

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 March 2021

Public Authority: Sunderland City Council
Address: Civic Centre
PO Box 100
SR2 7DN

Decision (including any steps ordered)

1. The complainant requested information relating to a long-standing complaint about a family grave. Sunderland City Council (the Council) refused to comply with the request under the criteria for section 17(6) of the FOIA (refusal of request).
2. The Commissioner's decision is that the request was vexatious and the Council was entitled to apply section 14(1) of the FOIA (vexatious request) to refuse the request. She also considers that the Council was not obliged to issue a refusal notice in respect of the request, in accordance with section 17(6) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 2 November 2020, the complainant wrote to the Council and requested information in the following terms:

"I am requesting the name of the Bishopwearmouth Cemetery manager, who was responsible for the everyday running of the cemetery, in November 2017".
5. On 2 December 2020, the complainant asked the Council why it was ignoring her FOI request.

6. The Council responded on 3 December 2020. It stated that the complainant had previously been advised that the line of enquiry she and her daughter are taking is considered to be vexatious and that the Council will no longer respond to their FOI requests on the subject matter concerned.
7. The Council advised the complainant that, if she was unhappy with its response, she could refer the matter to the Information Commissioner.

Scope of the case

8. The complainant contacted the Commissioner on 4 December 2020 to complain about the way her request for information had been handled.
9. It is not in dispute that the complainant had contacted the Commissioner prior to this date, with regard to the Council's handling of other of her requests for information. However, in the course of correspondence with the Commissioner, the complainant confirmed that it was the request of 2 November 2020 that she wished the Commissioner to consider.
10. In correspondence with the Commissioner, the Council confirmed that it considered the request to be vexatious within the meaning of section 14 of the FOIA. It also confirmed that it had previously informed the complainant that any further requests which are in some way attributed to her ongoing grievance would be deemed vexatious and would not be responded to.
11. The Commissioner acknowledges the substantial amount of correspondence that the complainant provided as evidence of her ongoing issues with the Council. She is also mindful that, during the course of her investigation, the complainant provided her with copies of her continued correspondence with the Council.
12. The analysis below considers whether the request dated 2 November 2020 was vexatious within the meaning of section 14(1) of the FOIA, and if so, whether the Council was entitled by section 17(6) of the FOIA not to issue a refusal notice.

Reasons for decision

Section 14 vexatious request

13. 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. The section is not subject to a public interest test.
14. 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 & Dransfield*. 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.
15. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly 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.
16. 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).
17. The Commissioner has published guidance on dealing with vexatious requests¹. That guidance includes a number of indicators that may apply in the case of a vexatious request. 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.

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

18. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant. 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".

19. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. In that respect, 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".

The Council's view

20. By way of background to its refusal to comply with the request in this case, the Council referred to a complaint, first raised in 2018, involving the complainant and members of her family.
21. The Council told the Commissioner that, after receiving the Council's response to its investigation into her complaint, the complainant subsequently escalated her complaint to the Local Government and Social Care Ombudsman:

"...who, after initial enquiries, decided in October 2019 not to investigate her case further..."

22. The Council told the Commissioner that the complainant and her daughter have continued to contact the Council:

"... and have used FOI requests to continue their campaign with requests submitted linked that are directly or indirectly to the original complaint, in ways that have echoed and sought to further her already-addressed matter [sic]"

23. The Council explained that in June 2020 the decision was taken to discontinue further contact with the complainant in relation to the complaint:

"A letter of response to five (linked) FOI requests received from [the complainant] and her daughter in June 2020 was issued on 2nd July 2020, refusing responses as their subject matter reflected a line of enquiry deemed vexatious.

Once again, further correspondence was received in relation to the same closed matter and on 30 July 2020 [the complainant] was notified that the decision in the letter sent on 2nd July would not be reviewed and that the Council would no longer respond to FOI requests connected with it due to their ongoing vexatious nature. The notification advised [the complainant] she could go to the Information Commissioner's Office if dissatisfied with the Council's position".

24. In support of its refusal to comply with the request in this case, the Council provided the Commissioner with details of various correspondence that had been provided to the complainant, including the letter dated 2 July 2020.

25. That letter, dated 2 July 2020, and addressed to the complainant, stated:

"Having considered your case in detail, I must advise that the Council takes the view that your recent requests are evidence of a line of enquiry that is considered vexatious

I have also considered the fact that correspondence relating to the matter in question has, both over time and more recently, been received from yourself and from your daughter [named redacted] and that the nature of the correspondence is such that it is inconceivable that you and your daughter are contacting the Council separately in relation to your queries and complaints. For this reason, contacts \ information requests from yourself and from [your daughter] on the matter are covered by this notification".

26. In its correspondence of 2 July 2020, the Council described the complainant's complaints and allegations as having been investigated and reviewed 'at some length' by the Council, as well as having been independently scrutinised by the Local Government Ombudsman (LGO).

27. The letter went on to say that the Council considered that, rather than seek access to information for the purposes intended by legislation, the complainant's recent requests seek to carry on with a closed line of complaint.

28. The letter concluded:

"Accordingly, based on consideration of the Commissioner's guidance and the history and context of your contacts with the Council I must confirm that the Council's assessment is that your current line of enquiry is vexatious, and confirm that your requests will not be responded to, as allowed by exemption at Section 14 of the Freedom of Information Act 2000 (and, so far as applicable, related provisions in Regulation 12(4)(b) of the Environmental Information Regulations 2004 and Article 12(5)(b) GDPR)".

29. Following a request for a review of its response, the Council wrote to the complainant on 30 July 2020 advising that it would not be undertaking an internal review. It also confirmed:

"As indicated in the Council's response to your FOI, the line of enquiry that you are taking is considered to be vexatious and the Council will no longer respond to your FOI requests on the subject matter concerned".

30. During the course of the Commissioner's investigation, the Council provided details of the five linked requests that were covered by its response of 2 July 2020. The Council described the subject matter of four of those requests as *"plot-specific information that had previously been addressed"* while the fifth request *"requested staff information which had previously been refused"*.

The complainant's view

31. During the course of her investigation, the complainant wrote to the Commissioner saying that she did not regard any of her requests as obsessive. She also stated that, while she herself felt harassed and distressed about events, she had no intention to deliberately harass or cause distress to Council staff. She also disputed that complying with the request imposes a significant burden in terms of expense and distraction.
32. She denied that the request in this case is designed to cause disruption or annoyance. She considered that this request, and others on the same subject:

"... serve an extremely serious purpose, and are invaluable to myself and my family's future peace of mind".

The Commissioner's view

33. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement

about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. 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.

34. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield* observed:

"There is...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".

35. In her guidance on dealing with vexatious requests, 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.
36. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
37. The Commissioner does, however, recognise 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.

Was the request vexatious?

38. The Commissioner considered both the complainant's position and the Council's arguments regarding the information request in this case.
39. In its submission, the Council did not provide evidence specifically as to the burden that would be caused by this particular request. The burden in this matter arises principally from the resources and staff time that it has already spent and the likelihood that the complainant's pattern of behaviour, namely submitting numerous and regular correspondence, will continue.
40. In that respect, the Council told the Commissioner:

"From 01.03.19 to 10.12.20, [the complainant] (and her daughter [redacted]) have sent a total of 767 emails directly and indirectly concerning this same matter to the Council".

41. The Commissioner acknowledges that the Council refers in that statement to the volume of correspondence received from both the complainant and her daughter. From the evidence she has seen, the Commissioner is satisfied that the Council's statement provides context to the complainant's engagement with the Council and its view that the request under consideration in this case is vexatious.
42. The Commissioner recognises that the complainant has her reasons for pursuing information from the Council. She accepts the sensitivity of the subject matter and the emotional involvement of the complainant. It is clear that the complainant is motivated by strongly-felt personal feelings about events which led to the request for information under consideration in this case.
43. The Commissioner recognises that an authority should be mindful to take into account the extent to which oversights on its own part might have contributed to a request being generated.
44. If the problems which an authority faces in dealing with a request have to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified.
45. In that respect, however, the Commissioner is mindful that the matters that gave rise to the request in this case have been through the Council's complaints process and been considered and dismissed by the LGO.
46. The purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
47. In this case, the Commissioner considers that there was nothing vexatious in the nature of the request itself: on its own, the request appears very simple. However, although the request was not vexatious in isolation, the Commissioner considered that it was vexatious when viewed in context.

48. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner was satisfied that the request was a manifestly unjustified and improper use of the FOIA such as to be vexatious for the purpose of section 14(1).
49. Accordingly, she was satisfied that the Council was entitled to apply section 14(1) of the FOIA.

Section 17 – refusal of request

50. Section 17(6) of the FOIA allows a public authority to refuse to issue refusal notice in instances when:

"(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request".

51. The Commissioner will usually only consider it unreasonable to expect a public authority to issue a further notice when it has previously warned the requester that it will not respond to any further vexatious requests on the same or similar topics.
52. In this case, the Council provided evidence that, on 2 July 2020, it had issued a refusal notice citing section 14(1) (vexatious request).
53. During the course of the Commissioner's investigation, the Council confirmed that its letter of 2 July 2020 related to requests for information concerning a family grave.
54. The Council also provided the Commissioner with a copy of its letter to the complainant, dated 30 July 2020, in which it advised her that it would no longer respond to her FOI requests on the subject matter and would not be undertaking an internal review.
55. The Commissioner acknowledges that the Council did not explicitly cite section 17(6) in that correspondence with the complainant. However, she is satisfied that it was, in effect, a section 17(6) notice.

56. Taking account of all the above the Commissioner has decided that it was reasonable for the Council to apply section 17(6) to this request. She is satisfied that the current request falls within the scope of what was described in the section 17(6) notice.
57. The Commissioner accepts that the Council has given the complainant adequate warning that future requests for information in respect of such matters would not be responded to and so it was not obliged to issue a further notice for this subject matter.

Right of appeal

58. 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

59. 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.
60. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF