

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 24 September 2009**

**Public Authority:** Bristol City Council  
**Address:** The Council House  
College Green  
Bristol  
BS1 5TR

### Summary

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The complainant made a number of requests to Bristol City Council, relating to a noise insulation claim he made following the development of a spine road in Bristol. The Council applied the exclusion under section 14(1) of the Act to the most recent request because it considered that the request was vexatious. The Commissioner has investigated and is satisfied that the Council was able to demonstrate that the request had been correctly refused. Therefore the Commissioner requires no action to be taken in relation to this request.

### The Commissioner's Role

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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.

### Background

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2. Between 4 December 2005 and 27 August 2007 the complainant made five requests to Bristol City Council ("the Council") referring to construction plans and photographs relating to the northern section of the spine road. The spine road links Lawrence Hill roundabout in the north of Bristol with the A4 Bath road in the south.
3. During the course of this correspondence the Council advised the complainant that the plans and photographs had been destroyed. The complainant did not accept this, and made further requests relating to the destruction of the plans and photographs. Details of these requests are reproduced at Annex 1 to this Notice.

## The Request

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4. On 27 August 2007 the complainant wrote to the Council:

“In your letter to the Information Commissioner’s Office dated 22 September 2006 you confirmed that the original as constructed plans relating to the section of road from Lawrence Hill roundabout to Barrow Rd bridge, were destroyed with the photographs at the end of January 2005.

Under the Freedom of Information Act can you please forward the documentary proof that this was the case”.

5. On 30 September 2007 the complainant wrote to the Council to advise that he had not received a response to his request. The complainant also contacted the Commissioner regarding the lack of response.
6. On 16 October 2007 the complainant approached the Commissioner explaining that he had still not received a response to his request from the Council.
7. On 1 November 2007 the Commissioner contacted the Council to advise it of the complaint. The Council responded to the Commissioner on 6 November 2007 confirming that it had not responded to the request because it had been considered to be vexatious in line with section 14(1) of the Act. The Council advised the Commissioner that it had previously advised the complainant of this decision.
8. On 26 November 2007 the Commissioner confirmed to the complainant that the Council considered the request to be vexatious by virtue of section 14.
9. On 13 November 2007 the complainant wrote to the Council appealing against its decision to refuse the request.
10. On 7 January 2008 and 27 January 2008 the complainant contacted the Commissioner to complain that he had not received any response from the Council in relation to his request for an internal review.
11. On 20 February 2008 the Commissioner asked the Council whether or not it had offered or conducted an internal review. The Council confirmed that it had not conducted a review, nor had it received any request for a review.
12. On 17 April 2008 the Commissioner provided the Council with a copy of the complainant’s request for internal review dated 13 November 2007.
13. On 28 April 2008 the Council undertook an internal review. The Council upheld its decision and explained that:

“All questions in relation to the destruction of the plans and documents relating to the spine road have been answered fully. You have made a large number of requests relating to this issue, the council is unable to elaborate further and has

been as helpful as possible to you. Indeed we have so far written to you on at least 12 occasions in response to your requests.”

14. The complainant remained dissatisfied, and on 5 May 2008 he asked the Commissioner to investigate the way his request of 27 August 2007 had been handled.

## The Investigation

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### Scope of the case

15. The Commissioner confirmed to the complainant on 6 February 2009 that the scope of his investigation would be to determine whether the Council was correct not to comply with the request of 27 August 2007 in reliance on section 14(1) of the Act.
16. On 1 March 2009 the complainant contacted the Commissioner to explain that he had made a further request in relation to the development to the Council on 7 January 2009 and requested that the Commissioner investigate whether the Council was correct not to correspond with him further on the matter. This further request falls outside the scope of this case and is the subject of separate investigation by the Commissioner.
17. The Commissioner's investigation has therefore been to determine whether the Council was correct to apply the exclusion under section 14(1) of the Act to the request dated 27 August 2007.

