

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 June 2009

Public Authority: Brent Council
Address: Forty Lane
Wembley
Middlesex
HA9 9HD

Summary

The complainant made a number of requests to Brent Council for information relating to complaints against it and their outcomes as well as its expenditure. The public authority refused the request on the basis of the provisions of section 14(1) of Freedom of Information Act 2000, (the Act) stating that the request was vexatious. The Commissioner has considered the public authority's grounds for deciding that the request was vexatious and has concluded that it was correct in its application of section 14(1) of the Act. However he did find the public authority in breach of section 17(5) of the Act in failing to provide a compliant refusal notice within 20 working days of the request.

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. This Notice sets out his decision.

The Request

2. On 23 August 2008 the complainant made the following freedom of information (FOI) requests to the public authority via the www.whatdotheyknow.com website:

"I would like to know the average proportion of time the elected representatives of your authority spend as part of their duties for 2005/2006, 2006/2007 and 2007/2008 on their main activities. The activities that form their duties (employment) as an elected representative are:

1 directly resolving complaints against the executive (Council Staff) of the Council by residents;
2 sitting on committee's;
3 acting for the political parties that they represent and/or ceremonial duties (i.e. all time not spent on sitting on a Committee or resolving a complaint against the executive);

The total time spent by an elected representative for a Council on these three activities should be 100 per cent of the time they spend 'working for a Council' as an elected representative.

I would additionally like to know how much in total was paid to local councillors to meet all their duties (including expenses) for 2005/2006, 2006/2007 and 2007/2008 by your authority, and how many elected representatives are (and were) represented on your authority for these years.

I would also like to know how many Complaints in total were submitted to your Council in 2005/2006, 2006/2007 and 2007/2008 for each year. I would further like to know how many of these complaints were formally considered by an elected representative for each of these years.

I would further like to know how many complaints against the Executive (Council staff) led to the elected representatives formally identifying that the Executive had acted wrongly for the years 2005/2006, 2006/2007 and 2007/2008, and how many of these formal determinations by the elected representatives identify that there was no wrong-doing by the Executive. How many staff employed by your authority in 2005/2006, 2006/2007 and 2007/2008 ceased to be employed by your authority as a direct result of a complaint against the Executive, and the Councillors identifying this to be the case.

I would further like to know how much money the Council has paid to a complainant (i.e. victim of a Council's wrongdoing) through its own complaints system (i.e. excluding any intervention by the Local Government Ombudsman, Valuation Tribunal or similar body) in 2005/2006, 2006/2007 and 2007/2008.

I would like to know how much money either in the form of local settlement or additional formal finding of maladministration causing injustice the Local Government Ombudsman has recommended that your Council pay in 2005/2006, 2006/2007 and 2007/2008 (for each year) and if the Local Government Ombudsman's recommendations have been met in full (including any non-financial recommendations for each year)). Please detail any recommendation that has not been met in full and provide a copy of the Elected representatives decision. Please additionally identify if these costs were met directly by Council Tax Payers or the Council's insurers (excluding self insurance by a Council)

Finally, please provide details of the financial cost of administering all your complaints systems (including FoI and DP) by the Executive for 2005/2006, 2006/2007 and 2007/2008 and the number of staff employed in administering complaints and resolving these (Full time equivalent staffing levels). Please also provide details of your total administrative costs for 2005/2006, 2006/2007 and

2007/2008 and the total number of staff employed by your authority, as well as any pay increase (including increments) made to the Council's Chief Executive (Head of Paid Service) in pounds sterling for each of these years. Please additionally identify if the Chief Executives wages included performance related payments.

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.

If you have a complaints system not fit for purpose please identify which political party currently controls your Council, and if this political party has appointed the current Electoral Registration and Returning Officer through its control of the Council (with date of their formal appointment). Please name the current Electoral Registration and Returning Officer, and identify if they are also Head of Paid Service, and Clerk to your Authority. Please additionally provide any documentation maintained by your Local Authorities Head of Paid Service identifying that they personally do not believe it to be appropriate for your Council to have a complaints system that is fit for purpose. This documentation should be in existence due to the provisions of s4 of the Local Government Act 1989."

3. On 28 September 2008 he issued a reminder to the public authority that their response was overdue.
4. On 30 September 2008 the public authority responded with a notice, citing section 14 of the Act and stating that it was refusing to respond on the grounds that the request was vexatious, that complying with it would impose a significant burden on the authority, that it was obsessive and that some of the questions were argumentative in nature.
5. The complainant requested an internal review of this refusal notice on 30 September 2008 that was acknowledged by the public authority on 2 October 2008.
6. On 17 December 2008 the complainant left the annotation "with ICO" on the request posted onto the www.whatdotheyknow.com website.
7. On 12 February 2009 the public authority provided the complainant with the outcome of its internal review, in which it upheld the original decision to refuse the request under section 14 of the Act. It further pointed out that some of the information requested could be found on the authority's website. It provided links to two locations where material could be found online. One of the links was to details of the number of complaints received by the authority over the three years specified by the complainant in the request.

