained to the Council her approach to investigating the application of section 14(1) of the FOIA. In her correspondence, she asked the Council to provide detailed representations in support of its position that the request in this case was vexatious. In line with her standard approach, she asked the Council for the following:
 - Details of the detrimental impact of complying with the request,
 - Why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value, and
 - If relevant, details of any wider context and history to the request if the Council believes that this background supports its application of section 14(1), including relevant documentary evidence to support such a claim.
35. The Council confirmed that it had applied section 14(1) of the FOIA to the two specific information requests - 608714 and 617355 submitted by the complainant. It provided the Commissioner with its reasons for applying the exemption, and details of the background to support its application, it also supplied copies of previous correspondence relating to the request.
36. The Council reported a cumulative impact of the complainant's submissions, information requests and associated persistent communications with the Council, its Officers and third parties. It considered that this constituted harassment and vexatious communications. The Council also considered the actual harm relating to its Officers and to third party individuals employed by the Council's contractor in the delivery of services to which all of the complainant's requests and correspondence relates.

37. Included in its explanation for considering the request vexatious, the Council said that *"While neither focussing on the motive of the request or the number of requests which may have been submitted previously by the relevant individual, it solely examines the worthiness of the request placed against the impact it would have on the Local Authority."*
38. Within the Council's submissions, it made reference to a number of indicators taken from the Commissioner's guidance on section 14(1) of the FOIA, including:
- Burden on the authority
 - Unreasonable persistence
 - Unfounded accusations
 - Harassment and distress to Council staff
 - Tone or language of requestor's correspondence
39. The Council said that it acknowledges the rights of individuals to object to how public authorities discharge their responsibilities in relation to the collection and kennelling of stray dogs – including on occasions where the Council's authorised third party contractor may have to put animals to sleep.
40. The Council explained that like other public authorities, it has a duty to provide this service alongside its various other key statutory obligations. This, it said, includes obtaining financial best value and compliance with information access legislation such as the FOIA.
41. The Council stated *"similarly we have explicit and clear legislative obligations to protect our employees as well as to take reasonable and proportionate steps to involve third party enforcement agencies such as Merseyside Police in those circumstances whereby individual submit comment or raise persistent unsubstantiated allegations or communications which constitute harassment and intimidation of our employees."*
42. The Council considers the two requests to be manifestly unreasonable and designed to target specific Officers and Service Areas, reduce capacity, intimidate and harass through the use of unsubstantiated allegations, and places substantial pressure on services already dealing with significant caseloads.

43. The Council explained that the extent and nature of the complainant's communications gave rise to real and legitimate concerns by Service Managers as regards to the potential for demonstrations on and off the Council premises. This in turn, it said, was and remains considered to have a demonstrable and real impact on the ability of the Council to undertake its duties without fear of threat or intimidation. The Council said that the complainant continues to make regular and persistent requests on this subject. These requests are similarly followed up by comments raising unsubstantiated allegations.
44. The Council informed the Commissioner that the nature and extent of persistent and extensive communications with the complainant and the Council on this and related matters, had resulted in formally raising its concerns. The Council also raised issues about a number of social media posts by the complainant, which it believed to be disturbing as to the safety of the Council's officers.
45. The Council stated that the requests impacted on employees and agents of the third party provider. In this instance, the Council said that there was and remains clear evidence to support a reasoned assumption that physical demonstrations were planned at facilities used for the kennelling and accommodation of dogs. The Council argued that *"such demonstrations would result in the cessation of service provision and place the Council in the position of being unable to satisfy statutory obligations as regard the kennelling of stray dogs. In addition and in view of the level of commentary online and impacts on the current provider, it is further considered unlikely that the Council would be able to secure alternative service provision."*
46. The Council said that once it responded to the complainant, photographs and information were posted on social media in relation to the owner and operator of the kennels and their family. Therefore, the Council considers that this social media activity to be a real and demonstrable threat. The Council argued that the complainant's persistent and continued communication with the Council and its Officers, specifically the nature and the tone of the communication, supports and substantiates its position.
47. The Council confirmed that it had provided the complainant with requested information and responded to his multiple requests. However, on each occasion that the Council corresponded with the complainant, it was met with the same response and persistence in terms of harassment, intimidation and unsubstantiated comments and assertions relating to the third party provider.

48. The Council considers that it duly advised the complainant on each of the occasions over the last 18 months that he had contacted the Council, thereby complying with its duty to provide advice and assistance under section 16 of the FOIA.
49. The Council's position is that the two requests *"may legitimately be seen and considered in the context of extensive wider communications the nature of which, by virtue of their cumulative impacts, are manifestly unreasonable and designed to harass, intimidate and disrupt the Council Officers and third party service providers in the delivery of lawful statutory services and obligations."* The Council added that in view of the sensitivities associated with the assurance of welfare and service standards for the management and accommodation of animals and in view of the level of threats already made, the Council further considers the persistent communications places a real and ongoing risk to Officers and third party providers.
50. The Council believes that it has sought to engage positively and constructively with the complainant on each occasion, but in order to comply with the statutory obligations to its employees, the Council considers that the two requests are vexatious in the context of section 14(1) of the FOIA.

The Commissioner's position

51. There are many different reasons why a request may be considered 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 judgment about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow theme. 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.
52. The Commissioner's guidance emphasises 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 providing 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.