### Chronology

18. On 6 February 2009 the Commissioner requested further information from the Council in respect of its application of section 14. The Commissioner requested an explanation as to how the Council determined the request to be vexatious with reference to the Commissioner's Awareness Guidance on vexatious and repeated requests.
19. The Council responded on 6 March 2009 advising the Commissioner that the destruction of the plans and documents relating to the spine road had been explored fully with the complainant in January 2006. The Council referred the Commissioner to the previous complaints investigated by his office and provided a chronology of its contact with the complainant (provided at Annex 2). The Council explained to the Commissioner that as the matter first arose in 2005 it no longer held all of the correspondence. The Council did however provide copies of correspondence it held.
20. The Council also stated:  
“...it was confirmed that the plans and photos have been destroyed on numerous occasions, including the letter of [an officer] of 30 March 2006 and my letter of 26 May 2006 and 23 October 2006....”

Documentary evidence has been provided in my letter of 24 April 06...21 June 06, 4 December 2006...and 8 January 2007 (...misdated as 2006)".

21. The Council submitted arguments to suggest that responding to the request of 27 August 2007 would create a significant burden in terms of expense and distraction, that the request could be considered to be obsessive and that the request lacked serious purpose or value.
22. Following further correspondence, on 30 April 2009 the Council confirmed to the Commissioner its view that it had in fact provided the complainant with all the information it held relating to proof of destruction of the plans and photographs. Therefore the Council concluded that there was no further information it could supply to the complainant.

## Analysis

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### Access regime

23. The Commissioner has first considered whether the information requested can be considered to be environmental information as defined by the Environmental Information Regulations 2004.
24. The Commissioner notes that the request was for evidence relating to the destruction of information. The Commissioner considers therefore that the request was for information relating to records and document management. The Commissioner is satisfied that information relating to document management is not itself environmental information and the correct access regime is therefore the Act.

### Section 14(1): vexatious and repeated requests

25. Section 14(1) of the Act states that:

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

The full text of section 14 is available in the Legal Annex at the end of this Notice.

26. The Commissioner's approach when considering vexatious and repeated requests is to consider the following questions:
  - Could the request fairly be seen as obsessive or manifestly unreasonable?
  - Is the request harassing the authority or causing distress to staff?
  - Would complying with the request impose a significant burden?
  - Is the request designed to cause disruption or annoyance?
  - Does the request lack any serious purpose or value?

### Could the request be seen as obsessive or manifestly unreasonable?

27. In assessing whether a request can be seen as obsessive or manifestly unreasonable, a public authority may take into account previous knowledge it has of the applicant and its dealings with that individual.
28. The Commissioner notes from the correspondence provided by the Council that between December 2005 and August 2007 the complainant made at least 10 requests for information to the Council. All of the requests, including the one that is the subject of this decision, related to the complainant's potential noise insulation claim and the spine road. The Commissioner considers that the Council did endeavour to engage with the complainant and respond to many of his requests before reaching the conclusion that the request of 27 August 2007 was vexatious.
29. The Council argued that the correspondence from the complainant on the issue of his noise insulation claim had been continuing over at least 2 years, and the Council felt that the complainant was asking for the same or similar information that he had previously requested and been supplied with. The Council therefore considered that the most recent request could be seen as obsessive.
30. The complainant also made complaints about the Council to the Local Government Office of the South West, the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman. Each of these complaints was rejected on the basis that there was no evidence to suggest that the Council had acted inappropriately.
31. The Commissioner also notes that he has dealt with two previous complaints made by this complainant in respect of the spine road, and that the Commissioner was satisfied in both of these cases that the information requested had been provided to the complainant.
32. The Commissioner considers that an assessment that a request is obsessive is likely to be reasonable where a complainant continues with the request despite being in possession of independent evidence on the same issue. The Information Tribunal has endorsed this view. In *Welsh v the Information Commissioner (EA/2007/0088)* the Tribunal stated:

“.....Mr Welsh simply ignores the results of 3 separate clinical investigations into his allegation. He advances no medical evidence of his own to challenge their findings.....that unwillingness to accept or engage with contrary evidence is an indicator of someone obsessed with his particular viewpoint, to the exclusion of any other...it is the persistence of Mr Welsh's complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious....” (paras 24 &25).
33. The Commissioner considers that the complainant in this case is displaying similar behaviour to that described in *Welsh*. The complainant refuses to accept the conclusion of independent and external investigations that the information he requested has been provided or supplied to him, and he fails to acknowledge the

decisions of bodies such as those listed at paragraph 30 above that there is no action to take against the Council in relation to his noise insulation claim.

