

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

### **Decision notice**

**Date:** 29 October 2015

**Public Authority:** West Sussex County Council (the Council)

**Address:** County Hall  
Chichester  
PO19 1RQ

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

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1. The complainant has requested information relating to the occupation of the first floor of the old Church of England school building in Surrey Street, Arundel. The Council refused to comply with the request under section 14(1) FOIA.2. The Commissioner's decision is that the Council has correctly applied section 14(1) FOIA to the request.3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 12 April 2015 the complainant requested information of the following description:

"Under the Freedom of Information Act, I request that you provide the following information in respect of the occupation of the First Floor of the Old C of E School Building in Surrey Street, Arundel:

- 1) All minutes/notes of meetings attended by [named Council officer] in relation to the occupation of the said premises since September 2011.
- 2) All reports produced by [named Council officer] in relation to the occupation of the said premises since September 2011.
- 3) All correspondence (including email correspondence) between [named Council officer] and Arundel Youth Club in relation to the occupation of the said premises since September 2011.
- 4) All correspondence (including email correspondence) between [named Council officer] and the owner / managers of The Learning Tree Pre-School Nursery in relation to the occupation of the said

premises since September 2011.

5) All correspondence (including email correspondence) between [named Council officer] and any other parties in relation to the occupation of the said premises since September 2011."

5. On 17 April 2015 the Council responded. It refused to comply with the request under section 14(1) FOIA.
6. The complainant requested an internal review on 26 April 2015. The Council sent the outcome of its internal review on 1 May 2015. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 31 July 2015 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Council was correct to refuse to comply with the request under section 14(1) FOIA.

### **Reasons for decision**

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#### **Section 14**

9. Section 14 of FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious.
10. The term 'vexatious' is not defined in the Act but following guidance from the Upper Tribunal the Commissioner considers that a request will be vexatious if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. It is important to recognise that in applying section 14 it is the request that must be considered rather than the person making the request. A public authority cannot simply refuse a new request on the basis that it has classified previous requests from the same individual as vexatious.
11. However in considering whether the current request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress, the context and history in which the request was made can be a major factor in determining whether the request is likely to have such an impact. Therefore the Commissioner will consider relevance of other requests that the complainant has made together with his previous dealings with the Council.

12. The Council has explained that section 14(1) FOIA was applied to the request on the basis that:
- a. The request places an unreasonable burden on the Council;
  - b. It is designed to cause disruption and annoyance;
  - c. It has the effect of harassing the Council and its officers;
  - d. It is obsessive and manifestly unreasonable.

## **Background**

13. The Council explained that the complainant's issue with the Council arose following the Cabinet Member Decision CF05(11.12) in 2011. It said that Council officers were tasked with implementing that Cabinet Decision, which removed the interests and direct delivery of open provision youth work in the majority of existing provisions, including the Arundel Youth Club. In addition, the decision removed the existing arrangements between management committees acting under licence on behalf of the Council. It said in the case of Arundel Youth Club, the partnership arrangements between the Council Youth Service and the management committee of the Youth Club were formally brought to a close. It said that it is this decision and the subsequent actions of Council officers that resulted in the complainant's dissatisfaction and protracted and numerous complaints. The complainant has informed the Council that he is acting as a 'spokesperson' for Arundel Youth Club.

## **Unreasonable burden**

14. The Council explained that the original FOIA request, which was dated 6<sup>th</sup> April 2015, was very wide and was initially for the following information relating to the premises:

*1) All WSCC minutes/notes of meetings relating to the occupation of the said premises since 2011.*

*2) All correspondence (including email correspondence) between WSCC Councillors/ Officers and Arundel Youth Club in relation to the occupation of the said premises since 2011.*

*3) All correspondence (including email correspondence) between WSCC Councillors/ Officers and the owner/managers of The Learning Tree Pre-School Nursery in relation to the occupation of the said premises since 2011.*

