Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 September 2020

Public Authority: Blackburn with Darwen Borough Council
Address: Town Hall
King William Street
Blackburn
BB1 7DY

Decision (including any steps ordered)

1. The complainant has requested information about council tax calculations. The Council responded, refusing to supply the information under the following sections of the FOIA: section 21 – information accessible by other means; section 22 – information intended for future publication; and section 14 – vexatious. The complainant was not satisfied that the Council was entitled to determine the request as vexatious.

2. The Commissioner's decision is that Blackburn with Darwen Borough Council has correctly applied section 14 of the FOIA to the request.

Request and response

3. On 17 February 2020 the complainant wrote to Blackburn with Darwen Council and requested information in the following terms:

> 1. *Please provide to me a copy of Blackburn with Darwen Borough Council's consolidated external audit and a full Comprehensive Annual Financial Report for the public liability debt 2019-2020, including audit strategy of council tax account number (redacted number and address) and Birth Certificate number (redacted).*
>
> 2. *As all liability orders (form A) were withdrawn from parliament in 2003 (and no other form has been substituted in its place) there is no written order or judgement, so without any written record by a magistrate the court order or judgement is invalid, which potentially compromises the making of all orders and enforcement activity (and to date has not been resolved). This is a serious flaw in the legislation (council tax handbook 12th edition). Please provide to me a blank copy of Blackburn and Darwen's liability order form A, B and C used by Blackburn with Darwen Borough Council's agents to summons members of the public to a Magistrate's Court hearing for non payment of council tax.*
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> 3. *Is it true that my case has not been judged as an individual liability, but has been processed as a group liability, this constitutes infringement of the Magistrate's Court Act and the Civil Procedure rules as the protocols for anything going through the court system are Openness, Fairness, Lawfulness and Full Disclosure. This has now been breached along with my Human Rights as a natural being as stated in the Human Rights Act 1998. This also breaches article 6 of The European Convention of Human Rights. Please provide to me a full breakdown of the itemised court costs as I deem these unreasonable, essentially as it is an automated procedure for issuing liability orders (bulking). Please provide me an explanation and breakdown of permitted costs and how they have been calculated, in particular, how the figure was determined and how many it was divided by. Please provide the number of other Council tax non payment liability orders that were issued on that day in court and why it is not readily available following hearings.*
>
> 4. *I was invited under summons to come into court. I declined the offer, but you then proceeded to issue an alleged liability order (please provide a copy of the alleged liability orders which must be signed, and have the printed title of the Magistrate/judge and*

a court stamp) which is a clear breach of Openness, Fairness, Lawfulness and Full Disclosure rules Part 1 – Overriding Objective and in particular rules 1.1(2) and (a) – 2(c)(i)(ii)(iii), 2(d) and 2(f).

5. *An alleged liability order is not a judgement debt for the purpose of the Civil Procedure Rules and the Magistrates Court Act 1980. This means it cannot be enforced as a judgement debt in the county court or high court pertaining to a bankruptcy. This must be dealt with in the magistrates court. Please supply me with a copy of the CPR rules or Magistrates Court Act or any other policy or law stating that a liability order is a judgement debt enforceable in the County Court or the High Court. The liability order refers to a statement / bill which invokes the Bills of Exchange Act 1982 and Financial Services and Markets Act 2000.*

6. *I will be asking for a strike out due to maladministration, due to the fact that form A has not been signed or stamped by a magistrate / judge and the case has not been judged on an individual liability, it has been processed as a group liability. Therefore the protocols of the court have been breached as there is no Openness, Fairness, Lawfulness and Full Disclosure.'*

4. The Council responded on 12 May 2020. It applied section 22 of the FOIA to questions 1, explaining that the Council's 2019/20 accounts are currently being finalised and will be made available once completed and audited. It provided a link to where they would be found. In relation to the 'audit strategy' element of the question, and for questions 2 and 3, it deemed these to be vexatious and applied section 14 of the FOIA. For question 4, it applied section 21 of the FOIA – information accessible by other means, as the complainant had already been provided with this by the Council. It also explained that the Magistrates Court and not the Council issues the liability orders in bulk. For question 5 it stated the information was not held as it is a document that would be created and used by the Court Service. The Council supplied the address to obtain it. For question 6, the Council deemed this to be a statement and not a request for information.