34. On this basis the Commissioner has concluded that the request of 27 August 2007, in the context of the complainant's dispute with the Council, can be seen as being obsessive.

**Would complying with the request impose a significant burden on the authority?**

35. The Commissioner understands that at the time of the request the complainant had been pursuing the matter of his noise insulation claim for approximately 2 years. The Council explained that it had received at least 19 letters on the issue of the spine road and his noise insulation claim, within which there were varying degrees of repetition. The Council provided that it considered that responding to further requests on this issue would become a distraction and unjustified burden.
36. The Commissioner considers the Tribunal decision in the case of *Betts v the Information Commissioner (EA/2007/0109)* to be relevant in this case. Paragraph 34 of that decision stated that:

“albeit it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources”.
37. The Commissioner notes from the correspondence provided by the Council that between December 2005 and August 2007 the complainant made at least 10 requests for information. All of the requests, including the one that is the subject of this decision, related to the complainant's potential noise insulation claim and the spine road. The Commissioner considers that the Council did endeavour to engage with the complainant and respond to many of his numerous requests before coming to the conclusion that this latest request was vexatious.
38. The Commissioner also notes that he has dealt with two previous complaints made by this complainant in respect of the spine road, and that the Commissioner was satisfied in both of these cases that the information requested had been provided to the complainant.
39. Upon considering the arguments put forward by the Council and viewing the correspondence generated between the complainant and the Council, the Commissioner accepts that the complainant's requests frequently overlapped or were repeated.
40. The Commissioner accepts, on the basis of the evidence provided, that responding to the complainant's requests often generated further correspondence and requests. Therefore, whilst it may not have been burdensome to respond to this request in isolation, the Commissioner is persuaded that a response would have likely generated further linked requests and correspondence. In view of this

he is satisfied that the request would have resulted in a significant burden in terms of expense and distraction.

**It does not have any serious purpose or value**

41. The Commissioner is assisted here by the Tribunal's decision in *Coggins v the Information Commissioner (EA/2007/0130)* which stated at paragraph 20 that it:

“could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious . For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action.”

42. In light of this the Commissioner has considered whether the requests in this case have any serious purpose and it would be inappropriate to deem them vexatious even when taking into account the factors outlined above which he is satisfied are met.

43. In reaching a view the Commissioner is also guided by the Tribunal in *Gowers v the Information Commissioner & London Borough of Camden, (EA/2007/0114)* at paragraph 62:

“As to the Appellant's contention that the requests were not vexatious because they were part of the research he was carrying out on the CCU, it is not clear from the evidence before us that all his requests dating back to April 2005 were for this purpose or whether the research was conceived later. However, as already noted, FOIA is motive-blind. A public authority's obligations under FOIA and an applicant's entitlement to the information requested are not any the lesser or greater by reason of what the applicant's purpose or motive in making the request may have been. Of course, if an applicant's motives are to harass, irritate or annoy a public authority, it is more likely that his request will be characterised as vexatious, but that is simply because in such a situation, it is likely that his request will be designed to achieve his objective. It does not follow that a request can only be vexatious if the applicant intended it to be so; it may be vexatious regardless of his motives.”

44. The Commissioner has considered this in conjunction with the complainant's wider pattern of requests and has reached the view that this weakens the argument that the request has serious purpose or value.

45. The Commissioner considers that there is some serious value in seeking information to enable individuals to challenge compensation awards, particularly where individuals feel that the situation was misrepresented to them. However the significance of this must be considered together with other circumstances in this case. In this instance the Commissioner is not persuaded that there is significant weight to the serious value identified. This is in view of the fact that the

information requested by the complainant has already been provided, and that the matter has been independently investigated by the Local Government Office of the South West, the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman.

46. Having considered all of the arguments in this case, the Commissioner is satisfied that to the extent that the requests have a serious value this does not outweigh the significant burden and distraction that the requests impose. Therefore he does not consider it inappropriate for the request to have been deemed vexatious.