- 4) All correspondence (including email correspondence) between WSCC Councillors/ Officers and any other parties in relation to the occupation of the said premises since 2011.*
15. It explained that on 9<sup>th</sup> April 2015 the Council advised the complainant that the request was too wide and on 12<sup>th</sup> April 2015 the complainant narrowed his request which then focused on the same information and the same period but with reference to only one particular Council officer. The Council explained that the named officer has over a significant period been the subject of a number of complaints both informal and formal relating to the Arundel Youth Club premises and by the complainant.
  16. The Council explained that there have been four stage 1 complaints, initially from the Youth Club and then from the complainant. It said that the last of these complaints progressed to stage two and was not upheld. It explained that none of the outcomes have been accepted by the complainant and a further letter of complaint dated 19<sup>th</sup> March 2015 resulted in the Executive Direction Residents' Services, Residents and Environmental Services undertaking a review at the request of the Chief Operating Officer. It said that this review has not been formally reported upon as yet however the Council has indicated that the draft findings are complete and the officer who is the target of the complaints has continued in his role throughout.
  17. The Council explained that from 11 February 2014 to July 2015 the Council has received 13 letters of complaint from the complainant or the Youth Club against the Council officer named in the request and the Council's decision referred to in the background above. The complainant has also had his complaint published in the press and the Youth Club has written an open letter setting out its complaints. A synopsis of the correspondence between the complainant, the Youth Club and the Council is contained in Annex A attached to this Notice.
  18. The Council summarised that the complainant has made numerous complaints surrounding the Cabinet Member Decision CF05(11.12) in 2011 and in particular against a named Council officer, all of which, it said have been investigated and responded to. It said that the FOIA request dated 12<sup>th</sup> April was a further attempt by the complainant to put pressure on the service and use up its time and resources as a consequence of his refusal to accept the Council's actions as reasonable. It said that the complainant then continued to reiterate his complaints following the FOIA request focussing these on the named Council officer and making various allegations about him and his conduct.

19. The Commissioner acknowledges that dealing with the Youth Club's and the complainant's numerous complaints surrounding its decision has placed a significant burden upon the Council. As these complaints have not been upheld by the Council, it appears that the FOIA request made on 12 April 2015 is likely to be a continuation of that complaint and therefore responding to it would add to that burden.

### **Whether the request is designed to cause disruption or annoyance**

20. The Council argued that the complainant has demonstrated an approach which is focused on his views of the named Council officer personally and his actions in pursuing sequential complaints against this individual, when combined with this request, appear to demonstrate a desire to cause disruption and annoyance both to this individual personally and to the Council.
21. The Commissioner considers that there have been a substantial number of complaints and concerns raised by the complainant and the Youth club generally about the Council's decision. This has led to the Chief Operating Officer requesting a review of the decision. This review hasn't reported yet, however the complainant decided to make an FOIA request to continue his correspondence with the Council surrounding his complaint and in particular against the named Council officer. Given that the FOIA request is directly concerned with the individual who is the target of his complaints it would appear to have been made to cause further disruption and annoyance.

### **Whether the request has the effect of harassing the public authority or its staff**

22. The Council provided examples of the complainant's comments made about the named Council officer which are detailed below, and it confirmed that the named Council officer has found these comments to be harassing:

Email from complainant dated 24th March 2015 10:23 to Chief Operating Officer, re Attendance at a meeting with the Learning Tree stating – "[named Council officer] *was at it again*" and "*this improper behaviour be brought to a halt*".

Email dated 4<sup>th</sup> April 2014 from the complainant to the owner of the Learning Tree Nursery – "*It is most unfortunate that a particular County Council officer seemingly gave you the impression (back in late-2012/early-2013?) that he had the authority to decide upon the allocation of rooms within a building which was actually sub-leased to another party. He had no such authority!*"

*It is also most unfortunate that this same County Council officer seemingly gave you the impression that he had the authority to bar Arundel Youth Club from the large room (previously Classrooms 1 & 2) and thereby restrict the activities of the legal lessee. He had no such authority!*

*Furthermore, it is most unfortunate that this same County Council officer seemingly gave you the impression that he had the authority to override a previous agreement with the Youth Club and, instead, permit you to use the premises – instead of the Youth Club – for After-School activities on Tuesdays and Thursdays. He had no such authority!*

