

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 September 2011

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

Summary

The complainant made a request relating to the ownership of a piece of land where a specified gate had been positioned. The public authority determined that the request was vexatious and applied section 14(1) of the Act, and wrote to the complainant, explaining that it would not respond to any further requests on this matter. The Commissioner has investigated and finds that the Council correctly applied section 14(1) to the request and requires no steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The Council provided the Commissioner with a sample of previous correspondence received from the complainant, and the complainant provided the Commissioner with a synopsis of the events leading up to the issues experienced in this case. It appears that issues relating to this matter date back to 2004, and the wider issues surrounding the case relate to a specified gate which provides entry to a park located in the vicinity of the complainant's home, and is linked to alleged problems with anti-social behaviour. The gate was originally locked for 24 hours a day, but following a campaign, began opening during the day. It appears that previous information requests and complaints to the

Council have centred on the fact that, during this time, the gate was not always locked and unlocked when it should have been.

3. Subsequently, the complainant identified that if the land on which the gate is situated ("the land in question") had been privately owned in 2004, it could deem the right of way claim (which, at the time of the request, was likely to be resurrected) as unlawful. The complainant was provided with some pieces of documentation by the Council which appeared to contradict each other; with some correspondence stating that the land was under private ownership in 2004, and other correspondence stating that the land was believed to be owned by the Council.

The Request

4. On 24 July 2010 the complainant wrote to the Council, referring to previous correspondence and a telephone conversation in respect of the ownership of the land in question. The complainant made the following request:

"I have been advised to ask why the city council refuses to answer questions or address what happened in 2004? I am further advised to ask, using my right under the Freedom of Information Act, for copies of all correspondence, documents etc which can confirm without any doubt that the 2nd paragraph of [named official]'s letter 22/4/04 is truthful".

5. The letter of 22 April 2004 from the Council official referred to within the complainant's request above stated the following:

"After checking information supplied to us by the [named residents] and Land Registry we believe that the gate is positioned on our land".

6. On 18 August 2010 the Council responded to the request, making reference to a previous letter that it had sent the complainant on 12 August 2010, in which it had indicated that the various issues being raised by the complainant "had already been extensively investigated with no case being found to answer". The Council confirmed that it would not be responding further to the request and that any further requests on this particular subject would be deemed to be vexatious in accordance with section 14 of the Act and manifestly unreasonable in accordance with regulation 12(4)(b) of the EIR.
7. The complainant wrote to the Council on 6 September 2010 to express her dissatisfaction with its handling of her information request. In the

complainant's view, the issues in question had not been "extensively investigated" as was claimed by the Council.

8. On 25 October 2010 the Council wrote to the complainant in an attempt to conclude the matters related to her request. The Council confirmed:
 - That the dedication of a bridleway had not yet been finalised.
 - That the claimants had withdrawn their right of way claim provided that there was access for horses during daylight hours through the bridle gate installed at the car park entrance.
 - That in a letter dated 27 April 2004, the named officer in paragraph 6 above stated that "we now are able to confirm that the gate is positioned on our land".
9. The Council also stated that the complainant had, along with another individual, written to the Council on over 60 occasions over the last 10 years relating to complaints on this matter. The Council confirmed once again that any further requests for information on this particular subject would be deemed to be vexatious in accordance with section 14 of the Act, and manifestly unreasonable in accordance with regulation 12(4)(b) of the EIR.
10. The complainant wrote to the Council on 21 January 2011 to request a review of the decision it had conveyed to her in its letter of 25 October 2010.
11. The Council responded on 14 February 2011 and restated the conclusions it had made in its letter of 25 October 2010. The Council also confirmed that, in its view, no further information was held falling within the scope of the complainant's information request. The Council upheld its determination that the complainant's request was vexatious.