### **The Commissioner's conclusion**

47. The Commissioner considers that there are strong and clear arguments to support a conclusion that the request of 27 August 2007 is vexatious. All the requests made are closely related and have a clear theme linking them. They are all concerned with plans, drawings or photographs of the spine road, which the complainant believes would support his claim for noise insulation. This claim is the source of all the requests. The complainant was not satisfied with the final outcomes of his previous complaints to the Commissioner relating to the destruction of documents, and therefore used a further request to the Council in an attempt to revisit issues which had been addressed in the course of previous correspondence and complainants to the Commissioner.
48. Having considered all of the above the Commissioner believes that section 14(1) of the Act was correctly applied in this case.

### **Section 17: refusal notice**

49. Under section 17(5) of the Act, a public authority wishing to refuse a request under section 14 must serve a refusal notice which states that fact. Section 17(6) provides that an authority does not need to provide a refusal notice where it is relying on section 14, if it has already given the requester a notice in relation to a previous request for information. However, this only applies if it would be unreasonable to expect the authority to provide a further refusal notice.
50. On 13 February 2007 the Council explained to the complainant that:
- “We have covered the issue of how the records have been destroyed and I have no further information on this. As previously stated, I am not prepared to enter into any further correspondence on this point and consider this to be a vexatious request in accordance with section 14 of the Freedom of Information Act.”
51. The Council argued that this letter acted as a refusal notice under section 17, which mean that the Council was not obliged to provide a further notice in respect of the request made on 27 August 2007.
52. The Commissioner notes that in July 2007 the complainant made two further requests relating to noise insulation claims and land compensation claims, and whilst these requests were connected to the complainant's requests concerning



the plans and documents in relation to the spine road, the Council provided the information to the complainant.

53. On the basis that the Council continued to answer requests connected to the plans and documents of the spine road after issuing the section 14 refusal notice of 13 February 2007, the Commissioner considers that, in the circumstances of this case, it would not be unreasonable to expect the Council to provide a further refusal notice.
54. The Commissioner therefore finds the Council to be in breach of section 17(5) as it ought to have issued a section 14 refusal notice within the statutory time period.

### **The Decision**

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55. The Commissioner's decision is that the Council correctly applied section 14(1) as the complainant's request can be correctly categorised as vexatious under the Act.
56. However, the Commissioner finds that the Council breached section 17(5) in failing to provide the complainant with a refusal notice citing section 14 as the basis for refusing the request.

### **Steps Required**

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58. The Commissioner requires no steps to be taken.

## Right of Appeal

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59. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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 24th day of September 2009**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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

## **Annex 1: Requests made to Bristol City Council**

### **4 December 2005**

In correspondence to the Council dated 4 December 2005 the complainant stated:

“According to the spine road contract the contractor had an obligation to provide photographs on a monthly basis as a record of progress. At six monthly intervals aerial photographs also had to be taken.

Under the Freedom of Information Act please provide me with copies of the photographs showing the Northern contract section.”

The Council advised the complainant that it did not hold the requested information. The complainant did not agree with the Council's response, and he made a complaint to the Commissioner (FS50113440). Following the Commissioner's intervention the complainant was provided with documentary evidence that the photographs were destroyed. This evidence was provided to the complainant on 24 April 2006.

### **2 May 2006**

The complainant made a further request to the Council on 2 May 2006, asking when and why the construction plans were destroyed. The complainant was unhappy with the handling of his request and made another complaint to the Commissioner (FS50132164). The Commissioner investigated the complaint and wrote to the complainant on 26 September 2006, explaining that he was satisfied with the Council's response that the plans and photographs were held together and were therefore destroyed together.

### **10 December 2006**

On 10 December 2006 the complainant requested information from the Council in relation to authorisation of the destruction of the plans and photographs which had been the subject of his most recent complaint to the Commissioner (FS50132164).

On 8 January 2007 the Council responded to the request and explained:

“I believe that we have entered into extended correspondence on this particular issue and it is unlikely that I will be able to add any further information on this point. As a result, I would consider that further requests on this specific issue would be vexatious. If this occurs, I may refuse to respond in accordance with section 14(2) of the Act 2000.”

### **14 January 2007**

The complainant contacted the Council on 14 January 2007 stating:

“In your letter you confirm that the only department to whom the documents belong should authorise destruction. I have been informed by [an Officer] that neither himself nor anyone else in the highways group ordered the destruction of these documents. Can you therefore please inform me how it came to be that these documents were destroyed without proper authorisation??  
Can you also please confirm what the width of the approach road is where it joins the Lawrence Hill roundabout.”

The Council responded on 13 February 2007 in the following terms:

“We have covered the issue of how the records have been destroyed and I have no further information on this. As previously stated, I am not prepared to enter into any further correspondence on this point and consider this to be a vexatious request in accordance with section 14 of the Freedom of Information Act.

I also confirm that no measurements are held about the width of an approach road to the Lawrence Hill roundabout.”

## **Annex 2: Chronology of correspondence**

- 4 Dec 05 Letter from complainant to Officer of Council. Letter requested photographs of Northern Contract Section.
- 20 Dec 05 Letter from Council to complainant. Explaining delay in locating photographs - holding letter.
- 10 Dec 06 Letter from complainant to Council
- 3 Jan 06 Letter from complainant to Council re: disclaimer signed and awaiting photographs.
- 9 Jan 06 Letter from Council to complainant re: disclaimer.
- 12 Jan 06 Letter from complainant to Council re: disclaimer and seeking photographs.
- 18 Jan 06 Letter from Council to complainant re: disclaimer and confirming photographs will be sent when / if located.
- 18 Feb 06 Letter from complainant to Council.
- 14 Mar 06 ICO became involved, case reference FS50113440
- 30 Mar 06 Letter to complainant re complaint. Council confirmed photographs were destroyed on 29/12/04 with the agreement of the depositor and apologised for the delay in responding to the FOI request.
- 2 Apr 06 Letter from complainant asking for copy of document retention schedule, written confirmation of Depositors agreement to destroy and specification of road.
- 7 Apr 06 Letter from ICO confirming further complaint to Commissioner (FS50132164)
- 24 Apr 06 Letter from Council to complainant enclosing document retention schedule (DRS), written confirmation of depositor's agreement to destroy photographs and confirming unable to confirm road specification as plans destroyed.
- 1 May 06 Letter from complainant to Bristol Record Office asking for date of photographs' destruction.
- 1 May 06 Letter from complainant asking when and why plans were destroyed.
- 26 May 06 Letter from Council to complainant confirming photographs destroyed in January 05.

Reference: FS50180713

- 6 June 06 Letter from complainant to Council asking which category photographs come under in relation to DRS, and when and why plans destroyed.
- 21 June 06 Letter from Council to complainant confirming that plans were intended to be destroyed after 6 years but were mistakenly destroyed after 5 years, in January 05. There is no category for these documents in the DRS.
- 22 June 06 Letter from complainant to Council (complaints manager at Bristol City Council) seeking response to when and why plans were destroyed. (This was answered in full in Council's letter dated 21 June 06).
- 1 Oct 06 Letter from complainant
- 23 Oct 06 Letter from Council to complainant. Confirming photos and plans were kept together.
- 6 Nov 06 Letter from complainant
- 4 Dec 06 Letter from Council to complainant re authorisation of destruction of spine road photos and plans.
- 8 Jan 06 Letter from Council to complainant re destruction procedure and confirming further correspondence on this issue would be deemed to be vexatious.
- 14 Jan 07 Letter from complainant
- 13 Feb 07 Letter from Council to complainant, confirming this matter is deemed to be vexatious
- 19 Mar 07 Letter from Council to complainant confirming that complaint not upheld.
- 25 Mar 07 Letter from complainant to Chief Executive.
- 25 Apr 07 Letter from Council to complainant.
- 1 Jul 07 Letter from complainant. Request re noise insulation claims.
- 17 Jul 07 Response of Council to complainant seeking clarification of request.
- 24 Jul 07 Noise insulation clarification from complainant to Council.
- 2 Aug 07 Freedom of Information requests from complainant re land compensation procedures.
- 23 Aug 07 Response to two recent requests sent (Council decided to respond to these requests even though they did relate to the same issue, however it was not directly linked to the plans and photos).

Reference: FS50180713



Information Commissioner's Office

27 Aug 07 Letter from complainant saying that in letter to ICO of 22 September 2006, Council confirmed plans and photos destroyed – asks for documentary proof.

## 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.”

### **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 Notices**

**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.”

**Section 17(6)** provides that –

“Subsection (5) does not apply where –

- (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.”