Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **16 September 2015**

Public Authority: **Wealden District Council**
Address: **Vicarage Lane**
Hailsham
East Sussex
BN27 2AX

Decision (including any steps ordered)

1. The complainant has requested information on Wealden District Council's housing register particularly in relation to sheltered housing. The Council refused this request as vexatious under section 14(1) of the FOIA.

2. The Commissioner's decision is that, taking into account the context and nature of the request it demonstrates the necessary characteristics of a vexatious request and he accepts that the Council has correctly refused it under section 14(1). He requires no steps to be taken.

Request and response

3. On 31 January 2015, the complainant wrote to Wealden District Council ("the Council") and requested information in the following terms:

    1) "Please provide documentation showing many people are currently registered on the WDC housing register excluding sheltered housing.

    2) Please provide a breakdown of the housing register by age and parish connection.

    3) Please provide documentation showing how many people are currently registered on the WDC housing register for sheltered housing.

4) Please provide a breakdown of the housing register by age and parish connection for sheltered housing.

5) Please provide documentation showing how many people are currently registered with the WDC for leasehold sheltered housing.

6) Please provide a breakdown for leasehold sheltered housing by parish connection.

7) Please provide documentation to show the current number of void rented sheltered housing properties there are at the date of this letter.

8) Please provide documentation to show the current number of void leasehold sheltered housing properties there are at the date of this letter.

9) Please provide documentation to show the number of applicants for leasehold sheltered housing at Newnham Way including if any application was made for a single person or a couple.

10) Please provide documentation to show the current number of rented sheltered housing properties that have been converted from a leasehold property since 31 January 2013. To the date of this letter.

11) Please provide any documentation that the WDC hold on why such leasehold properties as described a Q10 were made available to for the WDC rented sheltered housing portfolio.

12) Please provide any documentation the WDC holds to show the current value of the leasehold sheltered housing at Newnham Way and what date the valuation was made.

13) Please provide any documentation the WDC holds to show the current value of the leasehold sheltered housing at Hillside Drive and what date the valuation was made."

4. The Council responded on 19 February 2015 and refused the request under section 14(1) of the FOIA.

5. Following an internal review the Council wrote to the complainant on 23 February 2015. It stated that it upheld its decision to refuse this request as vexatious.

Scope of the case

6. The complainant contacted the Commissioner on 13 March 2015 to complain about the way his request for information had been handled.

7. The Commissioner considers the scope of his investigation to be to determine if the Council has correctly applied the section 14(1) exemption to refuse the request as vexatious.

Reasons for decision

8. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

9. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of *Information Commissioner v Devon CC & Dransfield*[1]. The Tribunal commented that vexatious could be defined as the *"manifestly unjustified, inappropriate or improper use of a formal procedure."* The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

10. 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 authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) the harassment or distress of and to staff. 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)

11. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

[1] 2012 UKUT 440 AAC / GIA 3037 2011

12. 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[2].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. However, these indicators include: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; and deliberation intention to cause annoyance.

13. The Council has identified several indicators as being present within the request. It has provided arguments that the request demonstrates unreasonable persistence, that it is creating a burden on the authority and that it contains an element of intransigence.

14. When considering whether a request demonstrates unreasonable persistence or obsessiveness the Commissioner considers the test to apply is one of reasonableness i.e. would a reasonable person describe the request as unreasonably persistent or obsessive? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.

15. In this case the Council has provided some background to the requests to provide some context to its decision. The Council has explained that it has engaged in correspondence with the complainant, who is in accommodation provided by the Council, since August 2010. This correspondence has been on the subject of service charges and costs charged on his property. Due to the large levels of correspondence with the Council and the burden this was placing on staff the Council made the decision to direct all of the complainant's correspondence to a single point of contact. However, due to the continuing large levels of enquiries and correspondence the Council made the decision in 2011 to apply its own vexatious policy to the complainant.

16. The Council has explained that it reviews this status every six months and did remove this status in December 2011 but had no option but to re-impose it in April 2013. The most recent review was in June 2015 and the vexatious status was maintained.

17. Whilst the Commissioner does not consider the Council's own vexatious policy and its decision to apply a vexatious status to the complainant

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

should be a factor in this decision he does recognise this is an important point to make as it demonstrates the high volume of correspondence the Council has received and the prolonged period of time this has been going on for.

18. As a further demonstrator of this the Council has also highlighted a subject access request made under the Data Protection Act 1998 (DPA) on 2 February 2015 by the complainant for all data held by the Council on him. The Commissioner has had sight of the information provided to the complainant in response to his subject access request and acknowledges the volume of information this amounts to is significant and only covers the period from 1 January 2013 to 5 February 2015.

