

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 September 2011

Public Authority: West Lindsey District Council
Address: Guildhall
Marshall's Yard
Gainsborough
Lincolnshire
DN21 2NA

Summary

The complainant requested information about the public authority's use of a 'single point of contact' procedure. The public authority refused the request as vexatious under section 14(1) of the Act. The Commissioner finds that the request was correctly refused as vexatious and he requires no action 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.

The Request

2. The complainant submitted a request to West Lindsey District Council (WLDC) on 22 January 2011¹ for:

"How many persons have been sentenced by you to the 'single point of contact' punishment during the years 2000=2010 inclusive."

¹ See http://www.whatdotheyknow.com/request/single_point_of_contact_2#incoming-148398

3. The public authority replied on 28 January 2011, refusing the request as vexatious under section 14(1) of the Act. It argued that:
 - the complainant's continuing requests can fairly be seen as obsessive;
 - complying with the requests is imposing a significant burden on the limited resources of a relatively small district council and hindering its ability to give due consideration to other requests; and
 - the volume, frequency and similarity of the requests are harassing the authority and causing distress to its staff.
4. The complainant replied on 31 January 2011, asking the public authority to review its response.
5. The public authority replied on 4 February 2011, explaining that the request was a repeat of a previous request which had also been refused as vexatious, and which was, at the time, the subject of an ongoing complaint to the Information Commissioner's Office. It explained its position that until it received the outcome of that complaint, it was unable to conduct further reviews on the subject.

The Investigation

Scope of the case

6. On 7 February 2011 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:
 - His request had been refused as vexatious and he asked the Commissioner to consider the matter.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
8. The scope of the Commissioner's investigation has therefore been to examine the public authority's use of the provisions of section 14(1) of the Act and to determine whether these provisions have been correctly or incorrectly applied.

Background

9. The complainant has submitted a previous complaint to the Commissioner about a similar request, which was refused as vexatious by WLDC on the same grounds. The Commissioner found, in that case, that the public authority had correctly refused the request as vexatious.

Chronology

10. The Commissioner contacted WLDC by telephone on 7 June 2011. The public authority confirmed that the situation had not changed since the Commissioner's previous decision notice, and it wished to rely on its previous submissions.
11. The Commissioner wrote to the complainant on 7 June 2011. He noted that the complaint had been submitted prior to the serving of the Commissioner's previous decision notice, which related to a very similar request. He explained that WLDC intended to rely on its submissions for the previous case and that the outcome of the current case would necessarily follow the last case. He asked the complainant if he wished to withdraw the complaint under the circumstances or, if not, he invited the complainant to provide any new or additional material in support of his complaint which had not been considered for the previous case.
12. The complainant replied the same day. He declined to withdraw his complaint, repeated his previous assertion that he was not vexatious but did not provide any additional material to support his position, beyond that which had already been considered for the previous case.

Analysis

Substantive Procedural Matters

Section 14

13. 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:
 - whether compliance would create a significant burden in terms of expense **and** distraction
 - whether the request is designed to cause disruption or annoyance
 - whether 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
 - whether the request has any serious purpose or value
14. These factors have been put to both parties. Their arguments and evidence will be examined under the headings below.

Will compliance create a significant burden in terms of expense and distraction?

15. The public authority has drawn the Commissioner's attention to 28 FOI requests which have been submitted by the complainant via the 'WhatDoTheyKnow.com' (WDTK) website². Of these, 22 were submitted to WLDC and, of the six which were submitted to other public authorities, all were connected to a dispute which the complainant was engaged in with ACIS, a housing association, and WLDC. The Commissioner has viewed the 22 requests submitted to WLDC and 19 of these are directly related to the matters he has described in relation to his dispute with ACIS, his allegations of complicity with WLDC, and his criticism of WLDC's actions in dealing with him.
16. The public authority has explained that it had introduced a 'single point of contact' (a named WLDC staff member who was designated as the sole contact point for the complainant, in order to contain or manage his communications with it) for dealing with the complainant as a result of what it describes as:

