

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 September 2009

Public Authority: London Borough of Bexley
Address: Bexley Civic Offices
Broadway
Bexleyheath
Kent DA6 7LB

Summary

The complainant requested information concerning the appointment of an independent member of a Social Services Review Panel. The public authority provided some information and refused other material on the basis of the exemption in section 40(2) of the Act. The complainant subsequently made repeated requests for the same and similar information on 11 January 2008. The complainant then complained to the Commissioner that he had not had a response to the January 2008 requests. The Commissioner has concluded that the public authority was correct to deem the requests of 11 January 2008 vexatious and that, by virtue of section 17(6) of the Act, it was not obliged to issue the complainant with a refusal notice explaining that fact. This is because it had previously issued a notice under section 17(5) in relation to similar requests regarding the same topic.

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 Request

2. On 25 February 2008 the complainant contacted the Commissioner to complain that he had failed to receive a response to a request made to the public authority on 11 January 2008. The request was for the following information.

“who approved the selection of Mr J Stanton as the independent person/chairman to sit on a Council Social Services Review Panel? and

whether the panel members were shown any proof of Mr Stanton’s identity”.

The Investigation

Scope of the case

3. The main focus for this investigation is the request made on 11 January 2008, which the complainant brought to the Commissioner's attention claiming that it had not been answered. The public authority did not respond to the request in view of previous correspondence which declared the complainant's repeated requests vexatious. The Commissioner has therefore considered whether the public authority appropriately deemed section 14(1) to apply and if it was right not to issue a refusal notice compliant with section 17(5) of the Act.
4. The complainant also raised several Data Protection issues that are not addressed in this Notice because they are not requirements of Part I of the Act.

Chronology

5. The request for information which is the subject of the complaint was the last in a series of requests for the same information made by the complainant over a period of at least six months. The Commissioner is aware of one such request made on 26 July 2007 which the public authority responded to on 10 August 2007. In that response the public authority provided the complainant with a copy of the letter of appointment of the chairman.
6. The public authority considered that it had substantially answered the request by informing the complainant that the appointment was made on the recommendation of the Bexley Volunteer Services Council. However in further correspondence it confirmed that the recommendation was “accepted” by a junior member of staff. The recorded information identifying this individual was within the scope of the complainant's request but the public authority explained that it could not be provided because it constituted the staff member's personal data. It explained that the individual had left the authority's employ and that it would be unfair to release the information. As such the information was deemed to be exempt under section 40(2) of the Act.

7. The Commissioner is aware of correspondence from the complainant to the public authority on the following dates: 17 August, 25 September, 12 October, and 14 November 2007 when the public authority say he repeated his requests for information. The public authority responded to the complainant's letters on 29 August, 11 October and 18 October. It then wrote to the complainant on 29 November 2007, stating that he seemed unwilling to accept the responses and declaring his repeated requests vexatious. The complainant complained to the public authority on 5 December 2007 that it was being evasive. The public authority replied on 21 December 2007 to say that it had reviewed the correspondence and that the decision to treat his repeated requests as vexatious had been upheld. It also informed him that he could contact the Commissioner if he remained dissatisfied with the decision.
8. Instead of contacting the Commissioner at that point the complainant wrote back to the public authority on 11 January 2008 repeating his earlier requests. The Commissioner is not aware of any response to the 11 January 2008 request having been made by the public authority, but he understands that this was because in light of its previous responses to the same or substantially similar requests the public authority did not deem this to be necessary.
9. The Commissioner wrote to the public authority on 13 February 2009, seeking information about the way that the request of 11 January 2008 was handled. The public authority responded on 22 May 2009 with a reply and supporting documents.

Analysis

Procedural matters

Section 14(1)- Vexatious requests

10. 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.”

When deciding whether section 14(1) has been applied correctly by a public authority the Commissioner consider the following criteria:

- would complying with the request(s) create a significant burden in terms of expense and distraction;
- are the requests designed to cause disruption or annoyance;
- do they have the effect of harassing the public authority;
- can they otherwise fairly be characterised as obsessive or manifestly unreasonable;

- do the requests have any serious purpose or value.

11. It is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious indeed a strong argument in one may outweigh weaker arguments in the others. As the Information Tribunal commented in the case of *Coggins v ICO* (EA/2007/0130) a, “decision as to whether a request was vexatious within the meaning of s.14 was a complex matter requiring the weighing in the balance of many different factors. The Tribunal was of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach...” (para 20). When determining whether or not a request has been appropriately refused on the basis that it is vexatious, the Commissioner will also take into account the context and history of the request.

It would create a significant burden in terms of expense and distraction

12. The Commissioner is aware that the complainant has been in correspondence with the public authority regarding his dissatisfaction with a Social Services Review Panel since 2005. The public authority has provided evidence of 6 letters containing several separate requests for information regarding the organisation of the panel and the appointment of the Chair. Requests were submitted by the complainant approximately once a month between July and November 2007. The Commissioner is mindful that the complainant may well have had further dealings with different parts of the public authority and that the “burden” imposed would not be limited to this correspondence. He accepts in principle that requests made to many different departments within a public authority could cause a burden in terms of distracting staff from their core functions. However in this instance the public authority has not provided any evidence or explanation to demonstrate the burden imposed by the requests. In particular it has not explained how much resource has already been expended dealing with requests or how complying with the requests of 11 January 2008 would have distracted staff from their core functions. Therefore the Commissioner does not consider this criterion to be met in this case.