Letter dated 18<sup>th</sup> February from the complainant to the Director of Children Services – [named Council officer's] *behaviour, has been a catalogue of lies, threats and broken promises in the dealings with the situation at Arundel Youth Club and his attitude has been appalling.*"

23. The Council said that in addition to dealing with successive complaints, [named Council officer] has also been subject to personal harassment and offensive comments which include the complainant accusing him of "making up" documentation, describing him as a "snake in the grass" "a total liar" and an attempt to "get [named Council officer] brought to book". The complainant has also used racist language when describing the named Council officer. In addition the named Council officer has been accused of "inappropriate, unethical and unlawful behaviour", the same allegation was also made in the respect of the Council's actions involving the Youth Club. It is this last "allegation" made by the complainant that resulted in the internal review being conducted by the Executive Direction Residents' Services, Residents and Environmental Services.
24. Given that a particular individual has been targeted as part of the request, and is the same individual who has been the target of the complainant's dissatisfaction with the Council's decision, and given the choice of language used by the complainant about the named Council officer the Commissioner does consider that the request would have the effect of harassing this member of staff.

**Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable**

25. The Council argued that the complainant's request demonstrates a refusal to accept any view that differs from his own as he has refused to accept the findings and outcomes of all the responses to his complaints.

He has also not waited for the result of the review being conducted by the Council. He has chosen not to progress the complaint to the Local Government Ombudsman within the statutory process, but instead has continued to repeat his targeted complaint about the named Council officer by making the FOIA request on 12 April 2015 to the Council.

26. The Commissioner considers that the complainant clearly disagrees with the decision made by the Council and is targeting his anger at a particular employee. Whilst the Commissioner does not necessarily consider that the complainant's disagreement with the Council's decision to be obsessive or manifestly unreasonable, he does consider the targeted complaints and subsequent FOIA request relating to one particular employee does demonstrate that the request is obsessive and manifestly unreasonable, particularly given the tone of language used as described above.

**Whether the request has any serious purpose or value.**

27. The Council argued that the request appears to be focused on the complainant's desire to establish some wrong doing by the named Council officer in his dealings with the Youth Club. It said that any documents that are relevant to the on-going litigation relating to the Youth Club have already been disclosed to the complainant.
28. The Commissioner considers that there is clearly an ongoing dispute between on the one hand the complainant and the Youth Club and on the other the Council, relating to the Cabinet Member Decision CF05(11.12) in 2011. The complainant is clearly dissatisfied with the decision reached and has made complaints to the Council and there also appears to be some form of ongoing litigation referred to by the Council above. The Council has not found any wrong doing as a result of the complaints but is now conducting a review as the complainant's dissatisfaction has been taken seriously. The Council has also highlighted that the complainant is able to take his concerns to the Local Government Ombudsman if he is not satisfied with the Council's findings. The Commissioner does not therefore consider that it can be said that there is no serious purpose or value behind the FOIA request. That being said as it is directed at the named Council officer to whom the complainant seems to have targeted his dissatisfaction and anger with the Council's decision, this does somewhat diminish the serious purpose or value behind it.
29. The Commissioner acknowledges that this is not a case where a vast number of FOIA requests have been made resulting in the application of section 14(1) FOIA. However the Council has had to deal with a fair amount of correspondence over a fairly significant period in which

complaints have been made by the complainant or the Youth Club about the Cabinet Member Decision CF05(11.12) in 2011. It is the tone of language used in these complaints and the fact the complainant's dissatisfaction and anger about this decision has been targeted upon one individual employee which characterises this FOIA request as vexatious.