"numerous repeated requests to West Lindsey asking for answers about action that ACIS were taking. He refused to accept that the Council could not answer his questions [...]"
17. The Commissioner observes that several of the complainant's requests to WLDC, visible on the WDTK website, relate to its 'single point of contact' policy and procedures.
18. The council explains that, from May 2008 to March 2009, the complainant submitted an average of one complaint a month to it (understood to be about the council's antisocial behaviour (ASB) team) and that he pursued all these complaints through all 3 stages of the council's complaints procedure. In addition, the complainant continued to email a variety of staff and councillors complaining about the issues which he had made formal complaints about, and made allegations about staff. This led to its decision to impose a 'single point of contact' for dealing with the complainant.
19. The complainant continued to submit complaints, a total of 24 further complaints during 2009-2010, an average of 2 per month. All these complaints were pursued through all three stages of the council's complaints procedure. The complainant also continued to email his nominated point of contact, sometimes as frequently as five times a

² See http://www.whatdotheyknow.com/user/james_murray

day. Some of these emails were described as being of a 'vindictive' nature.

20. The Commissioner has been provided with examples of the complainant's emails and agrees that several of the examples he has seen contain language which can be considered intemperate or confrontational. He makes strong allegations of malpractice or illegality and criticises named individuals. While this may be considered vindictive, to the extent that they may be thought of as intending to cause trouble for those parties, the Commissioner does not consider the public authority's characterisation of the emails as 'vindictive' to have been adequately argued, though he accepts that the emails would be likely to harass or distress the recipients or any parties referred to in the terms used by the complainant.
21. The Information Tribunal in the case of *Coggins v IC* (EA/2007/0130)³ is considered relevant to the circumstances of this complaint. At paragraph 14 the Tribunal explains:

"Since contacting the Council on this matter in March 2005 and up until the Council's refusal of the FOIA request, the Council reports to have received some 73 letters and 17 postcards on this matter. During that period the Council received some 20 FOIA requests. It is possible that since the Appellant could not pursue his requests for information from the independent care provider (that being a private sector body and not subject to FOIA) this intensified the focus upon the Council."

At paragraph 28 it concludes:

"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 Tribunal was of the view that dealing with this correspondence and his requests would have been a significant distraction from its core functions."

22. The Commissioner observes, from an examination of the correspondence visible on the requests on the WDTK website, that the complainant is in the habit of submitting supplementary requests after receipt of the council's responses, or of submitting new requests on similar or related subjects, following its responses. The Commissioner is

³ Available online at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i119/Coggins.pdf>

guided by the findings of the Information Tribunal in the case of *Betts v IC* (EA/2007/0109)⁴ which 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."

23. It is therefore clear to the Commissioner that dealing with the complainant's correspondence and FOI requests constitutes a burden and is likely to cause distraction in diverting staff resources from other tasks. He concludes that responses to requests are likely to lead to further contact or requests from the complainant. He therefore gives weight to the public authority's argument that compliance with the request will create a significant burden in terms of expense and distraction.

Is the request designed to cause disruption or annoyance?

24. The public authority has suggested that, by pursuing all his various complaints through all three stages of its complaints procedure, the complainant is deliberately causing disruption and annoyance to it and, by extension, his FOI requests are part of a similar pattern of behaviour. The Commissioner has not been provided with a full set of the relevant exchanges between the complainant and WLDC, so he has not examined the complaints and the public authority's responses in detail. He is nevertheless satisfied, from what he has seen, that the complainant's approach to such procedure appears to assume that he will find the responses at each stage unsatisfactory. For example, the complainant comments, in an email of 4 June 2008:

"It is safe to assume that your [Name] will attempt some sort of whitewash. (How can tis person give fair and unbiased consideration to grave complaints against a colleague?) It is therefore certain that I shall be unsatisfied– w hy not just stop messing around and let's get on to Stage 3 so that as I am certain once again not to be satisfied the matter can go where it belongs to the independent ombudsman." [sic]

25. The Commissioner has been provided with copies of correspondence from the Local Government Ombudsman (LGO) to the complainant

⁴ Available online at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i61/betts.pdf>

which indicate that the LGO found no grounds to pursue the matters raised by the complainant with it. The complainant has provided a summary of his complaints to the LGO, but explained that he was unable to provide further evidence of the outcome of any LGO investigations or actions. He has also voiced his general dissatisfaction with the Ombudsman. The Commissioner therefore accepts the council's submissions, which show the LGO's assessment as above.