Scope of the case

5. The complainant contacted the Commissioner on 26 March 2020 as the Council had failed to respond to his request. This was at the start of the Government's lockdown of the country due to the Covid-19 pandemic, when many public authorities were having to divert their resources and change working models to manage the crisis. In response to this, the Commissioner amended her casework approach, and the Council was

contacted by the Commissioner on 30 April 2020 to ask if it was in a position to respond to the complainant's request. The Council responded the following day, providing the Commissioner with detail of communications over the last year relating to one issue – non payment of council tax. It considered the resources expended on the matter were now an oppressive burden on the Council.

6. The Commissioner advised the Council that it was still required to formally respond to the complainant's request, detailing the reasons for any refusal. This was provided to the complaint on the 12 May 2020 (see above).

7. On 3 June 2020 the complainant contacted the Commissioner again, objecting to the Council's application of section 14.

8. The Commissioner considers the scope of the case to be whether the Council is entitled to rely on section 14 of the FOIA to refuse elements of the request. The complainant has not challenged the use of section 21 or 22.

Reasons for decision

Section 14(1)

9. 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'*

The Council's View

10. The Council has explained that this request relates to the non-payment of Council tax charges over a 3 year period. The complainant has been issued with a liability order for non-payment, but he maintains he is not the person against whom the council tax charges, or liability order, relates.

11. The complainant has previously made a complaint to the ICO, relating to the Council's refusal to comply with a Subject Access Request (SAR). Access was refused to information relating to the complainant's council tax account as he refused to confirm his identity.

12. Since the ICO reviewed the SAR complaint made to it in July 2019 (where the Commissioner determined that the Council has acted lawfully), the complainant has submitted 13 pieces of correspondence (some duplicated) to various members of the Council. Below is a chronology, along with the Council's responses:

- 04/07/2019 – Letter to CEO; Pre-Action Notice of Letter before counter claim from the complainant
- 07/10/2019 – Letter to DPO; Request to be advised of the principles the Council was using to process his personal data and an audit of how the Council processed an algorithm auditing credit score without his consent in relation to his council tax. Registered as a SAR.
- 08/10/2019 – Letter to the complainant in response to SAR. Complied with generic request for information, but refused any data in relation to a council tax account as the complainant still refused to provide evidence of who he was. The complainant was advised that further communication on this matter will be considered vexatious.
- 04/11/2019 – Letter to DPO: Repeat of the content of letter dated 07/10/2019
- 16/12/2019 – Letter to the complainant confirming the Council's position and the ICO's confirmation that it would not supply or confirm the status of any personal data without submission of the relevant identification.
- 19/12/2019 – Letter to DPO issuing identification and an instruction to respond within 72 hours to his requests.
- 23/12/2019 – Letter to the complainant in response to correspondence. Advised of the lawful processing by the Council to obtain property and financial data. The complainant was advised that no further correspondence will be entered into in relation to this matter and that any further communication would be considered vexatious and remain unacknowledged.
- 08/01/2020 – Letter to DPO reminding the Council to reply to his letter dated 19/12/2019 within 72 hours or the matter would be referred to the ICO. Neither acknowledged nor responded to. The Council had already responded, dated 23/12/2019.

06/02/2020 – Interim Charging order granted by the Court for outstanding liability (objections raised by the complainant).

- 17/02/2020 – Letter to CEO requesting information relating to Public Liability debt, Liability Order forms (blank and relating to himself), breakdown of itemised court costs and went on to complain about maladministration for a matter in which he refused to attend court. Considered vexatious by the Council and neither acknowledged or responded to. This is the request that is the subject of this decision notice.
- 17/02/2020 – Letter to S151 Officer detailing the same content issued to the CEO. Considered vexatious by the Council and neither acknowledged or responded to.

