

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 18 June 2009

**Public Authority:** The Commission for Local Administration in England  
**Address:** 10<sup>th</sup> Floor  
Millbank Tower  
London  
SW1P 4QP

### Summary

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The complainant made a series of freedom of information requests to various public authorities, including 48 to the Local Government Ombudsman (LGO) between July and December 2008. The LGO refused the request made on 12 December 2008 that is the subject of this decision, declaring it vexatious under section 14(1) of the Freedom of Information Act 2000 (the Act). This was because the request added to an already significant burden placed on the LGO by his series of requests and, taken in the context of the complainant's history, was having the effect of diverting staff from their primary activities. The public authority also argued that, having regard to the wider context and history of the complainant's requests, the request lacked serious purpose or value. The Commissioner has found that the authority was correct to apply section 14(1) of the Act.

### 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.

### The Request

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2. On 12 December 2008 the complainant made the following request:

"Since 01 April 2000 please identify by Council for each each year. [sic]

1 The number of complaints against each Council involving Social Services.

2 The number of complaints against each Council involving Social Services that were investigated identifying the Ombudsman responsible [sic]

3 The outcome of the LGO's investigation (M, MI, LS, OD, OJ, P etc), identifying which Ombudsman made the decision

If possible please additionally identify if the complaints related to Adults or Children.

Further identify by each complaint if the Ombudsman raised concerns with any other regulator of a Council (please identify by Council) or sought legal advice."

3. The public authority issued its response on 8 January 2009. It provided the complainant with a refusal notice, declaring the request vexatious under section 14 of the Act, stating that the complainant had made the largest number of freedom of information (FOI) requests from any individual in the period from July 2008 to date. It explained that in its opinion these requests, individually and cumulatively, placed a significant burden on staff, diverting them from their usual work because the LGO does not have any staff dedicated to dealing with FOI requests. The public authority also expressed the view that many of the requests lacked serious purpose or value.
4. The LGO indicated that before any of the complainant's FOI requests would be processed by the public authority in future, it would be necessary for him to provide an explanation of the reason for making the request so that the public authority would be in a position to establish that the request had 'serious purpose and value' and that, in the absence of any such explanation, it was likely that the public authority would declare a request vexatious.
5. The complainant requested an internal review of this decision in an email to the LGO on 9 January 2009. He made numerous points, some of which alluded to responses to other FOI requests, details of which were not stated in that email.
6. The public authority responded to the complainant's request for internal review on 6 February 2009. It upheld the refusal on the grounds that the complainant's request lacked serious purpose or value because the information requested would not assist him in his stated aims of improving council services, principally because the LGO is not an inspector.

## The Investigation

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### Scope of the case

7. On 11 February 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following:

“Would the ICO please determine if the Secretary and Deputy Chief Executive of the CLAE is placing their private interests above the public interest. It is my reasonably strong belief that this might be the case.”

8. The Commissioner understands the above complaint to be that the LGO inappropriately applied section 14(1). The complainant's grounds for this assertion are that it was seeking to protect its private interests when refusing the request. The Commissioner has made a decision on the basis of this interpretation of the complaint.

### **Chronology**

9. The complainant made his request through the 'whatdotheyknow.com' website where a complete history of the correspondence between the complainant and the public authority is available. The Commissioner determined that in this case it was possible to make a decision based on the basis of the information available on the aforementioned website and the correspondence submitted to him by the complainant. Therefore he has not investigated this case further.

### **Findings of fact**

10. The Commission for Local Administration in England is the official title of the body that runs the Local Government Ombudsman service. It is an independent body funded by government grant. The Commission's role is the provision of support for the Ombudsman service, including accommodation, staff, administration and financial management together with an overarching steering and policy function.
11. At the time of the investigation of this complaint the complainant had made 594 FOI requests via the website [www.whatdotheyknow.com](http://www.whatdotheyknow.com). Of these, almost two thirds (390) made similarly worded requests to various local councils throughout the UK, for information relating to the councils' complaints handling. The complainant's correspondence in this case confirms that he had made 48 FOI requests to the LGO.

