

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 14 March 2011

**Public Authority:** Lancashire County Council  
**Address:** Chief Executive's Office  
Christchurch Precinct  
County Hall  
Preston  
Lancashire  
PR1 8XJ

### Summary

---

The complainant requested all correspondence and information held by Lancashire County Council (the 'Council') regarding any communications with the Local Government Ombudsman within a specified timeframe. The Council considered that the request was vexatious and relied upon section 17(6) when not issuing a refusal notice. The Commissioner considers that the Council was entitled to rely upon section 17(6) and was not required to issue a refusal notice in response to the request. He therefore requires no further 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. This request involves the same parties as two previous Decision Notices issued by the Commissioner. In case FS50204940 the Commissioner found that the requests were vexatious. This case was subsequently considered by the First-Tier Tribunal (Information Rights)

(the 'Tribunal'), which upheld the Commissioner's Decision Notice. The Tribunal's reference was EA/2009/0080 and its decision can be found at the following link:

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i387/Wise%20v%20IC%20Decision\\_aa.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i387/Wise%20v%20IC%20Decision_aa.pdf). The complainant was then refused permission to make a further appeal to the Upper Tribunal under the reference GIA/1499/2010.

3. In case FS50250070 the Commissioner again upheld the Council's view that the request was vexatious. He also found that the Council was entitled to apply section 17(6) when saying it believed it was not required to issue refusal notices in response to further vexatious requests from the complainant. The complainant has appealed the Commissioner's Decision Notice to the Tribunal, whose decision is pending.
4. The above sequence of requests resulted from an allegation made in 2006 concerning the complainant. A police investigation found no evidence to substantiate this allegation, and the Council's Social Services Department were informed but no further action was taken. Following this, the complainant complained to Lancashire Constabulary about their handling of the matter. This complaint was considered by the Independent Police Complaints Commission (the IPCC), which decided not to pursue the complaint further.
5. The complainant contacted the Council on many occasions, mainly via email, in connection with the allegation. These communications particularly concerned contact between Lancashire Constabulary, the Council's Social Services Department and the IPCC. The complainant initiated the Council's complaints procedure, raising a variety of concerns about the Council's involvement in the matter, including whether the Council had inappropriately communicated false information to Lancashire Constabulary. This alleged communication led to the complainant's requests in the above two cases.
6. The Commissioner notes that the requests in the two cases referred to above and the request in this case were for a similar class of information. The requests relate to the Council's practices and policies for sharing information with external bodies. Each of these requests stems from the complainant's long-standing and ongoing grievance with the Council and other organisations, which is described at paragraphs 4 and 5.

## The Request

---

7. On 22 November 2009 the complainant made the following request for information to the Council:

"I make this request under the Freedom of Information Act 2000. For clarity if the disclosure team considers that some of this data may be of a personal nature please supply it via the subject access procedures of the DPA 1998. I dare say that the nature of some of the correspondence and/or documentation available/created may attract the exemptions as outlined in section 40 of the Act.

Please supply all internal or any other documentation that Lancashire County Council (LCC) has in its possession or created in relation to any contacts, discussions or dialogue with the Local Government Ombudsman (LGO) between 17 February 2009 and the date of my final response letter from [named employee] dated 12 May 2009.

Please include in response to this request all internal correspondence or external correspondence used or produced during the period as outlined above. Please also supply all correspondence or internal information relevant in any way to this period. Please include all internal or external letters, e-mails, faxes, file notes, scribbled notes, requests for information from other public authorities in relation to this period, all internal notes and memos, transcriptions of telephone conversations, records of meetings or discussions generated internally as a result of or due to the contact between LCC and the LGO . Please also include all other internal information that LCC knows about or discovers during their consideration of this request. Please also include all correspondence sent to any other persons during this period or in the aftermath of the contact during this period be it via email, letter, phone transcript or via any other medium. In particular I refer to correspondence to and between the LCC and the LGO at any time during this period."

8. On 23 November 2009 the complainant received an automated acknowledgement of the request from the Council. The Council did not provide a further response to the request.

## The Investigation

---

### Scope of the case

9. On 7 January 2010 the complainant contacted the Commissioner to complain about the Council's failure to respond to his request for information.
10. The Commissioner considered that much of the requested information was likely to contain the complainant's own personal data and therefore first considered the complaint under the Data Protection Act 1998 (the 'DPA'). The Commissioner has provided the complainant with an assessment decision in relation to the Council's compliance with the DPA.
11. The complainant has specifically requested that the Commissioner also considers the complaint under the Act.

### Chronology

12. On 7 December 2010, after a delay due to the volume of complaints at his office, the Commissioner contacted the Council to enquire about its handling of the request.
13. On 5 January 2011 the Council responded to the Commissioner and explained that it did not provide a response to the request under the Act because it considered it to be vexatious. It therefore relied upon section 17(6) when not issuing a refusal notice. In support of its decision not to respond to the request, the Council referred to the Decision Notices previously issued by the Commissioner involving the parties, as described at paragraphs 2 and 3 above.