- 17/02/2020 – Letter to DPO Officer detailing the same content issued to the CEO. Considered vexatious by the Council and neither acknowledged or responded to.
- 09/03/2020 – Letter to DPO detailing a 17 point request in relation to Local Authority processes that relate to the complainant's assumption that the Council has lied to the Courts. Considered vexatious by the Council and neither acknowledged or responded to.
- 09/03/2020 – Letter to DPO detailing the same content issued to the CEO. Considered vexatious by the Council and neither acknowledged or responded to.

20/03/2020 – Final Charging order granted by the Court for outstanding liability

- 07/04/2020 – Letter to DPO repeating request made 17/02/2020. Considered vexatious by the Council and neither acknowledged or responded to.
- 14/04/2020 – Letter to CEO repeating request made 09/03/2020). Considered vexatious by the Council and neither acknowledged or responded to.
- 14/04/2020 – Letter to DPO detailing the same content issued to the CEO. Considered vexatious by the Council and neither acknowledged or responded to.

All correspondence issued post the outcome from the Court has not been responded to. The matter is still being pursued as despite the Court's decision, the complainant has yet to comply with the liability order.

13. The Council maintains that the complainant has demonstrated a scattergun approach to correspond with various members of the Council, in a manner that is purposely aimed at delivering a burden to the authority to justify his action of avoiding council tax payments. The effort required to meet these requests for information are so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.

14. In addition, the Council considers that the complainant has demonstrated the following vexatious indicators:

- Unreasonable persistence - The requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority and the Courts.
- Unfounded accusations - The requests make completely unsubstantiated accusations against the public authority.

- Intransigence - The requester is taking an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.
- Frequent or overlapping requests - The requester submits frequent correspondence about the same issue.
- Futile requests - The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation. The continued issue of subsequent requests, complex in nature, is seen as purposely disruptive to the Council.

The Complainant's View

15. In his representation to the Commissioner, the complainant states that he has sent various SARs to the council which to date have all been ignored, and which have been sent by him to the ICO for investigation He maintains that this is an FOI request, and that the questions are in the public interest. This is the first FOI request made to the Council, and the complainant believes that the application of exemptions is just another attempt to avoid responding to him

16. The complainant does not accept his request is a deliberate attempt to waste officers' time and or obscure the fact he has an outstanding council tax liability order that he continues to avoid paying, as he maintains that that he is not the liable party for council tax. He therefore considers the liability orders are fictitious. He asserts that the Council is taking an unreasonably entrenched view by refusing to provide him with advice and assistance.

The Commissioner's View

17. Section 14(1) of the FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

18. Despite the complainant's history with the Council, it is important to remember that for the purposes of FOIA, it is the request that may be deemed vexatious, and that requests are motive and applicant blind. 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.

19. Whilst there is no definition of the term vexatious in the FOIA, Tribunal decisions have provided insight and guidance in determining a request as vexatious. As the complainant cites, in *'IC v Devon County Council & Dransfield'*, the Upper Tribunal took the view that the ordinary dictionary definition of vexatious is of limited use, as deciding whether a request is vexatious depends on the circumstances surrounding that request. The

Tribunal commented that vexatious could be defined as the '*manifestly unjustified, inappropriate or improper use of a formal procedure'.* This definition clearly establishes that the concepts of proportionality and justification are relevant considerations in deciding whether a request is vexatious.