### **Analysis**

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12. When determining whether or not a request has been appropriately deemed vexatious the Commissioner considers the following questions to be relevant:
  - 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 fairly be seen as obsessive or manifestly unreasonable?**

13. The complainant has asserted that the LGO is ineffective and is seeking to conceal this fact. He has supported this argument with evidence drawn from other FOI requests. He has also stated that councils have defective systems and has implied that in some cases councils' internal complaints procedures are not fit for purpose. The Commissioner has seen the documents in a related FOI complaint case from the same complainant in which the wording of the original request is such that any public authority not responding to the request might be deemed to tacitly make this admission. The complainant has issued approximately 390 such FOI requests to local authorities around the country, each requesting similar information and concluding with the following wording:

“If you do not have this reasonably basic management information related to complaints and/or identify that the costs of accessing the information requested will be more than £450 please state this and identify that your Authority does not have either a functioning or accountable complaints system, and does not maintain any basic management information related to this issue.”

14. The Commissioner considers the complainant's arguments unconvincing, based as they are on allegations which have not been fairly assessed and therefore the complainant's position is not considered to be properly anchored in sound evidence.
15. The complainant's suggestion that the LGO is seeking to avoid embarrassment by refusing to disclose information is not supported by the fact that the public authority has provided a response in the majority of his requests. It has disclosed a considerable amount of information which the complainant in fact mentioned in his request for internal review (See paragraph 20, below).
16. The complainant has argued that the LGO's practice of providing online histories for only three years' worth of cases is unhelpful for anybody seeking precedents whereas 10 years' worth of case histories would permit any trends or changes of position within the LGO to be identified. The public authority has indicated to the complainant that in a number of his previous requests, for information relating to a period of 10 years, two or three years' worth of information might be considered more reasonable and older information may be of little use as the context may have changed. The Commissioner notes that an overview of performance on complaints for the years 1998-2008 appears to be available on the LGO website. Whilst a period of 10 years may be reasonable for such top-level statistics he agrees with the LGO that for more detailed information, such as that the complainant has requested, a shorter period of time would be more reasonable. Moreover he accepts that the circumstances in which decisions are made by the public authority are likely to evolve and therefore he is persuaded by the public authority's argument in this regard.
17. Given the significant number of requests for similar information covering significant periods of time (up to 10 years) and apparently designed to elicit evidence or admissions of malpractice, cover-up or ineffectiveness, the

Commissioner considers that the request could fairly be considered obsessive and manifestly unreasonable.

### **Is the request harassing the authority or causing distress to staff?**

18. The public authority has stated that in the same period as the complainant made his series of requests the next highest number of requests from one individual was eleven. With regard to the observations above the receipt of multiple requests, on occasions worded so as to elicit admissions of poor performance from the public authority, might be considered by anybody receiving them as part of a campaign of harassment. Although the Commissioner does not consider this to be evidence that this is a specific objective of the complainant, he is persuaded that it is nevertheless one of the outcomes.

### **Would complying with the request impose a significant burden?**

19. The complainant has acknowledged the burden placed on the LGO by his FOI requests, but has argued that this should properly be dealt with under s12 (costs) and that, by not doing so, the LGO has tacitly admitted that the costs argument is not available to them, though he does not explain why this might be so. He has further argued that his requests were considered burdensome as a result of budgetary controls and were not considered a burden prior to the introduction of spending cuts. It was not disputed by the complainant that compliance with his requests imposed a burden, although he appeared only to consider any possible financial burden.
20. The complainant also argued that his 48 FOI requests to the LGO had resulted in a large number of successful outcomes and the majority were for information which the public authority should have made available through its website, as part of its publication scheme. He asserted that if it made more information available and accessible online, many FOI requests would be avoidable.
21. The Information Tribunal in EA/2007/0088 Welsh vs IC, said that whether a request represents a significant burden is
- “...not just a question of financial resources but also includes issues of diversion and distraction from other work...” (para 27).
22. The Tribunal in EA/2007/0114 Gowers vs IC and London Borough of Camden also said
- “...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor (para 70).
23. The public authority has explained to the complainant that it is a small organisation with no staff dedicated to dealing with Freedom of Information (FOI) work and that, consequently, the large number and scope of his requests have the effect of taking staff from their mainstream work. The Commissioner does not accept that the absence of dedicated FOI staff is sufficient to satisfy this factor as this might similarly be argued in response to any individual FOI request made to

an authority that opts not to have specific resources dedicated to ensuring compliance with the Act. He does, however, acknowledge the unusual burden placed on the public authority as a result of the large number of the complainant's requests which were made in a comparatively short period of time, noting that this is approximately four times the number of the next-highest individual requester.

