

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2020

Public Authority: Braintree District Council
Address: Causeway House
Bocking End
Braintree
CM7 9HB

Decision (including any steps ordered)

1. The complainant has requested information with regards to a rent at an industrial estate. Braintree District Council (the council) refused the request relying on section 14(1) of the FOIA as it considered it to be vexatious.
2. The Commissioner's decision is that section 14(1) of the FOIA is engaged. However, the Commissioner has found that the council breached section 10(1) of the FOIA, as it responded to the request outside the required 20 working days.
3. The Commissioner does not require the council to take any steps.

Request and response

4. The complainant contacted the Commissioner on the 22 February 2019 complaining that he made a request to the council that referred to a previous request and the council responded that it did not know to what request he was referring.
5. The Commissioner wrote to the complainant, asking him to provide the Commissioner with a copy of the request made to the council along with the council's response. It became clear that the complainant was referring to the same request that he had made three years earlier.

6. The complainant provided the Commissioner with a copy of his later request, dated 12 January 2019, which stated:

"Because a mistake has been made by ICO. My request had to be made again, Therefore my original request had to be made again.

Therefore you can easily duplicate my original request and, and [sic] according to ICO it will count as a new request.

Please note, it is not my doing, however I have to comply with ICO decision and repeat my request.

They told me that I will have to have everything repeated, and the whole matter will be treated as new request..

Therefore can you comply with my original request and repeat it. It will be treated by them as a new request, because it is their rules."

7. He also provided a copy of the council's response, which was dated 4 February 2019, requesting some clarification as to what previous request the complainant was referring to.
8. The Commissioner also advised the complainant that she would need to see a copy of the original request that he is referring to in his 12 January request to the council.
9. Despite these requests for clarity, the complainant later provided the Commissioner with a request dated 17 April 2019, made to the council:

"All rent paid by the various tenants recorded individually, of Perry Road enterprise area estate Witham Essex, between the dates of December 2007 and December 2009, and how frequently they where [sic], paid and how much. The actual amount of rent of each of unit annually, and full record of full record of the names of tenants, and the full record of rent paid by the various tenants, between the above dates, and the frequency of their pay.

Further how much industrial rates where [sic] paid by individual units, and how frequent for each unit, and the full record of it all.

It is the exact copy of the request made in 2015, and is repeated here, as required by ICO."

10. The complainant then contacted the Commissioner further to advise that he has not received a response to the request.

11. The Commissioner wrote to the council on 23 May 2019 asking that the council respond to the complainant's request of 17 April 2019.
12. The council responded to the complainant on the 30 May 2019. It advised that the request was received on the 23 April 2019 and that the request is being refused under section 14(1) of the FOIA, as the council considers the request vexatious.

Scope of the case

13. The complainant contacted the Commissioner further dissatisfied with the council refusing his request.
14. The Commissioner would usually require an internal review to be carried out before accepting a case for consideration. However in this case, as the request is a repeated request and the council is maintaining the same exemption it applied to the request when it was first made, and upheld in a decision notice, the Commissioner has not insisted on an internal review being conducted before she carries out her investigation.
15. The Commissioner considers the scope of the case is to determine whether the council can rely on section 14(1) of the FOIA to refuse the complainant's 17 April 2019 request

Reasons for decision

Section 14(1) of the FOIA – Vexatious request

16. 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.
17. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC v Dransifeld*¹. 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

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious

18. In the Commissioner's view, 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.
19. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious request. These are set out in her published guidance². 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.
20. In this case, the request is a repeat of the request that the complainant made to the council on 19 May 2015, to which the council applied section 14 of the FOIA as it deemed the request vexatious. The complainant brought this refusal to the Commissioner to consider. On 10 February 2016 the Commissioner issued a decision notice under reference FS50601116³ upholding the council's refusal.
21. Background to this request is provided in the previous decision notice from paragraph 15.
22. The council has stated, in its initial response to the complainant's repeated request, that the request is for a specific period between December 2007 and December 2009, a period which is now around 10 years ago. The nature of the request was for documents which have remained historic throughout, and accordingly there will not have been any new information created which could fall within the scope of the request.
23. The council argues that even though a significant period has elapsed between the first and second (repeated) request, there is no possibility that new information could have been created and so it is not unreasonable for the request to be considered as repeated and its previous arguments as to why the request is vexatious are still valid.

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

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1560677/fs50601116.pdf>

24. The Commissioner agrees with this conclusion by the council and considers that the reasons provided by the council in the decision notice FS50601116 are very much relevant and transferrable to this case.
25. The complainant, on discussing this case with the Commissioner, is still adamant that the council has deceived the courts.
26. He has also told the Commissioner that Colchester Court sent him money (in compensation) for its staff behaviour because his case was deliberately sabotaged by the court's staff who he states were friends of council employees.
27. The complainant has told the Commissioner that he accepted some of the compensation not because he wanted it, but because he wanted to make sure that he would have proof of what had happened.
28. The Commissioner has asked the complainant if he is able to provide evidence of this compensation and correspondence from the courts admitting what he claims.
29. The complainant has not, to date, supplied the Commissioner with this documentation. It is therefore difficult for the Commissioner to apply much, if any, weight to this claim in her determinations of this case. The complainant has sought to extend the time of the Commissioner's investigations in order to provide the evidence claimed to be held that supports his arguments regarding the Court's actions. However, these deadlines have been consistently missed and the Commissioner considers that more than enough opportunity has been provided to supply any additional material. This is true not just for the time in which the Commissioner's consideration has been ongoing, but would also allow for the fact that the alleged exchanges would have taken place prior to the engagement of the Commissioner and thus provided even more time for the relevant paperwork to have been collated.
30. The Commissioner, in her analysis of this case, has accepted that even though there is a space of four years between the two requests, the information sought would not have changed, as it is a request for information created within a specific time period.
31. She understands that the complainant has an ongoing position that the council has deceived the courts to his detriment and that this will always be his position.
32. However, the Commissioner has not been convinced that there is a change from her previous decision notice in the unjustified and disproportionate burden being placed on the council in having to respond to the request and that her considerations and the council's reasons given in that decision notice are transferable to this case.

33. The Commissioner therefore finds that the council are able to rely on section 14(1) of the FOIA to refuse the complainant's request.

Section 10(1) of the FOIA – Time for response

34. Section 10(1) of the FOIA requires a public authority to respond to a request within 20 working days following its receipt.
35. In this case, the council advised that the request was received on the 23 April 2019 and it responded on the 30 May 2019.
36. The response was outside the required 20 working days and therefore the Commissioner finds that the council has breached section 10(1) of the FOIA.
37. As the council has responded, the Commissioner does not require it to take any steps.

Right of Appeal

38. 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

39. 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.
40. 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
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Wycliffe House
Water Lane
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SK9 5AF