The Investigation

Scope of the case

12. On 16 November 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the handling of her information request, and to investigate the Council's determination that her request was vexatious under the Act and manifestly unreasonable under the EIR.
13. During the course of the Commissioner's investigation, he received lengthy correspondence from the complainant explaining the issues that

she felt should form part of his investigation. The Commissioner wrote to the complainant to explain that some issues fell outside his remit, but the complainant continued to maintain that the issues should be considered. The Commissioner confirmed that the following issues would not form part of the scope of his investigation:

- The wider issues surrounding this complaint – for example the complainant provided the Commissioner with evidence supporting her beliefs on who owned the land in question – for example suggesting that the Commissioner should look on Google Earth. The Commissioner explained that he would have no part to play in investigating the likelihood or otherwise that the Council owned the land in question in 2004.
- The fact that the Council did not “clear this up” – i.e. confirm ownership of the land – at the time, in 2004. The Commissioner’s investigation has focussed specifically on the information request of 24 July 2010 and the Council’s handling of that request.
- Issues relating to the language utilised by the Council within its correspondence; for example the fact that the Council “believed” that the land in question was Council owned, and subsequently “confirmed” this fact.

Chronology

14. On 7 June 2011 the Commissioner wrote to the Council and requested further arguments to support its position in this matter.
15. The Council responded on 13 July 2011 and provided detailed arguments to support its application of section 14(1) to the request.

Analysis

Substantive Procedural Matters

Correct Access Regime

16. Regulation 2 of the EIR defines environmental information as any information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)
17. The Commissioner notes that the request relates to the ownership of land; more specifically to a query about whether the piece of land in question was owned privately or by the Council in 2004.
18. On considering the request, the Council deemed it to be vexatious in accordance with section 14(1) of the Act, and manifestly unreasonable in accordance with regulation 12(4)(b) of the EIR. The Council subsequently explained to the Commissioner that it had considered both access regimes due to the volume of questions that had been asked by the complainant, on the basis that many of them would fall under the EIR, but in some circumstances would fall within the boundaries of the Act.
19. Due to the nature of the withheld information, the Commissioner considered whether it constituted environmental information and therefore whether the correct access regime under which the request should have been considered was the EIR.
20. For the reasons set out below, the Commissioner has determined that the requested information would not fall within the definition of environmental information set out at regulation 2(1)(c) of the EIR. The Commissioner considers the issue to be the ownership of the land in question rather than an intention to develop that land or change its use in some way, although he does acknowledge that the wider issues of the

case relate to right of access through a specified gate on the land. The Commissioner considers that if any information falling within the scope of the request were held, it would be likely to be 'on' the ownership of the land, which is not a measure likely to affect the elements or factors referred to in (a) or (b) above.

21. The Council deemed the complainant's request to be vexatious under section 14(1) of the Act and manifestly unreasonable under regulation 12(4)(b) of the EIR. Since the Commissioner has concluded that if any information were held, it would be unlikely to be environmental, he has considered whether the Council correctly applied section 14(1) of the Act.

Section 14(1) of the Act – 'vexatious requests'

22. Section 14(1) of the Act provides that a public authority does not have a duty to comply with a request where it may be considered vexatious.
23. Although there is no rigid test or definition of vexatious requests the Commissioner has produced guidance to assist public authorities in this area. The Commissioner's guidance states the following:

"Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

- *Could the request fairly be seen as obsessive?*
 - *Is the request harassing the authority or causing distress to staff?*
 - *Would complying with the request impose a significant burden in terms of expense and distraction?*
 - *Is the request designed to cause disruption or annoyance?*
 - *Does the request lack any serious purpose or value?"*
24. The Commissioner is also mindful of the following Information Tribunal decisions:
 - In the case of *Coggins v Information Commissioner* (EA/2007/0130), the Tribunal considered that "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".

- In the case of *Betts v Information Commissioner* (EA/2007/0109), the Tribunal considered not just the request but the background and history to the request as part of a long drawn-out dispute between the parties. The request was considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.
25. It is important to note that while the above cases and guidance provide a useful guide to assessing whether a request is vexatious, they do not provide a prescriptive test. In arriving at his decision on such matters, the Commissioner will assess each case on its own merits and is mindful of the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* (EA/2007/0088) (at paragraph 26), in which it pointed out that the threshold for vexatious requests need not be set too high.
26. The Commissioner does not consider it necessary to consider each of the five factors set out in paragraph 24 in every case, but has set out below the relevant factors in this case, and the applicable arguments.