53. The Commissioner acknowledges the background of this case, and that the complainant had made seven FOI requests to the Council relating to the same subject matter between June 2018 and November 2018. She notes that the complainant had set out a number of allegations based upon his investigation of the Council's handling of stray dogs found in the city. The complainant had made allegations relating to the process this takes, and he believes that the Council and the relevant third parties are not acting transparently. Also, he is of the view that there may be the potential for conflicted interests.
54. The Commissioner has viewed the correspondence and notes the nature of other material generated as a result of the complainant's approach to the Council. It shows correspondence between the Council and the complainant during 2018 relating to his ethical concerns about stray dogs.
55. The Commissioner has viewed the range of examples provided by the Council, which it obtained from its contractor in relation to engagement with the complainant. These examples included; screenshots of the complainant's social media posts which consisted of allegations about missing dogs, theories on what happens to them and information regarding stray dogs and of the third parties in question, which the council disputes. The inevitable result of such posts is that there has been an online backlash against the organisations concerned.
56. The Council reported that these activities on social media sites had resulted in staff being threatened. It said that there had been threats of arson attacks which had caused the kennels and the home of one of its staff being published on the social media site. The Council stated that *"an obsession with conspiracy theories and missing dogs is a regular theme in his [the complainant's] social post. These allegations have been investigated and unfounded but does stir emotional responses and behaviour from other individuals."*
57. The Commissioner considered that the tone and language of the complainant's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive. She also considered the direct impact that the correspondence had on the Council's third party as well as to the Council Officers. It is clear from the correspondence, the complainant's attempt to incite an aversion against individuals working within the animal rescue sector, especially enforcement officers acting as Dog Wardens.

58. The Commissioner has viewed the threatening and abusive messages received by the Council that had been posted on social media sites. She notes the Council's statement regarding the damage to [name redacted] dogs home in which members of staff resigned due to intimidation and stress caused by the these threats. Also noted, was the information the complainant had obtained from responses to FOI requests (referred to in para 30 of this notice) which were posted onto social media sites. The Commissioner accepts that this could be harmful to the specific local authorities and other organisations in that it would publicly raise concerns about the organisations in a field in which activists might consider direct action appropriate, thereby raising the level of risk of those organisations
59. The Council stated within its internal review response (para 11 of this notice), that "*Subsequent Information Requests*" relating to the same topic would be treated as vexatious. This is decided by the Commissioner on a case by case basis, and the Council cannot state in advance that requests should all be considered vexatious before they are received or considered. The Commissioner believes that this would undermine the purpose of section 14(1) applying to the request and not to the person. The Council cannot make such a categorical statement and the Commissioner considers that this is an incorrect approach to take.
60. Whilst the request in this instance may not impose a significant burden in order to comply with it, the Commissioner recognises that the aggregated burden of dealing with the complainant's overall contact with the Council may have placed an increased strain on the Council's resources. Subsequently, this has limited the time that staff are able to spend on responding to other information requests and performing its other duties.
61. The Commissioner notes the complainant's continued campaign against the Council, and she considers that further engagement with the complainant is likely to lead to further requests for information to the Council, and that this is unlikely to resolve the matter.

62. It appears to be that the complainant's actions and behaviour with regards to his concerns about this particular subject matter, have now drifted towards vexatious. The Commissioner believes that the bar had not been met at the time when the Council had asserted that the request was vexatious (21 January 2019). Her decision was based on the fact that there was insufficient evidence and arguments to support the Council's claim, and therefore the request did not engage section 14(1) of the FOIA – as outlined in paragraph 12 of this notice. However, taking into account the complainant's continued campaign, his persistent requests for information, along with the subsequently substantive evidence and supportive arguments provided by the Council, the Commissioner is of the view that at this time the bar for refusing the request has been met.
63. The Commissioner also believes that this matter is highly unlikely to be resolved by responding to the request. Any response to the questions within the request – set out in paragraphs 19 and 20 of this notice, is likely to prompt further questions for additional information, further comments, opinions or enquiries on the subject. Whether or not the Council complies with the request, the Commissioner considers that the complainant is likely to continue with his campaign regarding the topic in question.
64. The Commissioner acknowledges that there is a serious purpose to the request. It is clear that the complainant has concerns about arrangements the Council has in place following the collection of stray dogs. His concerns are partly discernible from the questions he has asked of the Council in this request. The Commissioner understands that these matters are clearly emotive. However, she considers that the complainant's social media activity could cause a health and safety risk to the Council's officers and to third party businesses for the reasons outlined above.
65. The Commissioner accepts that there is a wider public value in explaining what happens to unclaimed stray dogs found in Merseyside, and in knowing whether the Council, and the other organisations concerned are exercising their powers relating to the seizure, kennelling and treatment of stray dogs in an lawful and ethical way.
66. Whilst the Commissioner appreciates that the information the complainant has requested is of interest to him, she also accepts that the wider public would have an interest in how the Council handles the issue of stray dogs, and in the processes, checks and procedures which it has in place to handle this.

67. The Commissioner has given consideration to the findings of the Upper Tribunal in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1) of the FOIA. Taking into account all the above factors, and having viewed all of the evidence that clearly illustrates a vexatious request, the Commissioner's decision is that the request was vexatious and the Council correctly relied on section 14(1) in this case. Therefore, the Council was not obliged to comply with the complainant's information request.

Right of appeal

68. 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@justice.gov.uk.

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

69. 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.
70. 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

Phillip Angell
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