## Analysis

---

### Procedural Requirements

#### Section 17(6) – when a refusal notice is not required

14. Where a public authority deems a request to be vexatious and relies upon section 14 of the Act to refuse the request, it is normally required to issue a refusal notice stating that fact within twenty working days under section 17(5).

15. However, the Act provides that a public authority is not required to continue issuing refusal notices where a series of requests are vexatious. In such circumstances, it can comply with the Act by instead issuing a section 17(6) notice stating that it will not respond to further requests. There are three requirements for section 17(6) to apply:
  - i. The public authority is relying on a claim that section 14 applies;
  - ii. It has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim; and
  - iii. It would in all the circumstances be unreasonable to expect the authority to serve a further notice under section 17(5) in relation to the current request.
16. The first two elements are clear in this case. The Council has issued a number of refusal notices to the complainant applying section 14(1) to previous requests.
17. Specifically, the Commissioner notes that his Decision Notice in case FS50250070 relates to a request of 12 March 2009 which was refused by the Council on 30 March 2009 because it was vexatious. The refusal notice also gave the complainant notice that the Council believed section 17(6) applied from that point and that it was therefore not required to give notice when refusing any future vexatious requests from the complainant.
18. In light of his earlier decisions on previous similar requests made by the complainant, the Commissioner accepts the Council's treatment of this request as vexatious. The Commissioner has therefore gone on to consider whether, in relation to the request in this case, it would in all the circumstances be unreasonable for the Council to serve a notice under section 17(5).
19. The Commissioner notes that his Decision Notice in case FS50250070 found that the Council was entitled to rely on section 17(6) in relation to future requests from the complainant which relate to similar subject matter. In that case, and also case FS50204940, the complainant's requests were for information about the Council's practices and policies regarding sharing information with external bodies. In this case the request also relates to the Council's communications with external organisations, and the request is framed more specifically to cover particular correspondence with a particular organisation. The Commissioner considers that the request is for similar information to those previously refused as vexatious and, as such, it would be

unreasonable for the Council to be required to issue a further refusal notice in this case.

20. In addition to the above, the Commissioner considers there are further grounds on which it would be unreasonable for the Council to be required to issue a refusal notice in this case. The Commissioner believes it is also appropriate for a public authority to recognise the wider context and history of a request when considering relying upon section 17(6). As detailed at paragraphs 4 and 5, the complainant has a long-standing and ongoing grievance against the Council in relation to an allegation concerning him in 2006. The Commissioner's previous Decision Notices involving the parties explain that the complainant has sought to use requests under the Act as an avenue of challenge against the Council.
21. It is clear from the correspondence relating to this case that the complainant has also submitted a complaint about the Council to the Local Government Ombudsman. The request is for information held by the Council in relation to that complaint. In view of the Commissioner's knowledge of the complainant's grievance against the Council and the findings contained in his previous Decision Notices, the Commissioner considers that the request in this case is an extension of the complainant's overall grievance and a further attempt to use requests under the Act to challenge the Council. Therefore, the Commissioner believes this broader appreciation of the purpose of the request provides further grounds upon which it would be unreasonable for the Council to be required to issue a further refusal notice in this case.
22. In view of the circumstances of the case the Commissioner finds that the Council was entitled to apply section 17(6) when it decided not to respond to the request.

## **The Decision**

---

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

## **Steps Required**

---

24. The Commissioner requires no steps to be taken.

## Other matters

---

25. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Section 50(1) of the Act requires the Commissioner to make a decision in relation to complaints he receives about public authorities' compliance with the Act when dealing with requests for information. However, under section 50(2)(c) the Commissioner has the right to refuse to make a decision if it appears to him that a particular application is frivolous or vexatious.

As outlined in this Decision Notice, the Commissioner has now upheld the Council's decisions to deem three requests of a similar nature vexatious. In this case, he has also upheld the Council's reliance on section 17(6) when deciding not to give the complainant notice of its reasons for refusing the request.

In view of the findings of these Decision Notices, the Commissioner considers that the complainant has sought to use requests for information and subsequent complaints to the Commissioner as a means of pursuing his long-standing grievance against the Council. The Commissioner believes this clearly represents a pattern of vexatious behaviour. In future the Commissioner will consider whether it is appropriate for him to exercise his discretion under section 50(2)(c) to refuse to make a decision in relation to any complaint about a request of a similar nature from the complainant.

## Right of Appeal

---

26. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

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 sent.

**Dated the 14<sup>th</sup> day of March 2010**

**Signed .....**

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



## Legal Annex

### Vexatious 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”

### Refusal of request

#### **Section 17(5) provides that –**

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

#### **Section 17(6) provides that –**

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (a) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (b) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

### Application for decision by Commissioner

#### **Section 50(1) provides that -**

“Any person (in this section referred to as “the complainant”) may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.”

#### **Section 50(2) provides that -**

“On receiving an application under this section, the Commissioner shall make a decision unless it appears to him-

- (c) that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45
- (d) that there has been undue delay in making the application
- (e) that the application is frivolous or vexatious , or
- (f) that the application has been withdrawn or abandoned."