The Council's position

27. The Council provided the Commissioner with detailed arguments in support of its decision for applying section 14(1) in this case:
- The Council believed that the complainant was acting in conjunction with her neighbour, and the volume and frequency of requests and correspondence from these two individuals was considered by the Council to be extremely high. The Council stated that more than 60 pieces of correspondence had been received from them, and that all of these pieces of correspondence related to the park in some way.
 - On many occasions the requesters would repeat a request that had been responded to but instead direct the request towards another member of staff or to a different team.
 - The Ombudsman had been contacted by the complainant and her neighbour on three occasions but the Council stated that no evidence of maladministration had been found.
 - The correspondence received by the Council prior to the information request of 24 July 2010 referred to a number of issues, all of which related to the park in some way – the gate which formed the basis of the complainant's request was the entrance to the park. The Council stated that, looking at the general theme of the requests and complaints over the years, a "large amount" related to the gate – including the locking and unlocking of the gate and the ownership of the land in question.

- The Council described the correspondence as having an “obsessive focus” on the park and its management.
- Although the Council has frequently corresponded with both individuals, it has been unable to satisfy the requester’s questions. The correspondence continues even when the Council believes that a matter has been concluded.
- Even though the Council found the request in question to be vexatious and confirmed that it would respond no further, the complainant wrote to the Council on 23 May 2011 with eight further questions about the public right of way around the perimeter of the park, and followed this up again on 14 June 2011 and 12 July 2011 with further correspondence and information requests relating to the park, gate and land ownership.
- The Council made reference to the burden caused by the request in terms of expense and distraction, which can be evidenced by looking at the manual file held and the sheer volume of correspondence both received from and sent to the requester.
- The Council stated that the compiling of responses to the Local Government Ombudsman’s investigations has taken up much officer time.
- The Council also explained that members of its senior management had written to the requester and dealt with subsequent complaints via the Council’s complaints system.
- In summary, the Council confirmed that it has spent an extremely large amount of officer hours investigating and responding to the various requests, and that the amount of time and the costs to the Council in doing so clearly outweigh the value of the information disclosed.

The complainant’s position

28. The complainant is unhappy with the Council’s assertion that her request of 24 July 2010 was vexatious. In her letter of 6 September 2010 requesting an internal review, the complainant remarked that whilst issues relating to the unreliable locking of the gate had been “extensively investigated”, the issue of ownership had not. In the complainant’s view, the Council was using “other issues” to hide behind in an attempt to avoid what really happened in 2004.
29. In her letter to the Commissioner of 4 March 2011, the complainant stated the following:

"In response to a tenacious campaign led by the right of way claimant BCC agree to unlock the gate during the day. A further promise was given to residents, again in writing, that gate [sic] would be locked at or before 6pm daily. This didn't happen, locking was unreliable and at times non-existent. The poor locking generated a lot of correspondence and phone calls between BCC and myself, and other residents as a.s.b. began to trickle back. This is what I believe BCC in their letter refer to as "huge amounts of correspondence", alleging it relates to the land issue, which of course it does not. You will see that my request for sight of the "huge amounts of correspondence" they claim they have relating to the land issue has been completely ignored. It is easy to see that, nothing with BCC has ever been straightforward where the Preddys gate is concerned".

30. On 21 January 2011 in a further letter to the Council, the complainant stated:

"Please bear in mind that my Freedom of Information request concerns only who in 2004 really did own the land on which the Preddys gate is built. Nothing else. It is nothing at all to do with other issues regarding Dundridge Park brought to the City Council's attention both by myself and other residents, and must not be confused in any way with these other matters. It is only regarding land ownership that information is requested".

31. In respect of the Council's assertion that the request had caused a burden in terms of officer time, the complainant stated (again on 21 January 2011):

"Surely if the information I requested had been given to me in the first place then "Officer time", and my time come to that, would not have been wasted. Great amounts of "Officer time" has [sic] been wasted needlessly, attempting to hide between other issues at Dundridge Park which are nothing at all to do with this issue, in an effort to ignore/disown the fiasco over land ownership".

"Please no longer confuse my FOI request with other issues, or allege (...) previous extensive investigation and copious amounts of correspondence which as far as I can trace, do not exist. I can find nothing at all that refers directly to, or addresses the land ownership issue".