26. The Commissioner therefore notes that it appears that the numerous and regular complaints sent by the complainant to the council were submitted by him not in any expectation of resolution, but in order that he might exhaust the WLDC complaints procedure and proceed to the Ombudsman with his complaints. The Ombudsman has examined the complaints and declined to take the matters further.
27. The Commissioner is also mindful of the complainant's practice of submitting his complaints at regular intervals. WLDC explains that the complainant submitted his complaints at a rate of one per month in 2008-2009 and an average of two per month from 2009-2010. One such complaint, dated 4 June 2008, was that he had not received a copy of the minutes of a meeting, 8 days after the meeting took place. He called for the resignation of the person responsible *"as spending public money on such blatant incompetence is nothing short of scandalous"* [sic]. The Commissioner is not persuaded that this course of action would be a proportionate response to the particular failings of the council's staff alleged. He therefore satisfied that the public authority has provided adequate evidence, relating to the frequency and content of the complaints, to suggest that those complaints were submitted, at least partially, with the intention of causing disruption and annoyance.
28. The submissions to the LGO relate directly to events leading up to ASB proceedings which were pursued by ACIS against the complainant. These are a source of considerable concern for the complainant who maintains that he is the victim, not the perpetrator, of antisocial behaviour, and that ACIS' actions were as a result of his neighbours colluding against him, responding to his allegations against them. The complaints to the public authority which the Commissioner has seen are on closely related matters. These matters are subsequently aired again in the complainant's series of FOI requests. It is therefore apparent that the FOI requests represent a continuation of the underlying grievance which the complainant holds against ACIS and, by extension, WLDC. For this reason, the Commissioner believes it is reasonable to associate the FOI requests with the preceding series of complaints and, by that association, to conclude that the requests are similarly designed (at least in part) to cause disruption or annoyance. He consequently gives moderate weight to this argument.

Does the request have the effect of harassing the public authority or its staff?

29. The Commissioner also considers that the arguments employed in the two factors above also support the public authority's view that the requests are harassing the public authority or its staff.
30. The Commissioner notes the complainant's practice of adding critical annotations to his requests on the WDTK website, or airing grievances in the course of making requests, requesting internal reviews or other communications visible on the WDTK website. The public nature of these communications, and their accusatory or condemnatory tone, is considered likely to have the effect of harassing the public authority or its staff.
31. Various individuals are referred to by name and, as in the example at paragraph 27 above, the complainant calls for censure or other measures which can, on occasion, appear grossly disproportionate to the offences alleged. The public authority has claimed that the requests are having an adverse effect on its staff. The Commissioner accepts that it is likely that a reasonable person, in a reasonable frame of mind, would be likely to be harassed by the complainant's correspondence and requests, noting especially that the requests commonly make direct reference to named individuals, specific posts or particular teams within the public authority.
32. The Commissioner therefore accepts the public authority's argument that the requests are having the effect of harassing the public authority or its staff and he gives some weight to this argument.

Can the request otherwise fairly be characterised as obsessive or manifestly unreasonable?

33. The Commissioner is reminded that the Information Tribunal in *Coggins*, quoted at paragraph 28 above, stated:

"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"

and that the circumstances described by the Tribunal in that case bear many parallels to the current case, notably:

- the number of FOI requests;
- the amount of correspondence; and
- the haranguing, critical and tendentious tone commonly adopted by the complainant.

It is therefore reasonable to conclude that the request in this case may similarly be considered obsessive.

34. The Commissioner is struck by one particular comment made by the complainant to his nominated point of contact, in an email subsequent to a meeting, at his home, between him and the council's ASB staff about problems he was having with neighbours:

"With reference to your visit to my home yesterday, it was observed that

a) you had invited yourself here as a condition of a visit by your ASB 'adviser' and

b) that notes were being taken thus creating an atmosphere of distrust which reflects badly on your council. I should therefore be obliged if you would have the good grace to provide us with a copy of your notes to effect a comparison with the tape recordings I made of the proceedings in anticipation of such an event."