24. It is the Commissioner's view that the burden imposed by the requests is significant for the public authority as it takes staff away from their primary tasks particularly given the relatively small size of the authority. It is in this case the number, frequency and nature of the complainant's requests which create the significant burden.

#### **Is the request designed to cause disruption or annoyance?**

25. There is no evidence in the correspondence that, prior to the public authority's refusal notice of 8 January 2009, the complainant had been made aware that handling of FOI requests was taking staff away from their primary tasks. While the wording of his requests may on occasion be argumentative, the Commissioner does not consider they are designed to cause disruption or annoyance, though he observes, as above, that this may be their actual effect.

#### **Does the request lack any serious purpose or value?**

26. If a request is found to have a serious purpose or value, even if its effect on the public authority corresponded to all the four preceding tests, this would constitute a powerful argument which could be weighed against a finding of vexatiousness in a complaint.
27. The Information Tribunal in EA/2007/0130 Coggins vs IC stated, at paragraph 20:
- “the Tribunal 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.”
28. The complainant's arguments in his request for internal review of 9 January 2009 indicated his concerns at what he perceived to be serious shortcomings of the public authority. He used these to demonstrate the serious purpose and value of his request. In his request for internal review he argued that the decisions of the LGO's are inconsistent and widely ignored and therefore the system requires reform. The Commissioner does not consider that the information presented by the complainant that was drawn from his earlier requests constitutes evidence to support these assertions.

29. As has been noted above, a significant proportion of the complainant's FOI requests, to this and other public authorities, contain wording designed to elicit admissions of failings which will therefore reinforce his view that his actions have serious purpose in exposing these failings. It may be, therefore, that the complainant believes his requests have serious purpose and value, but that does not necessarily make it so.
30. The complainant has argued that by its failures, and by not producing documents which would show these, the LGO has identified that it supports acts which would be untenable in a world not filled with maladministration. The complainant's FOI requests seek to reveal whether a 'gap' in the system exists which allows council maladministration to go unchecked, and if there are inconsistencies between the various individual Ombudsman offices. The Commissioner does not consider the evidence he provided demonstrates that inconsistencies exist. Moreover he notes that it is entirely possible that the decisions reached by the Ombudsmen may vary because of the different circumstances of each case.
31. The Commissioner also notes an email sent to him by the complainant in a related matter, which indicates the complainant is engaged in what he describes as "[...]the first large scale survey of compliance with the FOI by organisations within the ICO's jurisdiction." The Commissioner observes that his own Good Practice and Enforcement team monitors and surveys FOI complaints as a matter of routine, and engages with public authorities whose compliance falls below an acceptable standard, to ensure best practice is achieved as far as possible.
32. The Commissioner is not persuaded by the arguments put forward by the complainant as to why his request has a serious purpose or value. However he considers that there is some value to the request albeit for a reason that the complainant has not put forward. In his view there is a serious value in seeking additional detail about the LGO's performance and its dealings with social service departments in the context of complaints handling. Whilst the Commissioner notes that the LGO is not an inspector it does consider complaints and makes recommendations about improvements that could be made by local authorities. He considers that there is a value in knowing more about complaints the LGO has considered involving social services and the outcomes. He believes this argument has some significance given the importance and impact of social services on peoples' lives.
33. It is not necessary for all five tests to be engaged, indeed a strong argument in one may outweigh weaker arguments in the others. As mentioned above the Commissioner is not persuaded by the complainant's arguments as to why the request has serious value or purpose. This is primarily due to the lack of evidence offered by the complainant to support his assertions about the LGO's performance. However the Commissioner has considered whether the value he has attributed to the request is sufficient to outweigh the factors that have been identified in support of deeming the request vexatious. Whilst the Commissioner considers there to be a value in the LGO making additional information available, he notes the considerable amount that it does already publish. He particularly notes that the LGO website contains copies of the annual letters which it sends to each authority. These include a summary of the complaints it has received about

