

Freedom of Information Act 2000

Decision notice

Date: 27 June 2013

Public Authority: London Borough of Bexley
Address: Civic Offices
Broadway
Bexleyheath
Kent
DA6 7LB

Decision (including any steps ordered)

1. The complainant requested information under the Freedom of Information Act (the Act) relating to the post of the London Borough of Bexley's Deputy Director for Leisure, Arts and Tourism; and later for the pay scales for two other posts. The London Borough of Bexley refused the latter requests as it considered that it would be unfair to disclose this personal data (section 40 of the Act). During the course of the Commissioner's investigation the London Borough of Bexley altered its response to state it was also refusing the request as it was vexatious (section 14).
2. The Commissioner's decision is that the request can be refused as vexatious and that the London Borough of Bexley has correctly applied section 14. No further action is required.

Request and response

3. On 22 September 2011, the complainant wrote to the London Borough of Bexley and requested information in the following terms:

I note in Bexley we have an official position known as Deputy Director (Leisure, Arts and Tourism) may I seek the following information please

1. *How long has this position/job been in being?*
2. *Who set it in being?*
3. *How many candidates were interviewed for the job?*

4. *What is the salary?*
 5. *It it's a Department & Section how many staff are employed*
 - a. *Full time*
 - b. *Part time*
 6. *Total cost of operating Leisure – Arts and Tourism*
 7. *Tourism? Please explain what this refers to: London Borough of Bexley, Kent, Europe?*
 8. *What benefits does Bexley residents obtain from Tourism as expressed in the Job Title.*
4. The London Borough of Bexley responded on 14 October 2011. It provided answers to all of the complainant's requests.
 5. The complainant wrote to the London Borough of Bexley asking for a review and also added two further requests:
 9. *What is the scale for the Head of Parks and Open Spaces?*
 10. *What is the scale of Parks and Projects Officer?*
 6. The London Borough of London Borough of Bexley responded on 21 November 2011. It refused to provide the information for the new requests as it considered that the information was exempt under section 40 of the Act.

Scope of the case

7. The complainant contacted the Commissioner on 23 November 2011 to complain about the way his request for information had been handled. The Commissioner confirmed to the complainant that his investigation would be concerned with whether the London Borough of Bexley was correct to consider the relevant information for items 9 and 10 of the request as being exempt under section 40.
8. However, during the course of the Commissioner's investigation the London Borough of Bexley altered its approach to state that the request was being refused under section 14 as well as section 40.
9. The Commissioner has accepted this late inclusion and considers the scope of the case to be whether the London Borough of Bexley was correct to refuse items 9 and 10 of the request by relying on sections 14 and 40.

Reasons for decision

Section 14 – Vexatious Requests

10. Section 14 of the Act states that:

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

11. The term “vexatious” is not defined within the Act. However, it has been considered in the recent case of *The Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011)*¹ which concluded that the term could be defined as “manifestly unjustified, inappropriate or improper use of a formal procedure”.

12. The Dransfield case identified four factors that are likely to be present in vexatious requests:

- The burden imposed by the request (on the public and its staff)
- The motive of the requester
- Harassment or distress caused to staff
- The value or serious purpose of the request

13. The Tribunal urged that anyone considering whether a request could be considered vexatious should take a broad “holistic” approach to consider any other factors that are relevant to the request. It also confirmed that a single factor could be appropriate to refuse a request if the weight of evidence for it was sufficient.

14. In its submissions to the Commissioner the London Borough of Bexley applied the factors listed above in order to illustrate why it felt it was correct to refuse the request as vexatious. The Commissioner will address the points raised by the London Borough of Bexley where they are relevant.

Burden imposed by request

15. The London Borough of Bexley argued that the complainant has sent in large number of letters and consider them to be a severe burden on

¹ <http://www.osspsc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

resources. It stated that it estimates that 500 hours of staff time have been spent on dealing with the complainant from 2010 to 2013 and provided a spreadsheet with a record of all recorded correspondence between the two parties. However, when making a decision the Commissioner only considers information from the time at which the request was made. As the Commissioner does not know the date the second request was made he has not considered any correspondence from after the second request was responded to by the London Borough of Bexley, which was on 21 November 2011.

16. The Commissioner notes that several pieces of correspondence relate to the complainant's role as chairman for a local allotment site. Given that he has an official role and an interest in the upkeep of the site it is expected that there would be some level of correspondence between the complainant and the London Borough of Bexley.
17. However, from the start of 2010 until the date of the response to the request the complainant sent in 21 pieces of correspondence and 7 freedom of information requests. Included in the correspondence were 9 complaints about a named individual, who works as a Parks and Projects Officer. Whilst not all of the correspondence is about a single subject or directed to a single member of staff, the Commissioner considers that this is significant enough to have imposed a burden upon the London Borough of Bexley, especially given the work involved in addressing a complaint against a member of its staff.
18. The London Borough of Bexley has argued that due to the volume of complaints it receives it spends a disproportionate amount of time and resources upon matters that are not in the wider public interest. The Commissioner considers that this argument is reasonable and that taken as a whole the complainant's correspondence can be viewed as an unjustified burden. This has added weight to the London Borough of Bexley's suggestion that the request can be viewed as vexatious, although it is not significant enough in itself to allow a refusal of the request.