The Commissioner's position

32. In order to arrive at a decision on whether the Council appropriately applied section 14(1) of the Act, the Commissioner has been guided by the five questions set out in his guidance, and has considered the points relevant to this particular case.

Could the request fairly be seen as obsessive?

33. The Commissioner has considered whether or not the complainant's request can be characterised as obsessive, bearing in mind that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. Further, the more independent evidence available, the more likely the request can be characterised as obsessive although a request may still be obsessive even without the presence of independent evidence.
34. The Commissioner has also had regard to the Tribunal's comments in the case of *Ahilathirunayagam v London Metropolitan University* (EA/2006/0070). The Tribunal found the request in that case to be vexatious by taking into account the following matters:
- (ii) *The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the detailed content of which had previously been debated with the University*
 - (iii) *The tendentious language adopted in several of the questions demonstrating that the Appellant's purpose was to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess*
 - (iv) *The background history between the Appellant and the University...and the fact that the request, viewed as a whole, appeared to use to be intended simply to reopen issues which had been disputed several times before (para 32)*
35. This means that even if a request appears reasonable in isolation, it may be vexatious when considered in the context of the correspondence generated by it, which in turn leads to new requests being made regarding the same subject area. The Commissioner has therefore taken into account the previous dealings that the complainant and her neighbour have had with the Council when considering whether the request can be correctly characterised as obsessive.
36. The Commissioner notes that the Council has stated that the complainant (along with a neighbour) has submitted over 60 pieces of correspondence "all relating to the park in some way". The complainant maintains that, whilst the previous requests and complaints submitted to the Council did relate to the park, they related to the locking and unlocking of the gate in question, whilst the current request and

subsequent complaint to the Commissioner relates solely to the ownership of the land.

37. The Council has provided the Commissioner with a sample of this correspondence. Whilst the complainant has maintained that her previous requests did not relate to the ownership of the land in question, and therefore could not be considered in relation to her request being deemed vexatious, the Commissioner notes that some previous correspondence does make reference to land ownership. For example, on 4 July 2010 in a letter to the Council, the complainant stated:

"BCC's plans in February 2004 to reopen the entrance resulted in 3 contradictory letters and an email, copies enclosed. Despite many requests (...) over the years for an explanation of what was going on, no comment from him was ever forthcoming. Further requests to him for sight of a document that could prove council ownership in 2003/4 were ignored.

During the past few years myself and a neighbour have obtained various documents etc which strongly suggest that at the time of the contradictory letters in 2004, the land on which the gate is built was probably in private ownership. Requests last year for a meeting with [named official] to look at and discuss our documents were refused outright or ignored, as were requests for sight of the document (i.e. "information supplied by the Land Registry" see letter from BCC 22/04/2004) that proved council ownership. When myself and a neighbour spoke to [named official] in the park on 16/06/2009 he told us we "couldn't see a document as none existed! Surely this cannot be true!"

38. Therefore, the Commissioner is satisfied that issues previously raised by the complainant have included the ownership of the land. The complainant has clearly attempted to address these issues prior to the request of 24 July 2010. Other correspondence between the complainant and Council has raised a variety of issues, including health and safety, the locking and unlocking of the gate and right of way claims, with the central theme of the correspondence being the park itself and, more specifically, the gate in question.
39. Further, the Commissioner notes the ongoing nature of the complainant's correspondence since her complaint to the Commissioner. After the Commissioner's initial acknowledgment of her complaint, the complainant wrote to the Commissioner on 10 December 2010, a four page letter on 4 March 2011, 23 March 2011 and 30 July 2011. At the same time, the Commissioner has been made aware that the complainant has written to the Council on at least three separate

occasions since complaining to the Commissioner, following up previous information requests and making new requests. The Commissioner also notes the complainant's statement, contained in her letter of 4 March 2011 to the Commissioner:

"[named official] claims I am obsessed, perhaps I am over this particular matter, as would anyone who has suffered badly due to torment and intimidation caused by anti social teenagers, outside my home, in my garden and in my driveway".

