

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 June 2015

Public Authority: Brimscombe and Thrupp Parish Council

Address: 11 Broadstone Close
Barnwood
Gloucester
GL4 3TX

Decision (including any steps ordered)

1. The complainant has requested information relating to allotments within Brimscombe and Thrupp Parish. The Council refused to provide the complainant with the requested information on the grounds that her request is vexatious.
2. The Commissioner has considered the representations made to him by Brimscombe and Thrupp Parish Council. He has decided that the Council has incorrectly applied section 14(1) of the FOIA to the complainant's request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council should disclose to the complainant any recorded information it holds which is relevant to her request or it should issue a new refusal notice which is compliant with the provisions of section 17 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

5. On 31 August 2014, the complainant wrote to Brimscombe and Thrupp Parish Council ("the Council") to ask for information in the following terms:
 1. "How much land does the parish have that is used for allotments?
 2. How much, if any, is classified as statutory allotments?
 3. How many individual allotments are there?
 4. How many people are currently renting allotments?
 5. How many allotments are currently unlet?
 6. How many people are on the waiting list?
 7. What is the annual rental charge per square metre or per allotment (in which case please state allotment size)?
 8. Do all plot holders have easy access to water?
 9. Please forward a copy of the allotment rules.
 10. Please forward a copy of any annual allotments report – there should be two of these by now according to item 11 of the Parish Council minutes from 8 January 2013."
6. The Council responded to the complainant's request on 20 October 2014. The Council informed the complainant that her request had been considered as being vexatious. The Council's decision appeared to be founded on its belief that the complainant had misrepresented herself as being a representative of the National Society of Allotment and Leisure Gardeners Ltd ("NSALG") and that she was conducting a review of allotment provision on its behalf. Consequently the Council advised the complainant to refer the matter to [a named person] of the NSALG, and stated that; if [a named person] was to confirm to the Council that this is a legitimate and non-vexatious request, the information will then be released.
7. On 17 November, the complainant wrote to the Council again. In her email the complainant advised the Council that her membership of NSALG was irrelevant and that she operates under no-one's jurisdiction. The complainant informed the Council that she has the right to make her information request and asserted that the information should be freely available to the public. The complainant stated that she was appealing the Councils decision of 20 October.
8. On 8 December, the complainant was informed that her request had been considered by the Council at its meeting of 2 December, and that it was unanimously agreed to refuse her appeal on the grounds that her request is vexatious.

Scope of the case

9. The complainant contacted the Commissioner on 8 December 2014 to complain about the way her request for information had been handled.
10. The Commissioner has investigated whether the Council is entitled to rely on section 14(1) of the FOIA as its grounds for refusing to comply with the complainant's request. This notice sets out the Commissioner's decision.

Reasons for decision

11. The Council has confirmed that it defends its position to refuse to release to the complainant the information she asked for in her request of 31 August 2014.

Section 14(1) – Vexatious requests

12. 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.
13. The term 'vexatious' is not defined in the legislation. In *Information Commissioner v Devon County Council & Dransfield*¹ 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" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
14. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment or distress of and to staff.

¹ UKUT 440 (AAC) (28 January 2013)

15. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
16. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request. He considers there is in effect a balancing exercise to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.
17. 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 requests². 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.

The Council's application of section 14(1)

18. There are two factors underpinning the Council's application of section 14(1) of the FOIA: The first relates to the complainant's position within the National Society of Allotment and Leisure Gardeners Limited ("NSALG") – known as the National Allotment Society, and the second relates to the complainant's use of a website called "TrollhunterX"

The complainant's position within NASLG

19. In most cases, where a public authority receives a request for recorded information under the FOIA, the identity of the applicant and the purpose or motive lying behind the request should not be considered by the public authority. However where a public authority considers the possible application of section 14(1), both of these factors may be considered. Such consideration may be relevant and necessary in order to gauge the overall affect the request might have on the public authority.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