Harassment or distress to staff

19. To demonstrate that the complainant has caused distress to a member of staff the London Borough of Bexley provided the Commissioner with a collection of some of the letters the complainant has sent. The London Borough of Bexley focussed primarily on one letter, which it stated harassed a Parks and Projects Officer and also contained an attempt at blackmail.
20. When considering whether a request or piece of correspondence is vexatious the Commissioner takes into account the tone used, as well as

the use of abusive, provocative language or personal accusations made towards an individual.

21. The letter in question directly addresses the recipient and states that it considers their new appointment to a role within the London Borough of Bexley "seems inappropriate" given their allegedly poor performance in a similar role, and asks that they reconsider whether they should keep the job. However, it caveats these statements with the "If I'm wrong then pray continue in the role". The Commissioner does not consider the tone and language used to be harassing towards the member of staff, however the intention of the letter is to ask them to leave their job. The Commissioner considers that this can be seen as harassing to a reasonable individual and is not justified by the complainant's concerns over the member of staff's supposed poor performance in a previous role.
22. The Commissioner has also reviewed the accusation that the complainant attempted blackmail within this letter. This is based on the complainant suggesting that it might be better for the addressed individual to leave now and also states that "to date" the letter had only been sent to the recipient. The London Borough of Bexley disputes this, and stated to the Commissioner that a letter had already been sent to the Chief Executive of the Allotment Regeneration Initiative. It is not apparent that the complainant had any malicious intent, nor clear what the threat is. However, the Commissioner does find the inclusion of this statement is concerning and cannot see a justifiable reason for it to be present in the letter. He considers that to a reasonable individual this could be interpreted as an unwarranted threat, which adds further weight to the suggestion that the letter is harassing.
23. The London Borough of Bexley informed the Commissioner that the Parks and Projects Officer concerned suffered health issues due to the actions of the complainant. It also provided the Commissioner with a response to the letter sent by its legal team which made clear that it similar behaviour would lead the London Borough of Bexley to consider taking proceedings in the civil courts, or possibly referring the matter to the police if it was considered harassing.
24. As a result of the complainant's letter, he has been banned from meetings where the aforementioned Park and Project Officer is in attendance. The London Borough of Bexley stated that this was because it has a duty to protect the well-being of its members of staff, which was part of its justification for refusing the request as vexatious. The Commissioner considers that these actions taken by the London Borough of Bexley in response to the complainant's letter show that it has serious concerns about the complainant's actions, as well as displaying a commitment to try and protect its staff from further distress.

25. The Commissioner's view is that the content of some of the complainant's previous correspondence has been unreasonable and caused distress to a member of the London Borough of Bexley's staff. As the request is clearly linked to this previous correspondence the Commissioner considers that these matters add significant weight to the view that the complainant's request can be refused as vexatious.

Value or serious purpose of request

26. In its submissions to the Commissioner the London Borough of Bexley argued that the request lacked value because there was no public interest in the requested information being released. It also pointed out that it complies with the code of recommended practice for local authorities on transparency of data, which recommends proactively disclosing salary details for any member of staff who earns in excess of £58,200.
27. The Commissioner notes the steps already taken by the London Borough of Bexley. However, he disagrees that there is no public interest in disclosing the requested information. It relates to spending of public money, which carries with it an inherent public interest and certainly cannot be said to contain no value.
28. However, the Commissioner considers that the context in which the request was made to be significant. The request is clearly linked to the on-going dispute between the complainant and the Parks and Projects Officer, and as such is viewed as being motivated by the complainant's personal interests rather than a public interest in accountability. The Commissioner considers that this diminishes the value of the request and adds further weight to the decision to refuse it as vexatious.

Summary

29. After considering the arguments put forward by the London Borough of Bexley and the context in which the request was made, the Commissioner's decision is that there is sufficient evidence to justify refusing the request as vexatious. The request is part of a personal grievance the complainant has against a member of staff within the London Borough of Bexley which has caused a significant burden upon its resources. As this grievance has caused said member of staff distress it is reasonable for the London Borough of Bexley to take steps to limit the amount of resources it spends on the complainant's requests. The Commissioner considers it reasonable that the London Borough of Bexley wants to draw a line under these events and his decision is that, on balance, it is correct to refuse the complainant's request as vexatious.

30. As the Commissioner's decision is that the request can be refused as vexatious he has not gone on to consider whether the London Borough of Bexley correctly refused the request under section 40.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alexander Ganotis
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