The Investigation

Scope of the case

8. On 12 March 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. When doing so he stated the following:

"ICO investigation requested. 250 Council's say Brent is wrong" [sic]

9. The Commissioner understands this to mean that 250 similar public authorities had provided responses to the complainant's requests which differed from the public authority's. Moreover he understands that the complainant wished him to decide whether the public authority's refusal of the request on the grounds of section 14(1) was appropriate.

Chronology

10. The Commissioner determined that in this case it was possible to make a decision on the basis of the information available on the aforementioned website and the correspondence submitted by to him by the complainant and the public authority. He contacted the public authority briefly to request clarification in relation to its approach of taking into account the complainant's history with other authorities but did not consider it necessary to obtain any further information from either party.

Findings of fact

11. At the time of the investigation of this complaint the complainant had made 594 FOI requests via the website [ww.whatdotheyknow.com](http://www.whatdotheyknow.com). Of these, almost two thirds (approximately 390) make similarly-worded requests to various local councils throughout the UK.

Analysis

Procedural matters

Section 17

12. The public authority failed to respond to the complainant's request for information within 20 working days. The failure to provide the refusal notice citing that the request was vexatious within 20 working days and to specify sub-section (1) of section 14 in that notice was a breach of section 17(5).

Section 14

13. 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?

14. 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).

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

15. The public authority informed the Commissioner that it was aware, at the time of its refusal, that the complainant had submitted substantially similar requests to a large number of local authorities (believed to be at least 390 as mentioned above) via the website 'whatdotheyknow.com'. Despite this apparently being the only letter containing requests submitted by the complainant to this public authority, it considered that the whole of the substantial body of the letter indicated that the complainant's approach was obsessive.
16. The Commissioner telephoned the public authority, to request an explanation of its decision to go directly to its refusal under section 14(1) where this would more commonly be used only after a protracted history of FOI requests or other interaction with a complainant. The public authority argued that it was aware of the large number of similar FOI requests the complainant had made to other councils and that this, in itself, constituted a significant history which it was entitled to take into account even though it was not a direct history with the public authority itself.
17. The Commissioner accepts the argument that in some cases it will be appropriate to consider history which does not directly involve both parties to a complaint. However he observes that in those cases where there is little prior contact, this will place a greater burden on the public authority to show reasonable arguments in relation to the five tests for vexatiousness and that these arguments apply directly to the circumstances of the requests under consideration. The Commissioner is guided by the Information Tribunal in *Welsh (EA/2007/0088)* which said, at paragraph 21:

“Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if

made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.”

Thus, the identity of the complainant can be a relevant factor even if, as the Commissioner notes, under the Act it is the request itself which may be deemed vexatious, not the requester.

18. Additionally, the same Tribunal notes at paragraph 26:

“[...] there is a danger that setting the standard of vexatiousness too high will diminish public respect for the principles of free access to information held by public authorities enshrined in FOIA.”

19. In this particular case the Commissioner is satisfied that it is appropriate to look at the pattern of requests made to the local government sector as a whole. Having done so he wishes to highlight that in many cases where identical or substantially similar requests are made to a number of public authorities by the same applicant they will not constitute vexatious requests. However in this case the complainant not only submitted a high volume of requests across the sector but in many cases letters contained at least 15 different requests many of which comprised a number of elements. The Commissioner considers that this volume together with the fact that the letters implied failings by each authority and related to the same topics is evidence that they were obsessive and manifestly unreasonable. In cases involving section 14(1) there is frequently an overlap between the evidence pertinent to each of the criteria above. Therefore this is also referred to in the section below on significant burden.

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

20. The public authority did not indicate that it had received any other requests from the complainant and did not specifically argue that the requests had the effect of harassing its staff. However it did refer to the ‘argumentative’ nature of certain aspects of the requests. In particular the public authority drew the complainant’s attention to two phrases in his requests, namely:

“that your Authority does not have either a functioning or accountable complaints system, and does not maintain any basic management information relating to this issue”;

and additionally,

“If you have a complaints system not fit for purpose please identify which political party currently controls your Council, and if this political party has appointed the current Electoral Registration and Returning Officer through its control of the Council (with date of their formal appointment). Please name the current Electoral Registration and Returning Officer, and identify if they are also Head of Paid Service, and Clerk to your Authority. Please additionally provide any documentation maintained by your Local Authorities Head of Paid Service identifying that they personally do not believe it to be appropriate for your Council to have a complaints system that is fit for purpose.”