19. The Commissioner notes that a complaint about an earlier decision by the Council to refuse a request as vexatious was referred to him for consideration. In September 2014 the Commissioner issued a decision notice[3] in which he concluded that the request did not have the necessary characteristics of a vexatious request. In making a decision in this case the Commissioner considers it would be remiss not to refer to this earlier decision however he stresses that the decision in this case must be made after consideration of the circumstances at the time of this request and the nature of this request. The previous decision, while relevant to the extent that it demonstrates the long standing issues, will not have any significant bearing on the decision in this case.

20. The Council have also referred to this decision notice in their submissions. Following the Commissioner's decision that section 14 had been incorrectly applied by the Council to an earlier request by this complainant, the Council has stated that in the period after this (from December 2014 to February 2015) it received 15 requests under the FOIA. The Council answered responded to each of these requests but has stated that even when information has been provided the complainant has repeatedly chosen to ask for reviews of decisions. This led the Council to consider that the request which is the subject of this decision notice and three other requests were vexatious and should be refused under section 14(1) of the FOIA.

21. The Commissioner acknowledges that 15 requests in a three month period can be viewed as a significant number of requests, particularly when made to a relatively small public authority. Many of these requests contain multiple parts, some that the Commissioner has viewed have contained 32 parts, and the Commissioner has to consider this alongside

[3] https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1036824/fs_50539997.pdf

the other correspondence that the complainant has also submitted to the Council which at times has been of a high volume.

22. The Commissioner accepts that the volume of correspondence, including information requests is persistent. It is clear that responding to one request has not resolved the matter and has led to further requests for information on information which appears to be varied but all link back to service charges and issues around shared accommodation and sheltered accommodation provided by the Council.

23. From the information supplied by the Council the Commissioner notes that much of the correspondence with the complainant has been on service charge and housing issues, particularly sheltered accommodation issues. The Council has explained that due to the ongoing and frequent nature of the correspondence it has with the complainant it has put in place a strict procedure for dealing with his correspondence which the complainant is aware of.

24. This has involved the Council placing a restriction on the amount of staff time it devotes to correspondence from the complainant and at the time of the request this was limited to one hour per month but in June 2015 was reduced to 30 minutes following a further review of the complainant's vexatious status.

25. In addition to this the Council has explained that it has been advising its sheltered shared ownership leaseholders of the major works likely to place over the next ten years. It has held a series of meetings at the various schemes from January to March 2014 including one at the complainant's accommodation. These meetings were to inform residents what works were necessary and the potential costs. The complainant asked a number of requests at this meeting, many related to his requests under the FOIA which were answered by the Council. The complainant then attended another meeting involving local councillors in May 2014 and asked some further questions which were answered verbally.

26. The Council has also stated that the complainant has made applications to various other bodies about service charge issues. These applications have been made to the Local Government Ombudsman on the complainant's numerous queries over service charge issues, and two applications to the Residential Property First Tier Tribunal[4] in relation to the complainant's ongoing dispute over service charges.

[4] http://www.residential-property.judiciary.gov.uk/Files/2015/May/CHI_21UH_LSC_2014_54_18_May_2015_14_10_06.pdf

27. The Commissioner notes from the decision of the First Tier Tribunal that it found that *"the proceedings have become grossly disproportionate to the sums involved."* The First Tier Tribunal went on to say that it *"would urge the Applicant to take a more pragmatic approach in future rather than launch wide ranging challenges to the service charges."* The Commissioner notes that this decision of the Tribunal is dated 18 May 2015 (after the date of the request) but he does consider to still be relevant as the application to the Tribunal was made prior to the date of this information request.

28. The main point the Commissioner takes from this is that the complainant has continued to interact with the Council on the issues of his dispute over service charges and sheltered accommodation despite the matter being referred to other bodies to look into different aspects of the service charges. From the correspondence the Commissioner has viewed the complainant has made wide ranging enquiries on various subjects which are not all directly linked to service charge issues but are on the broader topic of the sheltered accommodation provided by the Council.

29. In this case the request is for information on the housing register with a particular focus on sheltered housing which does not appear to be directly linked to service charges issues. However, the Commissioner considers this to be part of the complainant's ongoing campaign to demonstrate the issues in the Council's provision of shared accommodation which has at times focused on the service charges. The Commissioner notes that despite issues being referred to other bodies the complainant has continued to interact with the Council both via the FOIA and in general correspondence. For this reason the Commissioner is minded to accept that the request is at the very least persistent but it could be argued it also has the characteristics of an obsessive request.

30. It is clear that the issues between the complainant and the Council have been ongoing for some time and do not appear to be at a stage where they will be resolved soon. The involvement of the Local Government Ombudsman and the Residential Property First Tier Tribunal has not led to a resolution and it appears that the FOIA is being used to continue to pursue the complainant's issues with the Council.