20. In this case, in making her request for information, the complainant informed the Council that she is, 'the new Regional Rep for the Southern Region of the NSALG' and that she was 'looking at allotment provision in Gloucestershire'.
21. On receipt of the complainant's request, the Council contacted NSALG and spoke to its Legal and Operations Manager about this matter. The Manager confirmed that NSALG had not sanctioned any review of allotment provision. In consequence of this, the Council informed the complainant that, "...as you are the Representative for the NSALG and are allegedly conducting a review of allotment provision on their behalf which has not been sanctioned by the Association the Council considers your request at this current time as being vexatious".
22. The Council informed the complainant that should the NSALG Manager confirm that the request is legitimate and non-vexatious the information would be released.
23. The position of the Council, at this point, was based solely on the complainant's position within NSALG and, by its own admission; the information sought by the complainant would be released if NSALG was to provide it with appropriate authorisation.
24. The Council provided the Commissioner with an email it had received from NSALG. The email appears to have been sent in response to a complaint the Council made about the complainant's conduct in her capacity as a Regional Representative. The email makes clear that NSALG had asked the complainant to 'withdraw from this issue [her request and complaint] totally'.
25. Notwithstanding NSALG's email, the complainant's response to the Council makes clear that she rejects the Council's characterisation of her request as being vexatious. The complainant asserted that she does not operate under any one's jurisdiction and she denied the Council's claim that she was carrying out an NSALG survey.
26. The Commissioner has considered the wording used by the complainant in making her request. He can see how the Council has inferred that the complainant is seeking the requested information on behalf of NSALG. However, an objective reading of the request does not provide for this inference to be made. The Commissioner reads the request as being made by the complainant for her own purpose, albeit related to her position within NSALG.

The complainant's comments posted on the TrollhunterX website

27. The Council has drawn the Commissioner's attention to comments posted by the complainant on the TrollhunterX website. The Council

provided two links to information on this website and print-outs of information posted by the complainant.

28. The Council asserts that the complainant's posts were placed into the public domain and that they encourage others to send in freedom of information requests to the Council. The posts also refer to the Council and to one of its employees in a very disparaging manner.
29. The Commissioner has reviewed the information provided by the Council. He finds that the complainant's posts do relate, at least in part, to her position within NSALG and to her request for information made to the Council.
30. The complainant's posts relating to her position in NSALG began on 2 July 2014, and her posts relating to her request for information appear from 20 November 2014 onwards. All of the posts constitute a two-person exchange of views between the complainant and the site's administrator and the underlying issue to which the posts relate is the status of the Council's allotment site – whether it is statutory allotments.
31. The complainant makes clear reference to trying to get information out of the Council and she does encourage people to make freedom of information requests for themselves about the allotments. The complainant also refers to the Parish Clerk by name.

The Commissioner's conclusions

32. The Commissioner is bound to follow his own guidance: On its face, the complainant's request is straightforward and would not present the Council with a significant burden to provide the complainant with recorded information relevant to her request. The Council appears to acknowledge this when it confirmed that the information would be provided should NSALG sanction the request. The Commissioner would go further and state that the information sought by the complainant is of sufficient interest to the public to merit its potential disclosure.
33. Here, it was the complainant's disclosure of her position within NSALG that prompted the Council's initial view that the request is vexatious. The Commissioner must reject this: It is now well established that the identity of a requester and the purpose of his/her request is not generally relevant when considering whether to comply with that request unless the holistic circumstances of the case are taken into account. In this case there are no obvious circumstances which would suggest this approach is warranted.
34. Holding an office within an organisation does not impart with it enhanced rights to access information held by public authorities;

likewise not holding an office does not diminish a person's right to access that information.

35. There is no evidence to suggest that the complainant was using her position within NSALG to access information which the Council admits it would have provided had her request been sanctioned by that organisation.
36. It is true that the complainant has used social media to discuss her request with others. In the Commissioner's opinion the complainant's comments on the TrollhunterX website fall a long way short of harassing the Council. He considers that the complainant's posts are nothing more than the venting of frustration at not being able to access information from a public authority which she believes would assist her in determining the legal status of the Council's allotment site.
37. The Commissioner does not find the complainant's comments to be rude or intemperate and in his view they were certainly not made to cause annoyance to the level which the Council would have us believe.
38. Additionally the Commissioner is obliged to point out that all public authorities are open to criticism of one type or another, whether it is justified or not. Such criticism is a characteristic of a free open and democratic society.
39. It is apparent that the Council had formed its opinion about the vexatious nature of the complainant's request as early as 20 October 2014 and that this was made solely on the disclosure made by the complainant about her status within NSALG.
40. The complainant made no mention of the Council in her posts on the TrollhunterX website until after 20 November 2014. The posts were not considered by the Council until after it had decided the complainant's request was vexatious. Even if it had been able to consider the posts, the Commissioner would not agree with the Council that they describe a vexatious intent or a call to the masses to make requests under the FOIA in a concerted campaign.
41. The Commissioner's decision is that the complainant's request is not vexatious and that the Council has incorrectly applied section 14(1) to it.

Right of appeal

42. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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