

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 September 2007

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Cross Street
Beverly
East Riding of Yorkshire
HU17 9BA

Summary

The complainant requested information from East Riding of Yorkshire Council (the Council) relating to its health and safety policy and procedures, particularly where the policies and procedures address how risk is assessed and managed. The Council refused to comply with the request on the grounds that it considered it to be vexatious under section 14 of the Act (vexatious or repeated requests). The Commissioner found that, given the history of the correspondence between the complainant and the Council regarding the issue of risk assessment, the request in question would impose a significant burden on the public authority in terms of expense and distraction and that it is designed to cause disruption and annoyance, has the effect of harassing the public authority and could be fairly characterised as obsessive. Therefore he decided that the Council was correct to apply the exemption under section 14(1) of the Act. The Commissioner also found that the Council had failed to respond to the request within 20 working days, and therefore had breached section 17(5) of the Act (refusal of request). The Council is not required to take any further steps in respect of this complaint.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Requests

2. On 19 January 2007 the complainant sent the following request for information to the Council by email:

“Can you please send me a copy of your organisations health and safety policy and procedures where it described how risk is assessed and managed. In particular I require to see the guidance regarding the process of risk assessment?”

If has as been stated before by the Council that you have no procedure for undertaking risk assessments, can you please therefore inform me how the Council complies with the Health and Safety at Work Act and its associated regulations, and how your duty of care to the staff and public is exercised without such a procedure?”

3. In its letter of 7 March 2007, the Council stated that, having considered the reasons and the history of its previous correspondence with the complainant, it deemed his request vexatious. It further explained that the reason why the request was dismissed as vexatious was that it was clearly related to the complainant's previous requests for information about risk assessment following damage to his vehicle. The Council informed the complainant that, in accordance with its procedure on vexatious requests, where a request arose out of a previous response or a requester's contacts with the Council were frequent and often lengthy and complicated, his further requests could be considered vexatious. The Council confirmed that it considered the complainant's request to have arisen out of his previous requests and the correspondence with him to have been frequent, lengthy and complicated. The Council also informed the complainant of his right of appeal.

The Investigation

Scope of the case

4. On 19 March 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the Council's failure to comply with his request within the 20 day limit, and its refusal to address his request on the grounds that it had been considered vexatious. He also commented on the Council's procedure regarding vexatious requests as being flawed.
5. The Commissioner's investigation focussed on determining:
 - 1) whether the Council has dealt with the complainant's request in accordance with section 17(5) of the Act (refusal of request); and
 - 2) whether the requests in question would impose a significant burden on the Council in terms of expense or distraction and meet at least one of the following criteria:
 - clearly do not have any serious purpose or value; or
 - are designed to cause disruption or annoyance; or

- have the effect of harassing the public authority; or
- can otherwise be characterised as obsessive or manifestly unreasonable.

Chronology

6. Having reviewed the available correspondence that had passed between the Council and the complainant, on 27 June 2007 the Commissioner wrote to the Council and requested a further explanation of the reasons why it had considered the request to be vexatious.
7. In its response of 24 July 2007, the Council provided some of the background information related to its relationship with the complainant, accompanied by a copy of all his requests to date. The Council also stated that his recent requests represent “a continuation of the theme of how the Council assesses risk”, and that “given the length and characteristics of dealing with [the complainant] [...] his behaviour could now be characterised as obsessive”, on the basis of which it declared him vexatious.
8. On 9 August 2007 the Commissioner wrote to the Council and stressed that, in accordance with section 14(1) of the Act, it is a request, and not a person requesting information, that can be considered vexatious. The Commissioner also asked the Council to clearly demonstrate that the request in question would meet the criteria set in Awareness Guidance No 22 ‘Vexatious and Repeated Requests’.
9. In its letter of 28 August 2007, the Council addressed the questions put by the Commissioner, and explained why it considered the complainant’s request to be vexatious. In particular, the Council stated that “[the complainant’s] request in itself may not impose a significant burden, however, from experience with dealing with [his] requests in the past what will follow from any response [...] are further supplementary requests and correspondence with other Officers which combined will impose a significant burden on the resources of the Council”. The Council went on to provide examples of its previous interactions with the complainant dating back to 2005 in support of its statement. The Council stated that dealing with the complainant’s requests was extremely time consuming because he submitted multiple requests on the same theme, referred to different request in one email, incorporated new requests into his email responses creating a snowball effect, combined questions and requests for information, and was trying to merge the freedom of information process with a separate process for pre-action disclosure in court proceedings.
10. The Council stressed that the complainant’s request represented a continuation of his long-standing dispute with the Council over the damage to his car, and that he wanted to demonstrate that the Council was liable for it by using the Act rather than the Courts as a means of interrogating the officers of the Council about the matter.

Analysis

Procedural matters

Section 17 – Refusal of request

11. Section 17(5) states:

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

12. Section 10(1) states:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

13. The complainant's request for information of 19 January 2007 was refused on 7 March 2007 on the grounds that it was considered to be vexatious under section 14(1) of the Act, after the time limit set in section 10(1) had elapsed.

