

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 March 2014

**Public Authority:** Biggleswade Town Council  
**Address:** The Old Court House  
4 Saffron Road  
Biggleswade  
Bedfordshire  
SG18 8DL

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to play area inspection reports. Biggleswade Town Council (the "council") provided some information but withheld other information, citing clauses of the Environmental Impact Regulations. During the Commissioner's investigation the council revised its position, stating that it considered that the request was vexatious.
2. The Commissioner's decision is that Biggleswade Town Council has wrongly declared the request to be vexatious under section 14(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response under the FOIA without relying on section 14(1) of the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 18 June 2013, the complainant wrote to Biggleswade Town Council (the "council") and requested information in the following terms:

*"The British and European safety standard BS EN1176 and the Health and Safety Executive strongly recommend that all play areas have at least one inspection every year from an independent qualified body.*

*Can you provide me with a copy of the last independent inspection carried out at Kitelands please."*

6. The council responded on 16 July 2013. It stated that it operated an inspection regime and that it had competent individuals that undertake routine, operational inspections for all council play facilities. It stated that it would not expect to provide copies of actual inspection reports under the FOIA but that it would be happy to meet with the complainant or answer questions relating to this matter.

7. The complainant wrote to the council on 27 July 2013 and submitted the following supplementary request:

*"Firstly can you tell me what makes these individuals competent to carry out these inspections and secondly can you now provide me with copies of these inspections for Kitelands Recreation Ground that were carried out in the last 12 months."*

8. On 29 August 2013 the council responded to the complainant, stating that the requested inspection reports were exempt in line with Part ii 19 Environmental Information.

9. Following an internal review the council wrote to the complainant on 26 September 2013. It stated that the council was satisfied that staff members were competent to undertake inspections of play equipment and, in relation to the withheld inspection reports, referred the complainant to the "Environmental Impact Regulations Section 39, specifically clauses 2.2, 2.3 and 3.1"

## **Scope of the case**

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10. On 26 September 2013 the complainant contacted the Commissioner to complain about the way their request for information had been handled.

11. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly withheld the requested information.

12. The Commissioner contacted the council and advised that, on the available evidence, it appeared the grounds it had provided for refusing the request were invalid. During the Commissioner's investigation the

council revised its position and confirmed that it was relying on section 14(1) of the FOIA to refuse the request.

## Reasons for decision

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### Section 14 – Vexatious requests

13. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
14. The term vexatious is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*<sup>1</sup> the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure.' The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
15. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
16. The Commissioner's guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request. Where relevant,

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<sup>1</sup> UKUT 440 (AAC) (28 January 2013).

<sup>2</sup>

[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

public authorities will need to take into account wider factors such as the background and history of the request.

*Wider context*

17. The council has argued that the complainant maintains a blog which contains numerous negative entries which are routinely critical of the council.
18. The Commissioner considers that, as part of the democratic process public authorities should expect to be subjected to a degree of scrutiny and criticism. However, he accepts that, where criticism is either disproportionate or the tone offensive, this can indicate a desire to cause disruption which is carried over into requests for information.
19. In this instance, having viewed the blog in question, the Commissioner has not found any examples of postings relating to the council which might suggest a disposition towards causing disruption, irritation or distress. As the council has not directed him to any specific postings which provide evidence of this intent, the Commissioner does not consider that the complainant's blog can be considered as relevant in determining whether the request is vexatious.
20. The council has also stated that the complainant has a long history of submitting requests to the council and it considers it is arguable that this demonstrates intent to cause annoyance and disruption.
21. In submitting this argument the council has not provided the Commissioner with any examples of previous requests made by the complainant, nor has it confirmed the number or frequency of the requests.
22. Whilst he accepts that in some cases the submission of frequent requests to an authority can indicate an intention to cause irritation or disruption, the Commissioner is mindful that this in itself is not sufficient reason to label a request vexatious. A series of requests might equally be evidence of a benign desire to understand and engage with a public authority and could also indicate tenacity on the part of a requester in the face of an authority's evasive responses to requests.
23. Whilst the Commissioner has no evidence that the latter is the case, he does not consider that the council has shown that the context within which the request was made demonstrates an intention to cause disruption, irritation or distress. He has, therefore, considered whether the request in isolation would have these effects and whether the request is burdensome and whether it has serious purpose and value.

*Burden and serious purpose or value*

24. On the face of it, the Commissioner considers that the request for inspection reports, confined to a 12 month period, does not appear to be overly burdensome and it seems unlikely that complying with this would interfere with the council's core functions. The council has not provided any arguments which explain why, in practical terms, dealing with the request would be onerous.
25. The Commissioner notes that the council offered to meet with the complainant to discuss the matters referred to in the request. The council has suggested the complainant's refusal of the council's offer is a relevant factor, however, it has not explained why. In terms of any burden on the council's resources, it appears to the Commissioner that dealing with the request in the conventional manner would take up less of the council's time and resources than arranging to meet with the complainant. In any event, although the Commissioner accepts that the council was attempting to be helpful in extending this offer, there is no provision within the FOIA for requests to be handled in this manner.
26. Although the Commissioner does not consider that the request would in itself be burdensome to the council he recognises that, where a request does not have any purpose or value, even the slightest impact on an authority's resources can be unjustifiable. In this case, the council has argued that its response to the request confirmed that an inspection regime was in place for the site referred to in the request. It has suggested that this confirmation should have been adequate for the complainant to be reassured that the council had taken adequate safety measures in relation to the play area.
27. The council's argument (as the Commissioner understands it is that) is that the request focus, which identifies concerns about play area safety, has been met by the council's confirmation that inspections have been conducted. The council appears to suggest that the complainant's refusal to accept this and their persistence in their request for copies of the inspection reports provide evidence that the request is vexatious.
28. The Commissioner recognises that there are certain scenarios in which the argument presented by the council might be relevant. For example a request might form part of a sequence of requests which, when considered together, can be evidence of entrenched discontent which no response can satisfy, manifesting itself in escalating supplementary requests. In such cases the burden of responding to a further request in a sequence is not balanced by a corresponding purpose or value. In other words, whatever the purpose or value to the original request in a sequence, the effect of the latest request is to cause disruption, irritation or distress.

29. Whilst accepting that the above scenario can and does happen, the Commissioner considers it is for an authority to demonstrate that in a given case, it is applicable. In this instance, the council has not explained why the complainant's request falls into this category.
30. The Commissioner notes that the council has not disputed the serious purpose or value of the request. In relation to its argument that the complainant has been given assurances about play area safety, the FOIA provides a right of access to recorded information and it is not for authorities to judge what a requester needs and should be satisfied with, particularly in cases such as this where an objective reading of a request clearly identifies what is being asked for.
31. As already noted, the council has also failed to provide evidence that the request forms part of a sequence of requests which, when considered together, undermine the purpose and value of the request.
32. For the reasons given above the Commissioner concludes that, in these particular circumstances, the request is not vexatious.

## Right of appeal

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33. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**