31. The Commissioner acknowledges that the persistent requests are being made despite the fact that the Council has made every effort to respond to the requests and correspondence and regardless of previous requests that have been sent. The Commissioner considers that the request could be seen as an attempt to prolong issues which have already been addressed and independently looked at. The Commissioner therefore accepts that the continued requests to the Council, taking into account the context and background to the request, have reached the stage

where they are persistent and could be reasonably described as obsessive.

32. The Council has argued that responding to the complainant's requests is having a significant and detrimental impact on its normal business and due to the nature and volume of requests it cannot continue to divert resources to the complainant's requests.

33. In support of this position the Council has argued that the 15 requests made between December 2015 and February 2015 all related to issues about sheltered accommodation on which the complainant had corresponded over several years, receiving responses to his questions. The Council argues that the volume and pattern of the requests and the high level of detail requested represents an element of intransigence.

34. The Council accepts that for the majority of the requests, responding individually would not be particularly burdensome but it does not consider that responding to the requests will result in any resolution to the issue. The intransigence demonstrated by the requests and the fact that requests on all manner of issues around sheltered ownership have continued despite referrals to other bodies and the Council answering all questions put to it suggests that responding to further requests on this issue will not help in reaching a conclusion and will only result in further requests.

35. The Council has stated the complainant persistently bombards it with correspondence and never appears satisfied with the answers provided and believes the Council is deliberately withholding information and are obstructive in dealing with his enquiries. The Council strongly disagrees with this and instead considers the requests show an obsessive and wilful approach with no apparent purpose other than to attempt to disrupt the work of the Council. The Council has also stated that the decision of the Commissioner in the previous case has increased the number of FOIA requests it is receiving as the complainant is now using the FOIA to make frivolous, repeated requests and bypass the Council's own vexatious complainant's policy that has been applied to the complainant in his correspondence with the Council.

36. The Commissioner recognises that the volume, frequency and overlapping nature of the requests and correspondence is likely to be time-consuming and frustrating for all staff involved and accepts that this has resulted in the Council restricting the amount of time it spends each month on the complainant's correspondence. As a result the Council has demonstrated that the complainant has increased the frequency of his use of the FOIA to continue to engage with the Council on a wide-range of issues related to sheltered accommodation and service charges.

37. The Commissioner considers the frequent and similar nature of the requests are seeking to continue to prolong debates with the Council on a subject which the complainant feels strongly about and which has been investigated externally. The Commissioner is in little doubt that the length and frequency of the requests is placing a burden on the Council and its staff and that the Council has made every effort to engage with the complainant and answer his correspondence and requests up to this point.

38. When assessing whether a request or the impact of dealing with a request is justified and proportionate the Commissioner considers it helpful to assess the purpose and value of the request.

39. The Council has already shown that there have been a number of requests from the complainant on similar related subject as well as other correspondence. It is the Commissioner's view that the complainant did have a serious purpose to his requests when initially asking for information on the breakdown of service charges but his requests have expanded to asking for information on issues beyond the service charges for his accommodation and the complainant's requests now cover a wide range of issues relating to sheltered accommodation which at times could be considered frivolous and intended to create a burden for the public authority.

40. The Commissioner considers that the serious purpose to the complainant's requests has lessened over time as requests have been responded to, information provided and further requests sent. The Council have shown their willingness to engage with residents, organising meetings and responding to enquiries and questions on various issues. In addition to this independent bodies when reviewing aspects of the complainant's concerns have found that the complainant's approach has been disproportionate to the issues.

41. The Commissioner does acknowledge there is persistence to the requests and that this may be considered when determining if responding to the request would constitute a disproportionate effort but this must also be considered alongside any value to the requests, specifically any wider public interest there may be in the information.

42. In this case, the Commissioner has not received arguments from the complainant or the public authority as to any potential wider public interest in the information. He can only draw his conclusions based on the fact that any serious purpose or value to the requests has diminished over time as the correspondence and requests have continued and he adds significant weight to the argument that the requests are persistent and demonstrate intransigence which the Council has, in his view, comprehensively argued.

43. The Commissioner considers the Council has demonstrated that the requests and correspondence have reached a point where it is no longer reasonable for the Council to expend further resources on dealing with the requests.

Conclusion

44. The Commissioner has considered both the public authority's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the Council was correct to find the request vexatious. He is satisfied that the request is obsessive and persistent and there is a lack of serious purpose and, as such, the effort in dealing with the request would be disproportionate. The Commissioner therefore finds that section 14(1) has been applied correctly in this case.

Right of appeal

45. 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

46. 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.

47. 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 .....

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