Section 14 – Vexatious and repeated requests

14. The Commissioner has considered whether the Council correctly applied section 14 of the Act to the complainant's requests for information.

Vexatious requests

15. Section 14(1) states:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.

16. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states:

“While giving maximum support to individuals genuinely seeking to exercise the right to know, the Commissioner's general approach is that a request (which may be the latest in a series of requests) can be treated as vexatious where:

- it would impose a significant burden on the public authority in terms of expense or distraction; and meets at least one of the following criteria:
 - it clearly does not have any serious purpose or value; or
 - it is designed to cause disruption or annoyance; or
 - it has the effect of harassing the public authority; or

- it can otherwise fairly be characterised as obsessive or manifestly unreasonable.”

The request would impose a significant burden

17. The Council explained that the complainant had been in regular correspondence with it since January 2005 regarding the issue of road inspections and relevant risk assessment and provided the evidence to demonstrate that. It also explained why dealing with the complainant's requests had been extremely time-consuming. Even though the Council's position on this issue is somewhat contradictory, as it suggests that the request in question may not “in itself [...] impose a significant burden”, the submission of the Council and available evidence, which includes a number of emails addressed to various officers of the Council, points to the conclusion the request would be likely to impose a significant burden.
18. In addition, in at least one of the emails the complainant made it clear that he intended to cause the Council expense by comparing the resources the Council was spending dealing with his complaints to the Commissioner, the Local Government Ombudsman and the Audit Commission and the amount of compensation he had claimed following a car accident.
19. However, before section 14(1) can be said to apply, the Commissioner must consider whether the requests also meet at least one of the further criteria set out in paragraph 16.

The request is designed to cause disruption or annoyance

20. As it was stated in paragraph 18, the complainant made it clear that he intended to cause the Council inconvenience by launching a campaign of complaints against it to various regulatory bodies. Therefore, his request of 12 January 2007, when put into the context of this campaign, can be said to cause annoyance to the Council.

The request has the effect of harassing the public authority

21. The complainant's request by itself does not contain any evidence of deliberate harassment. However, when put into the context of his long-standing dispute with the Council and the correspondence originated from it, the request can be said to have the effect of harassing the Council.
22. Thus, for instance, in its letter to the Commissioner of 28 August 2007, the Council stated that the complainant was “referring to Council Officers as ‘deliberately obstructive and deceitful’”. Indeed, in his email to the Council of 16 August 2005, the complainant made such a statement. In his email of 19 January 2007, referring to the Council's officers, the complainant characterised them as “arrogant individuals [he had] had the misfortune to deal with”.

The request can be fairly characterised as obsessive or manifestly unreasonable

23. In assessing whether a request can be deemed obsessive or manifestly unreasonable, a public authority may take into account previous knowledge it has of the applicant, as well as previous grievances, disputes or complaints involving the requester.
24. In its letters to the Commissioner of 24 July and 28 August 2007, the Council stated that both the requests made by the complainant and his behaviour could be characterised as obsessive. It further explained that in his requests the complainant had been going over the same ground raised in a previously closed compensation case, and provided evidence in support of this claim.
25. The Commissioner believes that the available evidence demonstrates a pattern of requests, and even though the request in question may appear reasonable in isolation, considered in context, it can be justifiably judged as obsessive and unreasonable. The complainant appears to be using this request for information as a continuation of his previous requests and complaints to the Council. The Commissioner's view is also based on the previous independent knowledge of the complainant's relationship with the Council gained during his investigation of the two other complaints regarding the issue of road inspections and risk assessment.
26. Given the above, the Commissioner is satisfied that the request in question can be considered to be vexatious under section 14(1) of the Act.

The Decision

27. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act by correctly applying section 14(1) of the Act.
28. However, the Commissioner has also decided that, by failing to respond to the request within 20 working days, the Council breached section 17(5) of the Act.

Steps Required

29. The Commissioner requires no steps to be taken.

Other matters

30. Although it does not form part of this Decision Notice, the Commissioner wishes to express his concern with respect to the Council's Corporate Procedure for Dealing with Vexatious Rights of Access Requests. The Procedure does not

differentiate between repeated and vexatious requests for information and contains a very broad interpretation of when a request can be considered vexatious, therefore potentially allowing the public authority to dismiss legitimate requests for information. In this respect, the Commissioner would recommend the above procedure is reviewed to take into account his Awareness Guidance No 22 'Vexatious and Repeated Requests'.

31. The Commissioner has also given serious consideration as to whether the complainant's application for a decision under section 50 of the Act could have been struck out under section 50(2)(c) on the grounds that the application may be deemed frivolous or vexatious. It is clear from the complainant's actions that he is using the Act to inconvenience the Council (see paragraph 18 above). However, the Commissioner believes that in the circumstances of this case, it is important to issue a Decision Notice upholding the Council's position.

Right of Appeal

32. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 27th day of September 2007

Signed

Steve Wood
Assistant Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Time for compliance with request

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Vexatious or repeated requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

Refusal of request

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”