

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2023

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant submitted a request to Birmingham City Council ("the Council") for information relating to works carried out in Georges Park.
2. The Commissioner's decision is that the request was vexatious and therefore the Council was entitled to rely on section 14(1) of FOIA to refuse it. However, in failing to respond to the request within the statutory timescale, the Commissioner has determined that the Council breached section 10(1) of FOIA.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 28 July 2022, the complainant wrote to the Council and requested information in the following terms:

“Under the Freedom of information Act and/or Environmental Information Regulations please provide the following information:

Copies of all documentation and correspondence held by the council relating to works carried out in George’s Park, Lozells as part of the Birmingham commonwealth games celebrating communities funding. This should include information and correspondence relating to:

- the design and scope of the work - any risk assessments carried out
- any discussions or instructions given on what was and wasn’t permissible within a council owned park
- advice or instructions on procuring works and ensuring appropriate standards and safety conditions were met
- correspondence relating to the timing of the work and measures that would need to be in place during works
- any assessment made as to suitability of the contractor
- any declarations of interest made by any councillor or officer
- any checks made of the work after it was complete
- any checks made on validity of quote and assurances over use of funding
- any concerns raised by public, officers, councillors or other organisations over the use of the funds

The request should include all emails, documents, messages with the friends of George’s Park Group, the contractor who carried out the work, the ward councillor and cabinet member and all council officers. It should also include any correspondence held on non-council devices or apps such as WhatsApp where personal devices are used by council officers or executive councillors for work related purposes.”

5. A response was provided on 28 October 2022 in which the request was deemed vexatious under section 14(1) of FOIA.
6. Upon receiving this response, the complainant requested an internal review on 14 November 2022 and the Council provided its internal review response on 15 November, in which it upheld its original response.

Reasons for decision

Section 14(1)-vexatious request

7. 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. There is no public interest test.
8. The term 'vexatious' is not defined in FOIA. The Commissioner's guidance¹ suggests that if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
9. FOIA gives individuals the 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.
10. The Upper Tribunal considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield². The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure."
11. 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.

¹ [Dealing with vexatious requests \(section 14\) | ICO](#)

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

The Complainant's view.

12. The complainant has stated that the "excuses to call my request vexatious are ridiculous".
13. Furthermore, the complainant states that they attend a community forum and that they share their freedom of information requests with members of the community.

The Council's view

14. In its response, the Council informed the complainant that it had received 24 FOIA requests since November 2020, 10 of which relate to parks and friends of Georges Park and that the complainant "appears to make follow on requests almost immediately following a response".
15. Of the 10 requests relating to parks/Friends of George's Park, the Council has explained that one request was still awaiting a response, one had been withdrawn, three requests had been refused as vexatious and in five of the cases the requested information, that the Council held, had been disclosed.
16. In highlighting burden, the Council explained that of these 10 requests, there were 32 questions, most of which were multi-part questions. The Council acknowledges that it may not seem like a large number in the scheme of the overall number of requests that it receives each year, however it is "a significant number to receive from a single applicant" and that the requests are "often overlapping".
17. In examining motive, the Council states that it understands that the complainant has concerns but that the requests appear to stem from the complainant's "personal dissatisfaction with the Council or unfounded allegations of malfeasance".
18. Looking at the value and purpose of the request, the Council states that there is no indication that the information it has provided, in response to previous requests, has "ever been put to constructive use" and that the requests are aimed primarily at disrupting service delivery more than achieving transparency and accountability.
19. In highlighting harassment and distress, the Council states that as each request leads to further requests, internal reviews and complaints about delays, it has the effect of harassing staff in the Complaints and Information Governance Team and in the services handling the requests.

The Commissioner's decision

20. The Commissioner is keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
21. 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.
22. As per the Commissioner's guidance on section 14(1) of FOIA, consideration of the background and history of the request can be taken into account. Therefore, the Commissioner is mindful that since April 2021, the complainant has submitted 10 requests regarding parks/Friends of Georges Park.
23. The Commissioner acknowledges that the subject matter is of public interest and that the complainant does share their requests with the wider community. However, he also accepts that responding to this request would likely generate further related requests and correspondence, thereby placing extra burden on the resources of the Council.
24. In the circumstances of this case, and on the basis of the evidence provided, the Commissioner is satisfied that the Council was entitled to consider that the request was vexatious and therefore rely on section 14(1) of FOIA.

Procedural matters

25. Section 10(1) of FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
26. The request for information was made on 28 July 2022 and the Council provided a response on 28 October 2022. As this was more than 20 working days after the request was made, the Commissioner finds that the Council breached section 10(1) of FOIA.

Right of appeal

27. 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

28. 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.
29. 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

Joanna Marshall
Group Manager
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Wycliffe House
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Wilmslow
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SK9 5AF