

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2022

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Beverley
East Riding of Yorkshire
HU17 9BA

Decision (including any steps ordered)

1. The complainant requested information from East Riding of Yorkshire Council (the Council) relating to void information and repair costs for a property in the area. The Council refused the request under section 14(1) of FOIA (vexatious request).
2. The Commissioner's decision is that the request was vexatious and therefore the Council was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 1 September 2021, the complainant made the following request for information:

"I wish to make an FOI request for data relation to 2 Autherd Garth, Walkington House.

(i) How long was this house void/empty and from what date?"

- (ii) When was an inspection carried out and what repairs were listed?
 - (iii) When were the necessary works arranged and how long did this take to arrange?
 - (iv) What were the costs of the works?"
5. On 22 September 2021, the Council responded that the request was being refused because it was vexatious under section 14(1) of FOIA.
 6. The complainant requested an internal review on 1 October 2021. The Council upheld its decision via internal review on 22 October 2021.

Scope of the case

7. The complainant contacted the Commissioner on 8 February 2022 to complain about the way their request for information had been handled.
8. This notice covers whether the Council correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

9. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
 10. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)¹ states, it is established that section 14(1) 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.
 11. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
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¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

12. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
13. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
14. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
15. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
16. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. They stated:

"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" (paragraph 82).

The Council's view

17. The Council has said: "the customer continues to bombard the Council with requests such as these, in an attempt to further complain against other decisions made against her. In particular where she has exhausted all other rights of appeal of complaint. This FOI request was

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

a compiled request from 9 separate emails over a 6 day period, and one of 19 FOI's made between June and September 2021."

18. The Council provided copies of the other requests submitted by the complainant between 28 August 2021 and 6 September 2021:

"1. I wish to apply under FOI all complaints data of all housing suitability appeals registered against your housing department for the last 5 years.

(i) The reason for the appeal.

(ii) The outcome of the appeal.

(iii) The costs incurred and recovered by ERYC.

You do not need to include personal information.

2. I wish to make a FOI request for details of how many Syrian refugee families you have rehoused since November 2019 to the present date, the length of time they have waited and in what band.

Also include the general area and type of house and how many people in the family male or female and ages. And how long it took to assess their housing application.

No personal information needs to be included.

3. I wish to apply under FOI answers to the following:

(i) How many people have received temporary accommodation in the past 2 years?

(ii) The standard of the temporary accommodation, ie, carpets, curtains, furniture, appliances, beds included.

(iii) Was this in a hotel or a private rented sector property/council property and in what area.

(iv) Did the council cover the costs or part of the costs and if so how much was spent?

You do not need to include personal information.

4. I wish to make a FOI request for information relating to housing homeless refugee families from Afghanistan.

(i) What is planned regarding this? For example, private rented housing,

hotels, social housing in certain areas?

(ii) How many families are you accepting?

(iii) Is this a voluntary policy?

(iv) What budget do you intend to use for this and who provides.

5. I wish to apply under FOI all complaints data of all legal action that has been taken against your housing department for the past 5 years.

(i) The subject of the legal action.

(ii) The outcome of the legal action.

(iii) The costs incurred and recovered by ERYC.

You do not need to include personal information.

6. I wish to apply under FOI all complaints data of complaints that have been

registered against your housing department for the past 5 years.

(i) The subject of the complaint.

(ii) The outcome of the complaint.

You do not need to include personal information.

7. I wish to make a FOI request for the actual wait time of an applicant in bands 1, 2, 3 and 4 for the entire ERYC areas for the past 2 years for a permanent property.

8. I wish to apply under FOI all complaints data of legal action that has been taken against your housing department for the past 5 years.

(i) The subject of the legal action.

(ii) The outcome of the legal action.

(iii) The costs incurred and recovered by ERYC

You do not need to include personal information

9. I wish to make an FOI request for data relation to 2 Autherd Garth, Walkington House.

(i) How long was this house void/empty and from what date?

(ii) When was an inspection carried out and what repairs were listed?

(iii) When were the necessary works arranged and how long did this take to arrange?

(iv) What were the costs of the works?"

19. The Council added: "The impact of responding to the customer would be disproportionate as the questions asked are purely to pursue the customer's ongoing disagreements with the Council. The customer has made clear her attempts in emails submitted to the Council, to use the FOI process to overburden the Council's resources, and therefore submits FOI requests as part of this campaign when the outcome of a decision made is not to their liking. The customer was open in stating that they were only submitting these FOI requests so that they could be used against the Council as part of her ongoing legal claims, and as such are only of interest to the customer and serve no other wider public interest or value."

The complainant's view

20. The complainant has said:

"East Riding of Yorkshire council have refused to provide FOI as part of an ongoing campaign against me. A large number of requests have been denied or obstructed for no valid reason. This is in order to deny me information that I need as part of an ongoing legal claim.

[...]

I was denied housing when in a homeless situation so the need for the information is important. I have been accused of waging a campaign when this is not the case and is an offensive and malicious allegation rejected by me."

The Commissioner's decision

21. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA.

The value of the request

22. The Commissioner acknowledges that the subject matter may be of public interest.

23. He accepts that, by seeking transparency and accountability, a request will have value or serious purpose.

The negative impacts of the request - burden, motive, and harassment

24. The Commissioner acknowledges that the Council considers that the motive of the requester is to cause undue disruption. The complainant herself has stated that she is requesting information to support a legal claim against the Council.
25. The Commissioner has reviewed the other requests made by the complainant, referred to by the Council. He notes the frequency of the requests, volume of questions asked in each request and that the requests follow a similar theme.
26. The Commissioner notes the Council's view that the complainant has already accessed formal routes for reporting her concerns with the Council, for example customer feedback and Council housing process and is now using the FOI process to interrogate the Council. In effect, the complainant is attempting through FOIA requests to reopen issues already resolved by other channels.
27. He considers that, in the circumstances of this case, this lessens the value of the request and supports the argument that the request is vexatious.

Balancing the value of the request against the negative impacts

28. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
29. He has also considered, in light of the nature, and degree, of the dealings between the complainant and the Council, whether, at the time, the request crossed the threshold of what was reasonable.
30. The purpose of section 14 of FOIA is to protect public authorities and their employees in their everyday business. In his guidance, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
31. Having balanced the purpose and value of the request against the detrimental effect on the Council, the Commissioner is satisfied that the request was not an appropriate use of FOIA procedure.

32. The Commissioner considers that the request was vexatious and therefore the Council was entitled to rely on section 14(1) of FOIA to refuse the request.

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: 0203 936 8963

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

Michael Lea
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