It is designed to cause disruption or annoyance?

13. The Commissioner acknowledges that the requests may well have had the effect of annoying the public authority, but he does not consider that there is evidence to demonstrate that they were specifically designed with this aim in mind.

It has the effect of harassing the public authority

14. On 29 November 2007 the public authority wrote to the complainant to inform him that it had responded to questions regarding the Social Services Panel on more than one occasion but that he appeared unwilling to accept those responses. It went on to state that the repetitive

nature of his queries (which had been ongoing since 2005) was placing unreasonable demands on staff.

15. Despite being provided with some information, given a refusal notice on the basis of section 40(2) and subsequently being informed that his continued requests regarding the Social Services Panel were considered to be vexatious by the public authority, the complainant persisted in making further requests, in particularly on 11 January 2008. The Commissioner considers that the continued requests for the same or very closely linked information did have the effect of harassing the public authority. In reaching this conclusion he has taken into account the frequency of the requests, the focus of the requests and the fact that the complainant had been informed of his right to complain to the Commissioner but opted not to pursue this avenue until he had repeated his requests again.
16. The Commissioner also notes that the complainant's tone in his correspondence was sometimes accusing and negative. He accused the Council of being "dishonest" and "never giving a straight answer to anything." In his email of 4 Jan 2008 to the public authority he states "I need no advice resisting your attempts to slam the door in my face", referring to council officials as "cronies" and "embarrassment that may be caused to Bexley." The Commissioner considers that the tone and content of these comments and the requests would have had the effect of harassing the public authority.

It can otherwise fairly be characterised as obsessive or manifestly unreasonable

17. 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 requestor as well as previous grievances, disputes or complaints involving the requestor.
18. In reaching its decision to apply section 14(1), the public authority took into account the "extensive correspondence" with the complainant which had accumulated and the fact that the more recent requests for information were "substantially similar" and that it had "already provided information; in some cases, on several occasions." The Commissioner recognises that initially the complainant legitimately required information about the way in which the Social Service Panel in question was constituted. However he considers that the requests for the same information made to the public authority on 11 January 2008, after the complainant was advised of the right of appeal to the Commissioner, can be characterised as both obsessive and manifestly unreasonable.

It clearly does not have any serious purpose or value

19. The Information Tribunal in EA/2007/0130 Coggins vs IC 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.”

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 those factors outlined above which he is satisfied are met.

20. The Commissioner considers that the public authority replied appropriately to complainant's early requests for information by stating that the appointment of the independent person on the panel was made by a committee administrator following council protocol using a recommended list provided by Bexley Volunteer Services Council. It also explained that under the circumstances it did not consider it fair to release the name of the individual as it was personal data and therefore exempt under section 40 of the Act. The complainant did not accept the public authority's response but in subsequent correspondence simply repeated the request.
21. Given that the complainant had been supplied with information, provided with a refusal notice in respect of third party personal data falling within the scope of his request and that he was given details about the right of appeal to the Commissioner against that refusal and the overall handling of his requests, the Commissioner is satisfied that the requests of 11 January 2008 had no serious purpose or value. If the complainant was concerned about the refusal to supply information or the overall handling of his requests prior to January 2008 he should have complained to the Commissioner rather than simply repeating his requests to the public authority.

Conclusion

22. The Commissioner carefully considered the different criteria above. He did not consider that the public authority had supplied sufficient evidence to demonstrate that the 11 January 2008 requests imposed a significant burden or that they were designed to cause disruption. However he accepted that the use of provocative and accusing language as well as the persistent repeated requests on the same or very similar information had the effect of harassing the public authority and that the January 2008 requests were, in the context of the issues which the complainant has with the public authority, obsessive and manifestly unreasonable. The Commissioner also considered that the request lacked serious purpose or value bearing in mind the responses that the public authority had

provided to earlier similar and identical requests. He has therefore concluded that the requests made on 11 January 2008 were appropriately deemed vexatious within the meaning of section 14(1) of the Act and that the public authority was correct to refuse to comply with them on that basis.

Section 17 (6)

23. Section 17(6) states that a public authority does not have to provide the complainant with a refusal notice under section 17(5) where, it is relying on a claim that the request is vexatious, the applicant has previously been given a notice stating that it is relying on such a claim and it would in all the circumstances be unreasonable to expect the authority to serve a further notice.
24. The Commissioner notes that the public authority wrote to the complainant on the 21 December 2007 confirming that his requests regarding the Social Services Review Panel were considered vexatious and providing details of the right of appeal to the Commissioner. He is satisfied that the requests made by the complainant on 11 January 2008 were substantially similar to previous requests submitted between July and December 2007. Given that the complainant was advised on 21 December 2007, a month prior to the requests of 11 January 2008, that similar requests were considered vexatious and that the right of appeal information was included, the Commissioner is satisfied that the public authority was not obliged to issue a refusal notice under section 17(5) in response to the requests that are the subject of this decision notice by virtue of section 17(6).

The Decision

25. The Commissioner's decision is that in deeming the requests of 11 January 2008 vexatious under section 14(1) and determining that it was not necessary to issue a refusal notice under section 17(5) because of the provisions of section 17(6) the public authority dealt with the requests in accordance with the Act.

Steps Required

26. The Commissioner requires no steps to be taken.

Right of Appeal

27. 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.

Website: 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 30th day of September 2009

Signed

**Jo Pedder
Senior Policy Manager**

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

Legal Annex

Freedom of Information Act 2005

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”

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current 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), given 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 circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”