that authority as well as matters of concern to the LGO. It also publishes a significant amount of statistical information about complaints it has received. These are broken down by Ombudsman and into categories such as social care and housing, albeit not to individual council level. In view of this the Commissioner has concluded that when considered in conjunction with the other factors applicable in this case, the value of the request is not of such significance that it ought not to be deemed vexatious. He therefore upholds the LGO's refusal on the grounds of section 14(1) in this case.

## Procedural matters

**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 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.’

34. The public authority failed to comply with section 17(5) of the Act because in its refusal notice of 8 January 2009 it did not inform the complainant that its refusal of his request as vexatious was in accordance with section 14(1) of the Act, citing only section 14 and not the relevant sub-section.

## The Decision

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35. The Commissioner's decision is that the public authority correctly applied section 14(1) to the request for information in accordance with the Act as the complainant's request can properly be described as vexatious within the provisions of the Act.
36. However, the Commissioner has also decided that the public authority failed to comply with section 17(5) of the Act because it did not inform the complainant that its refusal of his request as vexatious was in accordance with section 14(1) of the Act.

## Steps Required

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37. The Commissioner requires no steps to be taken.



## Other matters

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38. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters:
39. The public interest test argument is misapplied by the complainant. A number of the exemptions set out in Part II of the Act are subject to a public interest test, but not all. Moreover section 14(1) is not subject to a public interest test.
40. Exemptions provided by the Act are applied on a case-by-case basis and the complainant's assertion that the LGO's activities are not subject to exemptions under the act is sweeping and suggests a misunderstanding of these provisions under the Act. In certain cases the fact that a particular authority holds information may impact upon their ability to claim a particular exemption. For example, section 30 (1) can only be applied by an authority that has a duty to carry out an investigation such as a police force. However in general the information itself and the circumstances surrounding a particular request will determine whether or not an exemption is applicable.
41. The Commissioner would emphasise that it is the request which is deemed vexatious, not the requester, and he would advise caution if a blanket policy of declaring all requests from an individual to be vexatious from the outset were to be considered. Each request must first be considered in isolation, although if a request conforms to a history or a pre-existing pattern or theme, which has already been declared vexatious, the Commissioner may accept a refusal on the grounds that a request is vexatious made early in the request handling process.

## Right of Appeal

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42. 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 18<sup>th</sup> day of June 2009**

**Signed .....**

**Jo Pedder  
Senior Policy Manager**

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

## Legal Annex

### **S.1 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.'*

**Section 1(2)** provides that -

*'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'*

**Section 1(3)** provides that –

*'Where a public authority –*

*(a) reasonably requires further information in order to identify and locate the information requested, and*

*(b) has informed the applicant of that requirement,*

*the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.'*

**Section 1(4)** provides that –

*'The information –*

*(a) in respect of which the applicant is to be informed under subsection (1)(a), or*

*(b) which is to be communicated under subsection (1)(b),*

*is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.'*

**Section 1(5)** provides that –

*'A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).'*

**Section 1(6)** provides that –

*'In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as 'the duty to confirm or deny'.'*

### **S.14 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'*

**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.'*

### **S.17 Refusal of Request**

**Section 17(1)** provides that -

*'A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -*

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.'*

**Section 17(2)** states –

*'Where–*

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-*
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or*

(ii) *that the information is exempt information only by virtue of a provision not specified in section 2(3), and*

(b) *at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

*the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'*

**Section 17(3)** provides that -

*'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -*

*(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or*

*(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'*

**Section 17(4)** provides that -

*'A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.'*

**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.*

**Section 17(7)** provides that –

*'A notice under subsection (1), (3) or (5) must—*

*(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*

*(b) contain particulars of the right conferred by section 50.'*