

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 February 2023

Public Authority: Hertsmere Borough Council
Address: Elstree Way
Borehamwood
Herts
WD6 1WA

Decision

1. The complainant requested information from Hertsmere Borough Council ("the Council") relating to waste collection vehicles and the replacement of wheelie bins.
2. The Commissioner's decision is that the Council is entitled to rely on section 14(1) (vexatious request) of the FOIA to refuse to provide the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainant made the following information request to the Council on 26 May 2022:

"How big is the hard drive on the waste collection lorries, how much cctv footage can it hold, ie days, weeks, months.

How often is the waste lorries cctv down loaded to a central computer.

In my own outstanding case, Street scene manager states that cctv was viewed by one of the staff, what was the date that the cctv was viewed. It is also stated, by street scene management that the cctv in my outstanding case is not available due to a hard drive issue, when was the issues raised , when was the hard drive replaced.

How many bins have been replaced by HBC street scene due to damage by HBC employed staff.”

5. The Council refused to provide the requested information citing section 14(1) (vexatious request) of the FOIA as its basis for doing so.

Reasons for decision

6. This reasoning covers whether the Council is entitled to rely on section 14(1) of the FOIA to refuse to provide the requested information.
7. The complainant does not consider their request to be vexatious. In their complaint to the Commissioner, the complainant stated that they have not previously asked the Council to provide them with any of the requested information and therefore, their request cannot be vexatious. The complainant considers that the information they have requested could prove that the Council has been dishonest.
8. The Council considers the request to be vexatious. In its submissions to the Commissioner, the Council stated that the complainant has sent a large volume of correspondence to the Council relating to a range of issues such as parking, fly tipping and their wheelie bin. The complainant has also submitted multiple freedom of information requests and subject access requests.
9. The Council explained that the request was submitted to the Council as part of an ongoing dispute relating to the replacement of the complainant's wheelie bin. The complainant believes the Council to have damaged their wheelie bin when collecting waste and they would like the Council to replace the bin free of charge. However, the Council explained that it has investigated the damaged wheelie bin by reviewing CCTV footage from the relevant waste collection lorry and have determined that the wheelie bin was already damaged prior to the Council collecting waste. The Council has therefore refused to replace the complainant's wheelie bin free of charge in line with its bin replacement policy. The Commissioner notes that the Council refused to provide the complainant with a copy of its video evidence to this effect, stating that doing so would breach the data protection rights of its

collection operative. It later said that due to a technical fault, the video was no longer recoverable¹.

10. The Council explained that the complainant has submitted a complaint about its refusal to provide a replacement wheelie bin free of charge and has exhausted the Council's three stage complaint process. The complainant has also submitted a complaint to the Local Government and Social Care Ombudsman about the matter. The Commissioner understands that the Local Government and Social Care Ombudsman ordered the Council to pay the complainant £50 due its poor handling of the complainant's complaints, which the Council has now paid.
11. The Council argues that the complainant is attempting to use their request for information as leverage to persuade the Council to provide a new wheelie bin free of charge. The complainant submitted the request after the Council did not uphold their complaint about the replacement of their wheelie bin. Furthermore, the Council explained that it had received an email from the complainant which stated that the request would be withdrawn if it provided a new wheelie bin free of charge. The complainant also suggested this in a meeting with the Council, where they stated:

"The ombudsman says you have to pay me £50. I'll waive the £50 if you give me a new bin. I'll also withdraw the two FOI requests and save you another £900."
12. Whilst the Commissioner does not necessarily consider that complying with the request itself would place a significant burden on the Council, he recognises that the aggregated burden of dealing with the complainant's overall correspondence would place an additional burden on the Council and its limited resources over a matter which has already been through its three-stage complaint process and has been considered by the Local Government and Social Care Ombudsman.
13. As the complainant has already exhausted the Council's three stage complaints process about its refusal to provide a replacement wheelie bin free of charge, the Commissioner accepts that the complainant is using their request to attempt to reopen a matter which has already been addressed by the Council. Furthermore, the Council's conduct over the matter has already received independent oversight through a

¹ <https://www.lgo.org.uk/decisions/environment-and-regulation/refuse-and-recycling/21-012-736#point5>

complaint to the Local Government and Social Care Ombudsman which resulted in the Council being ordered to pay the complainant £50.

14. The Commissioner accepts the Council's argument that the complainant is seeking to use their FOIA request as a means of pressurising the Council into providing them with a new wheelie bin, free of charge, in spite of its findings regarding the damaged wheelie bin. He therefore considers the request to lack a serious purpose or value.
15. The Commissioner decision is that the request is vexatious and therefore, the Council is entitled to rely on section 14(1) of the FOIA to refuse to provide the requested information.

Right of appeal

16. 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

17. 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.
18. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF