

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 19 January 2010

**Public Authority:** Eastbourne Borough Council  
**Address:** Town Hall  
Grove Road  
Eastbourne  
East Sussex  
BN21 4UG

### Summary

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The complainant requested copies of documents he described as having been incorrectly served on a person connected with his property. The public authority has previously disclosed information to the complainant and maintains that it does not hold any information relating to the matter which has not already been disclosed to him. The public authority refused to comply with the complainant's request, arguing that it was vexatious under section 14 of the Freedom of Information Act. The Commissioner's decision is that the public authority was correct in its application of 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.

## Background

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2. The complainant became involved in a dispute with Eastbourne Borough Council (EBC) which has its origins in 1997 when the public authority began measures to enforce improvements to the fire safety provisions in the complainant's property. This was carried out under section 352 of the Housing Act 1985, because the property is a house in multiple occupation (HMO), that is, a larger property subdivided into flats.
3. The complainant owns a flat in the property and maintains that the process of the enforcement action enabled third parties to purchase the freehold of the flat from him at a reduced price due to the financial duress imposed by the enforcement notice, known as a s352 notice, and the cost of the required works.
4. He has complained that the council, by its actions, has created a situation in which unscrupulous parties can take advantage of the difficulties caused by the issuing of a s352 notice, which he describes as a fraud. His freedom of information (FOI) requests are intended to expose elements of that fraud and, possibly, uncover complicity within the public authority. He complains that the public authority's refusal to provide certain information in response to his requests is preventing him from building a prima facie case of fraud. The public authority, for its part, maintains that it does not hold information meeting the complainant's description. The complainant has made a series of related FOI requests which revisit the same general subject area.

## The Request

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5. On 28 October 2008 the complainant requested the following information:

*"I have been informed by EBC that all of the notices served on my co-freeholder regarding the vandalised step, and the S352 (1985 Housing Act) fire prevention notices were served on [name 1], on the basis of my misinformed belief that she was co-freeholder of [the complainant's address].*

*In fact, up until the transfer of the estate into [name 1]'s name in July 1998 (approximate date), the co-freeholder would have been [name 2], and so all notices served on [name 1] before transfer of the freehold into her name were improperly served.*

*Please give me information on these improperly served notices, please send copies."*

6. There is a second part to the request:

*"Before the freehold was transferred into [name 1]'s name, did EBC contact anyone claiming to represent the estate held by the executor*

*[name 3]? In particular, I was told the co-freeholder's solicitor was [name 4], anyone from EBC contact her."* [sic]

*"Please include copies of material which you hold in any form, including paper, microfiche, electronic records including emails, and relevant post-it notes"*

7. A refusal notice was issued on 25 November 2008, advising the complainant that a review had been made of all his outstanding FOI requests and that, from this point onwards, any and all FOI requests relating to the matters described in the notice would be treated as vexatious under section 14(1) of the Act.
8. Regarding the first part of the request, the refusal notice included the comment:

*"The notices served on the co-freeholders were identical apart from the name and address therefore you effectively already have copies of these notices"*
9. The second part of the request was not commented on in the refusal notice. The complainant was advised of his right of appeal to the public authority's internal appeals procedure.
10. The complainant responded to this refusal notice on 2 December. This was treated as a request for internal review by the public authority.
11. An email was sent to the complainant on 20 January upholding the public authority's decision to declare his requests on the subject vexatious and advising him of his right of appeal to the Information Commissioner.

## The Investigation

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### Scope of the case

12. On 19 January 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider the following points.
  - He has made a series of requests to EBC and requires them to be fully answered.
  - He has become aware of documents (s352 notices) which have not been disclosed to him.
  - EBC is wrong in its reasons for declaring his requests vexatious, he has been misled in the matter of the undisclosed documents and EBC's use of section 14 of the Act prevents him from further efforts to obtain the undisclosed documents.
  - EBC's real reason for its use of section 14 of the Act is to avoid embarrassment when these facts are discovered.

- Documents provided to the complainant had been thoroughly edited to remove any evidence of possible fraud.
  - It is EBC's secretive behaviour which is causing the work created by the complainant's questions, not his requests.
13. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
14. The Commissioner has previously issued a Decision Notice in case reference FS50214916 which has considered the complainant's allegations that information he has requested (in particular, s352 notices) is held by the public authority and which has not been disclosed to him. The Commissioner found, at paragraph 23 of that Decision Notice, that the public authority does not hold any information which meets the description given by the complainant, which has not already been disclosed to him.
15. Those matters will therefore not be addressed in detail in this Decision Notice, which will confine itself to consideration of the complainant's third point listed above, that the public authority is wrong in its application of section 14 of the Act, and the fifth and sixth points, that any burden of work is of the public authority's own making, insofar as this relates to the burden claimed in the public authority's application of section 14 of the Act to the complainant's request.
16. The complainant brought three related complaints to the Commissioner and these were dealt with at the same time. This sometimes meant that the correspondence referenced more than one case. Elements of the chronology for case reference FS51214916 are therefore relevant to this investigation and are briefly detailed below, together with a summary of the correspondence in this complaint.

## Chronology

### **Case reference FS50214916:**

17. On 27 March 2009 the Commissioner wrote to the complainant by email, advising him that the information he had requested from the public authority may be available to him by another means. The Land Registry might be able to assist him, which might therefore require consideration of section 21 of the Act (information accessible to the applicant by another means).
18. The complainant replied on the same date, indicating that the Land Registry did not hold the information he had requested from the public authority. The complainant asked the Commissioner a series of questions about his case, mostly about whether the Commissioner agreed with the public authority's arguments. The complainant suggested that if the Commissioner could answer these questions, he would provide the Commissioner with his reasons why the Land Registry would not be able to assist him
19. On 30 March the Commissioner wrote to the complainant indicating that at this early stage it was not appropriate to discuss elements of the case, but that the complainant's comments about the Land Registry were noted.

20. On 31 March the complainant contacted the Commissioner requesting that he confirm that section 21 of the Act was not under consideration. He requested the Commissioner list the Information Commissioner's Office (ICO)'s and the public authority's objections to release of requested information, asking also whether there were any other exemptions likely to be used. The Commissioner responded on the same date, explaining his investigation process and advising the complainant that this investigation was still in its early stages.
21. On 6 April, the complainant sent the Commissioner an email containing various questions about his investigation. He was concerned to know what arguments the public authority had used for the application of section 14 (vexatious requests) to his other cases, or whether they had used section 40 (personal data) to refuse his requests.
22. The Commissioner responded on the same date, explaining that the complainant had brought three separate complaints to the Commissioner, these were being dealt with as three separate cases and each was considering different sections of the Act. These would be treated as specific to the case in question. He requested the complainant answer his letters of 30 March and 31 March 2009, which set out the scope of his investigations and requested the complainant's assistance in various matters.
23. On 8 April 2009 the complainant wrote two emails to the Commissioner. The first explained why Land Registry data may be inaccurate, the second accused the Commissioner of 'moving the goalposts' by his introduction of section 21 of the Act.
24. On 9 April, the Commissioner wrote to the complainant (in the context of the second of his cases, reference FS50224509) and also confirmed that the exemption provided by section 21 of the Act was no longer under consideration and refuting the complainant's suggestions of 'moving the goalposts'.

**Case reference FS50230569**

25. On 30 March 2009 the Commissioner wrote to the complainant in case reference FS50230569 to establish the scope of his investigation. The complainant was asked to provide explanation or evidence concerning when he first found that he was being misled about the identity of his co-freeholder. He was also asked to explain his allegation that material provided to him by EBC had been edited to remove evidence of fraud, and to provide evidence of edited documents. The Commissioner was aware, from information provided by the public authority, that some of the complainant's allegations had been previously considered by the Local Government Ombudsman (LGO) and the complainant was asked to provide details of what he had brought to the LGO.
26. On 30 March the Commissioner also wrote to the public authority, pointing out that the complainant maintained that he had not received proper responses to his requests, and asked the public authority for details of its application of section 14 of the Act to the complainant's request.

27. On 2 April the public authority acknowledged the Commissioner's letters in respect of the three cases under consideration and provided copies of internal emails referring to searches for documents and other administrative matters in respect of its handling of the complainant's requests. It also provided a chronology of the public authority's correspondence and contact with the complainant since 1997.
28. On 15 April the complainant emailed the Commissioner to complain that EBC would not elaborate on its reasons for its use of section 14 of the Act, as he had requested. The public authority had explained to him that this was because the matter was now with the ICO for consideration, the complainant alleged it was being kept secret from him. The Commissioner responded on 20 April, providing a copy of his guidance on the use of section 14 of the Act. He also explained that the public authority was acting appropriately in this matter as the complaint had been referred to the ICO.
29. On 21 April the Commissioner received a number of documents from the public authority which related to the three cases under consideration. Part of its overall response addressed the matters raised in the Commissioner's letter of 30 March.
30. On 23 April the Commissioner wrote to the complainant, asking if he had received the Commissioner's letter of 30 March and requesting his responses to the questions asked.
31. On 24 April the complainant confirmed that he had received an email from the Commissioner on 30 March and was preparing his response. He requested that the Commissioner use email, not post, as he had reason to believe his mail was being interfered with. On 27 April, the complainant requested a copy of the Commissioner's letter of 30 March. On 28 April, the Commissioner confirmed that the original letter was sent by email, not via the post, and hence would have already been received, but provided a further copy.
32. On 14 May, the Commissioner wrote again to the complainant requesting his response. On 28 May, the Commissioner wrote a further reminder to the complainant.
33. On 28 May the complainant replied, confirming that he was still preparing his response but that he had encountered problems. These problems had occurred because the exemptions used had changed; the information requested would be inaccurate due to the fraud being committed and, further, that he could not give his counter-arguments against the public authority's use of section 14 as he had been unable to obtain the public authority's reasons.
34. On 1 June the Commissioner wrote to the complainant requesting that he confine himself to answering the questions asked in his letter of 30 March. The Commissioner reminded the complainant that he had indicated, in his initial complaint, that the information was already in his possession.

35. On 1 June, the complainant provided material relating to the complainant's suggested method for the alleged fraud; questioned the validity of certain overseas addresses for his co-freeholder; showed how the Land Registry data can be out of date, and provided extracts from his correspondence with EBC which, he suggested, proved the existence of an earlier s352 notice, prior to the one served on him, which bore the name of a different co-freeholder.
36. On 2 June the complainant sent a further response to the Commissioner's letter of 30 March.
- He continued to raise arguments about the Commissioner's consideration of s21 of the Act. He argued that if the Commissioner was now saying section 21 was deemed to apply, then the exemption provided by section 40 could not also be applicable.
  - With reference to his allegation that the public authority's response was carefully edited to remove evidence of fraud, he asked the Commissioner to tell him exactly where he had said this and that he would respond when he had seen the quotation in context. The complainant requested that he be provided with a manifest of all the information and documents held by the public authority and he would be able to advise the Commissioner which documents had been edited.
  - With reference to the Commissioner's request for further information relating to his complaint to the LGO, he asked the Commissioner if he was expected to provide him with evidence that he is being vexatious.
  - The complainant concluded by saying that if it was still considered that he hadn't answered the Commissioner's questions, then the Commissioner should identify again what he still needed to know, as well as answer the complainant's own questions. At this point, the complainant stated, he would answer.
37. On 2 June the Commissioner contacted the public authority to request details of the LGO's involvement and findings in the complainant's case.
38. On 9 June, the public authority provided copies of the LGO's findings.
- In a letter dated 24 January 2001, the LGO found no evidence of maladministration in the complainant's case.
  - A further complaint was brought in January 2008, that the public authority had breached the complainant's human rights by its actions during, and subsequent to, the issue of the s352 notice on his property. The LGO again found no cause to continue the complaint in a letter dated 7 February 2008.
  - In response to emails from the complainant, the LGO sent a further letter on 13 March 2008, advising the complainant that his earlier position was unchanged and that the complainant might wish to bring a complaint to the Legal Complaints Service as his allegations concerned the actions of

solicitors. He offered the complainant a further three weeks to provide his reply, in answer to the complainant's request for additional time to prepare his response.

- A later letter from the LGO, dated 20 June 2008, acknowledges the complainant's comments in emails of 18 June but indicates that the complainant's allegations remain insufficient to persuade the LGO to uphold his complaint.
39. On 9 June 2009, the Commissioner emailed the complainant, re-confirming that no matters in relation to section 21 of the Act remained under consideration. The Commissioner explained that the quotation of the complainant's comments relating to the editing of documents to remove evidence of fraud came from his own submissions in an online web complaint to the ICO, a copy of which was attached. The Commissioner answered some of the complainant's questions and explained that no manifest of documents was held.
40. The Commissioner also took the opportunity to further explain role of the ICO, indicating that his investigation had asked the public authority for evidence of its position and was also asking the complainant for his evidence for his position. If this was not provided, it could not be taken into consideration. He reminded the complainant that the allegations of possible fraud are a separate issue which cannot be allowed to cloud the Commissioner's investigation. The complainant was referred to the Commissioner's letter of 30 March and asked to address the questions asked.

## Analysis

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### Section 14: Vexatious or repeated requests

41. In assessing the public authority's refusal of the complainant's request as vexatious under section 14(1) of the Act, the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
- 1) whether compliance would create a significant burden in terms of expense **and** distraction
  - 2) whether the request is designed to cause disruption or annoyance
  - 3) whether the request has the effect of harassing the public authority or its staff
  - 4) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
  - 5) whether the request has any serious purpose or value



## Context / history

42. The complainant has repeatedly asserted that EBC is withholding information. EBC, for its part, is equally certain that it has disclosed everything that it holds. The complainant has also asserted that information disclosed to him has been edited to remove any evidence of fraud. This was stated in his submission of an online complaint form to the Information Commissioner's Office on 19 January 2009:

*"[...] EBC say: These files were collected on your behalf, with your agreement, on 4th January 2007. The files were carefully and thoroughly edited for any information that could be used to bring a case of fraud against the land grabbers. This included any notices served on any of the co-freeholders so as to mask their identities.[...]"*

43. The Commissioner has asked the complainant for evidence to support this, but his responses have not provided anything which supports such an allegation. The Commissioner is aware that EBC has redacted items from information disclosed to the complainant, for example names and addresses where these would be exempt from disclosure under section 40 of the Act. The Commissioner has issued Decision Notices in two related cases brought by the complainant against EBC, case references FS50214916 and FS50224509. Both concern themselves with the application of section 40 of the Act and redactions have been found to have been correctly applied.

44. The complainant has also complained to EBC that it has provided misleading and contradictory accounts as to how the 'Fire upgrade action' was triggered (this is the complainant's description of the process leading to the issuing of the enforcement notice, known as a s352 notice). With reference to the complainant's request for review of a previous FOI request, dated 23 July 2008, he requests that EBC clarify whether it was a land search or the complaint of damage to fire escape steps which started this process, stating:

*"The problem I have is that EBC told me, in response to a direct question, that the Fire Upgrade action, which included the s352 notice, may have been triggered by a land search. EBC told the LGO that the upgrade action had been triggered by 2 fractured steps on the fire escape.[...]"*

*I need to determine if an EBC officer had deliberately misinformed me as to the trigger (by suggesting the trigger was a land search) [...] so as to unfairly deny me a proper appeal.*

*It is implied from the evidence you have sent me that in every single instance where an HMO had a S352 notice served on it (with the possible exception of [the complainant's address]) by EBC was [sic] the trigger was NOT a land search[...]"*

45. The Commissioner notes that the EBC response given to the complainant is qualified, in other words its use of the word 'may' does not express certainty about the cause of the fire upgrade action. However, it is reasonable to assume that EBC will have been more definite in its response to the LGO. The Commissioner does not agree with the complainant's inference that this may

constitute a deliberate attempt to mislead, or that this follows from the circumstances described.

46. Furthermore, the database supplied to the complainant in response to his request for information (and considered by the Commissioner in case reference FS50224509), contains two common descriptors in the column for 'How found' namely 'C=complaint' and 'O=other'. There are plenty of examples of 'C', but 'O' is the more common, and it would be reasonable to infer that 'O' would therefore include land searches.
47. The Commissioner does not therefore accept the complainant's statement that *"in every single instance where an HMO had a S352 notice served on it (with the possible exception of [the complainant's address]) by EBC was the trigger was NOT a land search"*
48. The complainant also asserts that he has evidence to prove that earlier s352 notices have been served on parties involved with his property. This was considered by the Commissioner in case reference FS50214916 and he has been unable to obtain any evidence from the complainant to support that argument. The Commissioner has considered various comments in correspondence from the public authority at various times.
49. In the complainant's letter to a local councillor, dated 11 January 2009 he states, at item (5):

*"In EBC's FOIA response of 25<sup>th</sup> November 2008, [EBC staff member] finally admitted that EBC had been serving notices on [name 2] (a fact that EBC had previously kept from me)"*

50. The Commissioner has reviewed that response, finding one reference within the document which refers to [name 2], which states as follows:

***"FOI-09-150***

*I have been informed by EBC that all of the notices served on my co-freeholder regarding the vandalized step, and the s352 (1985 Housing Act) fire prevention notices were served on [name 1], on the basis of my misinformed belief that she was co-freeholder of [the complainant's address].*

*In fact, up until the transfer of the estate into [name 1]'s name in July 1998 (approximate date), the co-freeholder would have been [name 2], and so all notice served on [name 1] before transfer of the freehold into her name where [sic] improperly served.*

*Please give me information on these improperly served notices, please send copies."*

51. The response given by the public authority was:

*"The notices served on the co-freeholders were identical apart from the name and address therefore you effectively already have copies of these notices."*

52. This does not constitute an admission of the sort described by the complainant at paragraph 48, above. An objective reading of the EBC response would not infer any admission, tacit or otherwise, that EBC has served any notices on [name 2]. That the response given does not contain a rebuttal of the complainant's assertion cannot be construed to be an admission of agreement with that assertion. The Commissioner might agree that the EBC response is not entirely specific in this regard, but that is not the same as accepting the complainant's argument that this constitutes any admission that [name 2] has been served any notices.
53. The complainant further supports his argument with an extract from a letter from another EBC staff member in a document dated 12.8.98. The complainant suggests *"I have already supplied you with a copy of a letter from [EBC staff member] telling me the name on the Earlier S352 notice was [name 1], not [name 2] as it should have been."* The complainant asserts that this indicates that a s352 notice was issued which predates the one served on him, bearing a different name for his co-freeholder. This has always been denied by the public authority.
54. The Commissioner has considered the extract provided and it makes clear that the document the EBC staff member is referring to is a 'Minded-To letter' not a s352 notice. A 'Minded-To' letter is a less formal precursor to a s352 enforcement notice. It is not disputed by EBC or the complainant that two sets of 'Minded-To' letters were sent, approximately one month apart, but as the copies already provided to the complainant have shown, the addressees were the same in both cases. This is also consistent with the public authority's position that no documents were served on any parties other than those already disclosed to the complainant.
55. In all these cases, therefore, the Commissioner does not find that an objective reading of the text supports the complainant's arguments and that the complainant may have inferred something from the correspondence which was not intended by its author. The Commissioner has observed a similar misunderstanding in relation to the complainant's reaction to the Commissioner's examination of section 21 of the Act in relation to Land Registry data.
56. The public authority has provided the Commissioner with explanations as to its processes, the timescales involved, and the measures taken to obtain information about the identities of various parties, prior to the issuing of a s352 notice. These have also been considered in the Decision Notice issued in case reference FS50224509. The Commissioner has concluded in that Decision Notice that there is no information held by the public authority bearing the names of any co-freeholders to the complainant's property, other than those already disclosed to him. The Commissioner's consideration of the complainant's arguments, in paragraphs 42-56 above, also informed that Decision Notice but are directly applicable to the present case.

***Whether compliance would create a significant burden in terms of expense and distraction***

57. The public authority has provided evidence as to the amount of correspondence, both to and from the complainant, and also internal correspondence which has been generated in order to respond to his requests. The Commissioner has been provided with a list of related correspondence, received from the complainant or sent to him directly by the public authority and the key elements are summarised for each year, below:
- 1997: 5 letters (these are all from EBC and relate to the matter of the reported faults to the fire escape to his property)
  - 1998: 27 letters or emails, 3 telephone calls, 1 meeting
  - 1999: 18 letters or emails, 3 telephone calls
  - 2000: 1 letter, 3 telephone calls. Note that by this time, the s352 notice had been served and the complainant had taken his complaint to the Local Government Ombudsman (LGO)
  - 2001: 11 letters or emails, 7 telephone calls, 1 meeting. Note this includes the period which still required some correspondence relating to administrative matters on the s352 notice.
  - 2002: 7 letters or emails, 1 telephone call
  - 2003: 19 letters or emails, 6 telephone calls, 1 meeting
  - 2004: no correspondence on file
  - 2005: 1 FOI (Freedom of Information) request
  - 2006: 11 letters or emails
  - 2007: 21 letters or emails (to the end of June 2007)
58. At this point, the public authority's compilation ceases to list individual items but describes *"numerous and various FOI requests received since [July 2007] – still appealing against withholding of names [...]"*
59. To put the volume of correspondence in some context the earliest, from 1997 to approximately 2001 is largely concerned with the processes required for the serving of the s352 notice and related matters after the event. There is also correspondence from 2001 to early 2003 which is largely concerned with matters related to the works required by the s352 notice and associated processes.
60. The matter of the s352 notices and the possibility of improper activity is first logged by the public authority in correspondence dating from March 2003. Some parts of the complainant's correspondence in the matter are also copied by him to various third parties including councillors. From this point forward, there is relatively little reference to the matters of the works and other administrative processes relating to the specific s352 notice at the complainant's property.
61. The Commissioner also observes that the public authority's chronology also contains references to internal correspondence relating to the matters raised by the complainant's letters, emails and telephone calls and it is therefore apparent that the complainant's correspondence generated additional work beyond that required to draft a reply to him.

62. The Information Tribunal in *Gowers v. Information Commissioner & London Borough of Camden* (EA/2007/0114) stated at paragraph 70:

*“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”*

63. It appears from this list that the levels of correspondence generated by the complainant have increased since his first FOI request in 2005 and have continued to be received in some numbers. It also appears that his FOI requests and appeals continue to revisit issues which have already been addressed by the public authority and also have been considered by the LGO, who found no evidence of maladministration.

64. The Information Tribunal in *Coggins v. Information Commissioner* (EA/2007/0130) stated at paragraph 28:

*“The number of FOIA requests, the amount of correspondence and haranguing tone of that correspondence indicated that the Appellant was behaving in an obsessive manner. It was apparent that this would, over the relevant period, have caused a significant administrative burden on the Council. The Appellant’s correspondence was difficult to deal with as it was often very long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received.”*

65. The Commissioner wishes to stress that the complainant’s tone in this case is not haranguing in the sense of *Coggins*, nevertheless in his two previous Decision Notices for the same complainant, case references FS50214916 and FS50224509, the requests contained in those complaints concern the same subjects as those described at paragraph 4 and consequently the burden described in *Coggins* may be seen to be similar in this case due to the length and the overlapping nature of the complainant’s correspondence, which often repeats or elaborates on a request before the public authority has had a chance to respond.

66. The Commissioner is aware of situations in which, when the public authority responds to a request or other correspondence from a complainant, it receives a reply from him which makes further requests, or requires further response. The Information Tribunal in *Betts v. Information Commissioner* (EA/2007/0109) stated at paragraph 34:

*“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.”*

67. The Commissioner considers that, as the complainant has been discussing his specific concerns with the public authority since March 2003 and has received a number of responses, his continued correspondence on the matter over a period of approximately five years constitutes a significant burden in distracting staff from their core functions. The public authority has not sought to refuse the complainant's requests purely on grounds of cost and the Commissioner therefore has not considered the possible extent of any financial burden in any detail, beyond observing that the substantial amount of staff time which, the evidence shows, the public authority has found it necessary to allocate in dealing with the complainant's various requests and correspondence will constitute a financial burden in itself.

***Whether the request is designed to cause disruption or annoyance***

68. The complainant's correspondence is often assertive and challenging when he considers a response given to him to be unsatisfactory to any degree. It also seems that the complainant's correspondence with the public authority occasionally involves tangential points and challenges matters of semantics or issues of little apparent relevance.
69. Though it is clear that his evident lack of trust or belief in the public authority's responses might reasonably be considered to cause annoyance, the Commissioner does not believe that the request has been so-designed.

***Whether the request has the effect of harassing the public authority or its staff***

70. The complainant does not use intemperate language, nor is his correspondence directed at members of the public authority's staff personally, other than referring to them by name where appropriate. It is clear that his correspondence is intended to uncover truths which the complainant believes are being kept from him, or expose wrongdoing where he believes this has been concealed. However misguided the public authority may consider the complainant's position, and his persistence, the Commissioner does not consider that this should be taken to constitute deliberate harassment on the part of the complainant.
71. Nevertheless, the volume and frequency of correspondence can be considered as harassing the authority. For example, the request under consideration here was made on 28 October 2008. From the public authority's response, it is apparent that this request was made the day after a meeting had been held with the complainant and a friend, a councillor, an officer of the public authority and its legal advisor in the hope of resolving his underlying concerns. The Commissioner notes in the correspondence that this meeting had been proposed for some time previously, and had been delayed at the complainant's request to allow him time to compile his arguments. Nevertheless, it seems clear that the public authority was willing to meet with him to raise any concerns which he had.
72. The Commissioner has been provided with a copy of the minutes of that meeting taken by the public authority and it is apparent that no attempt was made to prevent the complainant making his points. The public authority's response of 25 November indicates that, subsequent to that meeting, it received six further FOI

requests from the complainant, plus four requests for clarification. For further requests to be made, some only the day after a meeting was held to give him the opportunity to bring matters to its attention, could therefore be viewed as harassing the authority.

73. While the public authority has not argued directly that the request '*has the effect of harassing*' the public authority or its staff, the Commissioner observes that, by continuing to make requests for information while the public authority is believed to be considering the points made by the complainant in a meeting convened for his benefit, the complainant is not affording the public authority adequate time and space to address his concerns before sending it further matters requiring its attention. He therefore finds that the request has the effect of harassing the public authority or its staff.

***Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable***

74. The public authority's refusal notice of 25 November 2008 addresses a series of the complainant's requests, six in total, all of which concern themselves with various aspects of the complainant's dispute over the s352 notice and its consequences. The public authority's clearly stated reasons for declaring his requests on the subject vexatious centre on the fact that he has been provided with all the information which the public authority holds and which can be provided to him under the Act. His continued requests on the same theme will therefore likely elicit the same response or see a reiteration of the position.

75. The Information Tribunal in *Welsh v. Information Commissioner* (EA/2007/0088) stated at paragraph 24:

*"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. As Mr Welsh has continued to maintain his allegations, so he has embellished them with wide ranging arguments about the law and human rights, and demands that his various requests be met, that his view of justice should prevail, on pain of ever continuing complaints and legal action, and wider and wider publicity."*

76. As in the case of *Welsh*, the complainant has made repeated allegations, including a complaint to the LGO, about contraventions of his human rights by various officers of the public authority.
77. The complainant had been corresponding with the EBC on these matters for over five years by this time. Several aspects of the responses contained in its letter of 25 November effectively re-stated previous advice, comment or information already provided to the complainant, including information provided to him in meetings, and copies of minutes to meetings at which the complainant was present.
78. It appears to the Commissioner that the complainant's continued requests on the subject conform to the pattern identified in *Welsh*, above. Given that the matter

has also been considered by the LGO, which found no evidence of maladministration, it is reasonable to conclude that the request can fairly be seen as obsessive.

***Whether the request has any serious purpose or value***

79. It is clear that there is a serious purpose to the complainant's underlying concern. The exposure of a fraud, even if the public authority is not implicated but merely an unwitting participant, is certainly a matter of the public interest. However, there comes a point at which these allegations have to be formalised and evidenced, ideally handed over to an authority with the skills, powers and experience to properly pursue the investigation.

80. The information Tribunal in *Coggins*, as above, also stated at paragraph 20:

*"The Tribunal accepted that the Appellant was driven by a genuine desire to uncover what he believed was a fraud against the elderly woman in question, the Council and possibly other recipients of care. This on the face of it was not unreasonable"*

81. It continued, at paragraph 22:

*"There came a point however when the Appellant should have let the matter drop. Even if he believed that the Council had not properly complied with his earlier FOIA requests, there had been three independent enquiries into the circumstances giving rise to the request. One of these bodies, CSCI, had seen the witness evidence. In addition, the Appellant was aware that the police had told Age Concern that there was no evidence of dishonesty. Despite all this, the Appellant refused to believe the veracity of the independent investigations. In the Tribunal's view, it was not justified in the circumstances to persist with his campaign to force the Council to make disclosure, in particular, of the timesheets."*

The Commissioner has noted the complainant's expressed intention, in a letter to him received on 9 April 2009, to provide a 'fraud pack' (the complainant's description) to Sussex Police. It would seem appropriate, as it appeared to the Tribunal in *Coggins*, that the complainant's concerns should be passed to the appropriate authorities for their consideration and the complainant should abide by their findings and professional judgement. The LGO has twice considered the complainant's allegations, in 2001 and 2008, and found no evidence of maladministration. The Commissioner anticipates that Sussex Police would conduct its own evidence-gathering if it were satisfied that an investigation were warranted, and he doubts that it would require a private citizen to compile its evidence for it.

82. The complainant states in his letter that he "...will explain how s352 notices served by EBC are used for land grabs". It is already clear to the Commissioner how the mechanism he describes might be expected to work, from the correspondence sent for the investigation of this complaint. The Commissioner has considered if, with all the information already amassed by the complainant, it



has not yet been possible to persuade Sussex Police that there exists a case for it to investigate, then whether the information he has requested, if it were held by the public authority, would perhaps 'tip the balance'. That might permit additional weight to be given to the complainant's serious purpose.

83. Even if that were the case, the Commissioner returns to the underlying problem that the information the complainant claims has been withheld has not been shown to have ever existed. On the contrary, it can be seen from paragraphs 48-55 above that the complainant appears to have misinterpreted certain elements of correspondence in support of his theory and that these misunderstandings may have contributed to his holding of a position largely unsupported by evidence.
84. Furthermore, as the complainant's continued requests are attempts to obtain information not held by the public authority, there can be no serious purpose to his request. His refusal to accept that the public authority does not hold the information is based largely on a fallacy arising from his misreading of certain elements in letters from the public authority.
85. Even if the Commissioner attaches as much weight as he can to the possible serious purpose **behind** the complainant's request, as this is the only factor which acts in his favour against the other findings above, he would not argue that it outweighs the arguments in the other four tests, because continuing to pursue this matter long after it should have been either dropped, or handed on to a responsible authority, diminishes that serious purpose. As the information requested is not held by the public authority, and this fact has already been communicated to him, the serious purpose of the request itself is considerably diminished.
86. The Commissioner therefore finds that a consideration of the context and history of the complainant's correspondence and requests for information leads him to conclude that the public authority's decision to declare the complainant's continued requests for information on the subject vexatious under section 14(1) of the Act is correct.

## The Decision

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87. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## Steps Required

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88. The Commissioner requires no steps to be taken.

## Other matters

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89. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
90. The Commissioner notes that the complainant requested an internal review of the public authority's decision on 2 December 2008. The public authority responded with the outcome of this internal review on 20 January 2009.
91. 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 No 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 has decided 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 although no such circumstances existed in this case. The Commissioner is concerned that in this case, it took over 30 days for an internal review to be completed, despite the publication of his guidance on the matter and advises the authority to ensure that internal reviews are conducted in a more timely manner in future.

## Right of Appeal

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

First-tier Tribunal (Information Rights)  
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 19<sup>th</sup> day of January 2010**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**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.'*