35. The Commissioner is surprised that the complainant would seek to suggest that note-taking during a meeting creates an atmosphere of distrust which *'reflects badly on the council'* whereas his own tape recording of the same event (whether covert or otherwise) should be considered justifiable. Given that making a record will be helpful if the outcome of the meeting is to be productive, the Commissioner considers the complainant's stated viewpoint manifestly unreasonable.
36. The examples of the complainant's correspondence which the Commissioner has seen contain other, similar, instances, so that the example above cannot be seen as an isolated aberration. This is suggestive of a manifestly unreasonable approach to the public authority being adopted by the complainant.

Does the request have any serious purpose or value?

37. The Information Tribunal in the case of *Coggins* stated, at paragraph 20:

"the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious"

38. The complainant is considerably aggrieved about action taken against him by ACIS, a housing association which is not subject to the Freedom of Information Act. ACIS has terminated contact with the complainant and WLDC argues that, having failed to obtain redress from ACIS, the complainant has turned his attention to the public authority.

39. The complainant asserts that WLDC and ACIS are 'co-agencies' (along with Lincolnshire Police) and this therefore justifies his pursuit of WLDC.
40. Despite repeated requests, he has produced no evidence to show any formal relationship or connection between ACIS and WLDC which would justify the approach he now takes. It is reasonably clear that the WLDC ASB team has co-operated with ACIS on occasion, and that Lincolnshire Police has become involved in certain matters, however this falls some way short of the sort of formal link which would be necessary if WLDC were to be held in some way responsible for the actions of ACIS. There is no outcome to the complainant's requests which would achieve the result he requires, namely redress from ACIS for its alleged mistreatment of him.
41. Furthermore, some of the complainant's requests are for information which would be likely to be held by ACIS, and there is no apparent reason why, even if the requested information exists, WLDC should be expected to hold it, an example being the request of 28 May 2010⁵ which relates directly to the accreditation of ACIS by *"SLCNG and Housemark for 'the way in which it deals with anti social behaviour'"*.
42. This has been put to the complainant, the Commissioner has suggested to him that his requests may be *"aimed at the wrong target"*. The complainant refutes this suggestion, repeating his claim that WLDC and ACIS are connected, but failing to provide any evidence to support it.
43. Some of the complainant's requests, notably those connected with the council's use of a 'single point of contact' process for dealing with the complainant's contact, appear intended to challenge the council's use of this procedure. The complainant has characterised this procedure as *"punishment"* and complains that he has been *"sentenced"* to this procedure which he describes as *"illegal"* and *"reminiscent of the worst excess of state tyranny and totalitarianism"*.
44. The Commissioner is aware that many public authorities adopt a similar procedure in dealing with specific individuals for a variety of reasons, which may include an attempt to manage a large amount of contact and correspondence. While it is legitimate to examine critically any policy of a public authority, and the Act may have a role to play in that, scrutiny of the WLDC single point of contact policy is unlikely, in the circumstances, to amount to a purpose sufficiently serious to invalidate any claim of vexatiousness.

⁵ See <http://www.whatdotheyknow.com/request/accreditation#outgoing-75386>

45. The Commissioner therefore finds that the requests, because they are on the whole designed to obtain redress for the complainant for actions of an entirely different body, cannot achieve the outcome for the complainant which he desires. Furthermore, the specific request under consideration does not have a sufficiently serious purpose to outweigh the combined weight of the arguments in support of the refusal. The Commissioner finds no serious purpose to the requests considered collectively, or to the specific request in this case, which would suggest that the request ought not to be deemed vexatious.

Conclusions

46. While it is not necessary for all five tests to be engaged in order for a request to be refused as vexatious, the Commissioner observes that the first four tests in this case have been found, in varying degrees, to carry some weight in favour of the public authority's decision to refuse the request as vexatious. Cumulatively, that amounts to a significant weight of argument in its favour.
47. Balancing that, and as expressed in the case of *Coggins*, if the complainant can show sufficiently serious purpose for his requests, that may outweigh any combined weight of argument on the public authority's side. Despite being given several opportunities to do so, the complainant has failed to adduce any such evidence and the Commissioner therefore finds no reason why the refusal of the requests as vexatious ought not to be upheld. He therefore finds that the request was correctly refused as vexatious.

The Decision

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

Steps Required

49. The Commissioner requires no steps to be taken.

Right of Appeal

50. 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

51. 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.
52. 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 19th day of September 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
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Legal Annex

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”.

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.”