21. The Commissioner considers that the tone and content of these comments, which in effect invite the public authority to admit to failings as a consequence of its refusal to answer the complainant's preceding FOI requests in the same letter, would have the effect of harassing any reasonable person required to respond to them.

Would complying with the request impose a significant burden?

22. In its refusal notice the public authority claimed that the request would impose a significant burden. The Commissioner considered whether, if it had determined that complying with the request was burdensome, the public authority should have cited section 12 (costs) of the Act in its refusal instead of section 14(1) and noted that this approach was taken by a number of other public authorities faced with the same request.
23. The complainant has pointed to the fact that other public authorities relied upon section 12 as evidence that the public authority in this case was wrong to cite section 14(1). The Commissioner wishes to point out that decisions about how to respond to requests for information rests with the public authority that received them. Moreover the fact that other public authorities have refused identical or substantially similar requests on a different basis does not necessarily make the refusal on the basis of section 14(1) in this case inappropriate.
24. As mentioned above the complainant's letter contained at least 15 different requests many comprising a number of separate elements. In the Commissioner's view where a public authority's only concern relates to the costs of complying with the requests, then it should cite section 12 as the basis of for refusing. Where a refusal is on the basis of section 14(1) he expects a public authority to show that complying with the request would cause a significant burden both in terms of costs and also diverting staff away from their core functions.
25. The requests in this case span a number of topics and would likely require a search of numerous different sets of records to extract the information sought. The public authority argued, in its internal review, that complying with the request would require significant involvement and co-ordination of staff across the public authority extracting information from numerous sources. In view of this the Commissioner is satisfied that complying with the request would not only impose a significant burden in terms of time but would also divert staff away from their core functions.

Is the request designed to cause disruption or annoyance?

26. The public authority did not specifically seek to rely upon this argument. 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.

Does the request lack any serious purpose or value?

27. 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 the factors outlined above which he is satisfied are met.

28. The Commissioner considers that there is some serious value in seeking further information about complaints against the public authority, the various outcomes and details of expenditure of public funds. However the significance of this must be considered together with other circumstances in this case. In this instance he is not persuaded that there is significant weight to the serious value identified. This is in view of the information that is already made available by the public authority on its website which includes some statistics regarding complaints.
29. Furthermore the Commissioner considers that an email sent to him by the complainant in a related matter is relevant when considering this factor. The email indicates that 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”. This suggests that the complainant is less interested in the outcome (i.e. the requested information) than in the process of FOI itself. The Commissioner notes 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. In the Commissioner’s view the use of the presumptive language to which the public authority has objected is in fact indicative of a campaign by the complainant in support of a more personal agenda. The Commissioner has considered this in conjunction with the complainant’s wider pattern of FOI requests and has reached the view that this weakens the argument that the request has serious purpose or value.
30. In reaching this view the Commissioner is also guided by the Information Tribunal in Gowers, (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.

31. This echoes the Information Tribunal in Hossack (EA/2007/0024) which stated, at paragraph 11:

“the consequences of a finding that a request for information is vexatious are much less serious than a finding of vexatious conduct in these other [legal] contexts, and therefore the threshold for a request to be found vexatious need not be set too high.”

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 or the effect of harassment that the requests impose. Therefore he does not consider it inappropriate for the request to have been deemed vexatious. Furthermore, bearing in mind the wider context in which the requests were made, he attributes particular significance to the argument that the requests were manifestly unreasonable. He has therefore concluded that the complainant's requests were vexatious and the public authority was correct to rely upon section 14(1) as its basis for refusing to comply with them.

The Decision

32. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- It was correct in refusing the request on the basis of section 14(1) of the Act.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The public authority breached section 17(5) in failing to issue a refusal notice compliant with that section within 20 working days and in failing to state which relevant sub-section of section 14, namely section 14(1), it was relying on.

Steps Required

33. The Commissioner requires no steps to be taken.

Other matters

34. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

The public authority took over 90 working days to conduct an internal review and communicate the outcome to the complainant. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *Good Practice Guidance 5*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned at the length of the delay in this case, and would advise the public authority to ensure that internal reviews are conducted promptly in future.

Right of Appeal

35. 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 25th day of June 2009

Signed

**Jo Pedder
Senior Policy Manager**

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

Legal Annex

S.10 Time for Compliance

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(2) provides that –

‘Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.’

Section 10(3) provides that –

‘If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.’

Section 10(4) provides that –

‘The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.’

Section 10(5) provides that –

‘Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.’

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 it 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.’

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.’