20. In the Dransfield case, the Tribunal also found it instructive to assess 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) harassment or distress of and to staff. However consideration of a request as vexatious is not a tick box exercise and the Tribunal noted '*there is, however, no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.*'

21. The Commissioner has issued guidance on dealing with vexatious requests[1]. The guidance includes a number of indicators that may help to identify a request as vexatious. However, these indicators are neither exhaustive nor definitive, and all the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious. Congruous with the Tribunal comments in the Dransfield case regarding circumstantial consideration, the Commissioner's guidance states: '*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.'*

22. At the centre of this request is a dispute between the Council and the complainant regarding council tax liability, based on a disagreement regarding the identity of the complainant. It is not for the Commissioner to determine the identity of the requestor for council tax purposes, but based on the correspondence she has seen between both parties and sent directly to her, she is satisfied that the person making

[1] https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf

the SAR requests which have subsequently resulted in this FOI request, is the same person.

23. The Council has supplied evidence of continued correspondence on the same issue beyond the date of the request, but the Commissioner is only able to consider evidence up until the statutory time for compliance, which in this case is the 16 March 2020.

24. As this was a hybrid request that included the complainant's own personal data and generic information, the Commissioner asked the Council to write to the complainant again clarifying what was has already been supplied under previous subject access requests, and that which was being refused under the FOIA. The Council complied with this and sent a clarification letter on 31 July 2020.

25. This letter clearly set out, for each question, the information that has been previously supplied to the complainant. It also explained in detail the legal process for issuing liability orders and the numbers issued for the dates relating to the request, as well as administrative information about council tax banding. Again, much of this information had already been provided to the complainant.

26. The complainant believes that the Council is failing to provide advice and assistance in dealing with the request. Whilst there is no requirement to provide advice and assistance in the application of section 14, the Commissioner would expect support to be provided where requests are hard to follow or the information requested is unclear. However, in this case the Council has already supplied the majority of the information requested, as well as provide clear and comprehensive answers to questions where possible. She does not consider engaging with the complainant about the nature of the request would achieve anything further and would be likely to result in further complex communications with the complainant.

27. This is the first FOIA request made by the complainant to the Council. The Commissioner draws attention to the judge's comment in the Dransfield case: '*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 Commissioner considers this particularly relevant in this case. She has seen the repeated SAR requests made to the Council about his council tax bill and legal proceedings, as well as the duplication of the requests sent by the complainant to a number of officers within the Council. She has also seen the Council's responses, which have been comprehensive, explanatory and transparent.

28. Whilst the FOIA is motive and applicant blind, the Commissioner's guidance on dealing with vexatious requests addresses how the context of requests may be considered, including their wider purpose or value.

It is clear to the Commissioner that this request is motivated solely by the complainant's personal issue of council tax liability and disputed identity. The Council has provided the generic procedural information falling within the scope of the request, for which there may be a public interest in disclosure, and complied with requests for personal data as appropriate. The Commissioner considers that the complainant is arguing points for much of the request, rather than asking for information, and where he does is largely asking for information that has already been supplied. He continues to press the Council for information based on a purely personal concern and accuses the Council of wrongdoing in complying with various legislation without any cogent evidence.

29. The Commissioner notes that the language used by the complainant is often complex, obscuring what information is actually sought, and includes detailed references to various legislation, which makes it difficult to see how it relates to the questions being raised.

30. The Commissioner therefore considers that, taking into account the wider context of the request, it demonstrates several vexatious characteristics including: limited purpose/value, disproportionate level of disruption and irritation, burdensome in terms of time taken to respond, intransigence, overlapping requests, unfounded accusations and disproportionate effort. She therefore upholds the Council's application of section 14.

Section 10 – Time for compliance

31. Section 10(1) of FOA states that:

'(1) a public authority must comply with section 1(1) promptly, and in any event not later that the twentieth working day following the date of receipt.'

32. Although the Council had previously advised the complainant it would no longer respond to communications on the council tax matter on 23 December 2019, this was not in response to a FOIA request. The complainant submitted his FOIA request on 17 February 2020 and prompted by the Commissioner, the Council responded on 12 May 2020. This was outside the 20 working day limit and therefore the Council breached section 10(1) of the FOIA.

Right of appeal

33. 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

34. 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.

35. 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
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