40. Whilst the Commissioner appreciates that the wider issues surrounding the complainant's information request are clearly emotive and causing much distress, his role is to consider the Council's application of the Act.
41. The Commissioner considers that there is clearly a history of contact between the complainant and the Council and he has therefore considered the Council's view that, through her information requests and correspondence, the complainant is seeking to re-open matters surrounding the ownership of the land, that have already been dealt with by the Council in its response of 25 October 2010 where it confirmed that the land was under Council ownership. Issues surrounding this matter have also been investigated by the Local Government Ombudsman, with no maladministration identified. The Commissioner is satisfied that the complainant's request can be fairly characterised as obsessive.

Would complying with the request impose a significant burden in terms of expense and distraction?

42. When determining whether a request imposes a significant burden, the Commissioner believes that a public authority should:

*"...consider whether complying with the request would cause it to divert a disproportionate amount of resources from its core business. However, where the **only** concern...is the burden on resources...it should consider whether it would be more appropriate to apply section 12..."*

43. The Commissioner is also assisted by the Information Tribunal's comments in the case of *Gowers v the Information & London Borough of Camden* (EA/2007/0114). The Tribunal emphasised that previous requests received may be considered in the context of the request in question:

"...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)

44. It is therefore appropriate for the Commissioner to take into account the complainant's previous interaction with the public authority when making a determination of whether the requests represent a significant burden to a public authority. This means that even if the requests do not impose a significant burden when considered in isolation, they may do so when considered in context. Therefore in this case the Commissioner has considered not only the requests themselves but also the background and history to these requests, which have generated a sizeable amount of correspondence between the complainant and the Council.
45. The Council has provided the Commissioner with evidence that the requests made by the complainant and her neighbour have already necessitated a considerable amount of work within the Council. Within the outcome of its internal review on 25 October 2010, the Council stated to the complainant that:
- "A huge amount of correspondence has been exchanged on this particular issue and most responses draw further requests for information. It has been confirmed previously in 2005 that Bristol City Council would respond no more on this issue due to the volume of correspondence and the amount of officer time being used".*
46. Having considered the evidence provided by the Council, the Commissioner has noted the volume of correspondence sent by the complainant to the Council, generating new information requests within many of the pieces of correspondence. Whilst the Commissioner's investigation in this particular case has focussed on the handling of the information request of 24 July 2010, the Commissioner notes that correspondence on this and similar matters both pre- and post-dated the request under investigation. In light of this the Commissioner accepts that answering this request would be extremely likely to lead to further correspondence, further requests and possibly further complaints against the Council. These would impose even more of a burden on the Council in terms of time, costs and diversion of resources to deal with the requests.
47. The Commissioner considers it appropriate for the Council to consider the cumulative effect of dealing with the correspondence associated with the complainant's request. The Council has provided the Commissioner with samples of the correspondence received from the complainant since 2004. In conclusion the Commissioner accepts that, taking together the action already taken by the Council and the potential for further correspondence and follow-on requests from the complainant, the effect of complying with the request would have placed a significant burden on the Council.

Conclusion

48. The Commissioner notes the complainant's assertion that her request is separate from previous requests submitted to the Council and that her request should not have been deemed vexatious on the basis of this previous correspondence. However, having viewed a sample of the previous correspondence submitted to the Council by the complainant, the Commissioner considers that all of the correspondence related to the park in question in some way, and that the query of the ownership of the land has clearly been raised before and responded to by the Council. In the Commissioner's view, there is strong evidence that the complainant's request can be deemed to be 'obsessive'; indeed the complainant herself has used this term when describing her correspondence with the Council. The Commissioner also considers that compliance with the complainant's request would be likely to lead to further correspondence and requests, which would place an intolerable burden on the Council. Therefore the Commissioner is satisfied that the complainant's request is vexatious, and that the Council correctly applied section 14(1) to refuse to comply with it.
49. On balance, the Commissioner considers that there is sufficient evidence for him to determine that the request of 24 July 2010, when considered in the context and history of the complainant's contact with the public authority, is obsessive and that compliance with the request would place a significant burden on the Council.

The Decision

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

Steps Required

51. The Commissioner requires no steps to be taken.

Right of Appeal

52. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

53. 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.
54. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 21st day of September 2011

Signed

**Andrew White
Group Manager
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Legal Annex

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.”