30. The Commissioner also acknowledges that the request was targeted at one particular employee as a result of the Council asking the complainant to refine his request. However the Commissioner does not consider that this precludes the Council from applying section 14(1) FOIA when the complainant choose to refine his request by making it about an employee to whom he has targeted his complaints against. The Commissioner considers that the tone of the language used to describe the named Council official and the fact his anger and dissatisfaction regarding the Council decision has been targeted at one individual demonstrates that the request does have the effect of harassing this individual and that the request is obsessive and manifestly unreasonable. Whilst the Commissioner does not consider he has been provided with evidence to suggest that there is no serious purpose or value behind the request, the complainant's concerns surrounding the Council's decision are under review and the complainant does also have the option to refer his complaint about the Council's decision to the Local Government Ombudsman. On balance the Commissioner considers that the request is likely to cause further disruption, irritation and distress given the context and history in which it was made.
31. The Commissioner therefore considers that section 14(1) FOIA was correctly applied in this case.



## Right of appeal

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32. 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)

33. 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.
34. 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 .....**

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

## **Annex A**

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### List of complaints on behalf of Arundel Youth Club:

- 11<sup>th</sup> February 2014                      Complaint made to Director of Children's Services about the general handling by [named Council officer] of the situation at Arundel Youth Club and specifically about a decision by [named Council officer] that operations should be suspended; dated 6<sup>th</sup> February 2014.
- 19<sup>th</sup> February 2014                      Further complaint on same subject received from the Youth Club's employed worker.
- 20<sup>th</sup> February 2014                      Response by Director of Children's Services to complaint dated 6<sup>th</sup> February. Complaint not upheld.
- 21<sup>st</sup> February 2014                      Complaint from youth club volunteer staff member re handling of concerns about comments she was alleged to have made to third parties about [named Council officer's] personal involvement.
- 26<sup>th</sup> February 2014                      Response by Director of Children's Services to complaint dated 21<sup>st</sup> February. Complaint not upheld.
- April 2014                                      Complainant alleges, in a story published by the Littlehampton Gazette, that the Council has acted unlawfully by telling [named nursery] to withhold rent due to the Youth Club
- 10 July 2014                                Youth Club publish an 'Open Letter' accusing 'a certain council officer' of acting without authority to push the Youth Club about on a mission to squeeze the club out of the building.
- 10 July 2014                                Email from complainant to [named] County Councillor. Says that [named Council officer] has been 'publicly revealed as the cause of all the problems and a total liar to boot' and should be 'brought to book'
- 2<sup>nd</sup> December 2014                      Complaint to Chief Operating Officer from complainant re [named Council officer] alleging "misconduct in public office" "inappropriate, unethical and unlawful behaviour". Repeats many of the

complaints made previously by the Youth Club Management Committee

- 8<sup>th</sup> December 2014                      Response from Interim Director of Children's Services to complaint dated 2<sup>nd</sup> December. Complaint not upheld. [named Council officer] held to have acted properly within his role as a council officer.
- 19<sup>th</sup> December 2014                      Same complaint made against West Sussex County Council for allowing this behavior
- 16<sup>th</sup> February 2015                      Complaint responded to by Chief Operating Officer. Not upheld.
- 23<sup>rd</sup> February 2015                      Letter expressing dissatisfaction with response, particularly one part of complaint
- 11<sup>th</sup> March 2015                          Complaint responded to by Chief Operating Officer – acknowledges incorrect use of term in one part of complaint response, but does not invalidate the point being made or the outcome
- 19<sup>th</sup> March 2015                          A further complaint to Chief Operating Officer, again expressing dissatisfaction with the response.
- 24 March 2015 10:23                      Email to Chief Operating Officer re proposed attendance of [named Council officer] at a meeting with [named nursery] 'during Youth Club operating hours' stating – [named Council officer] was 'at it again' and 'this improper behaviour be brought to a halt'.
- 24 March 2015 12:44                      Response from Chief Operating Officer pointing out that the meeting is to be held in a separate part of the building and was arranged by the [named nursery], who invited both [named Council officer] and the Youth Club to attend. She therefore saw no need for her to intervene
- 25 March 2015                              Email from complainant to Chief Operating Officer thanking the Council '*for allowing the [named nursery] to hold its meeting in the Library downstairs and thus enabling the Junior Youth Club to proceed with its regular meeting*'. He ignores the fact that this was the arrangement from the beginning. He does

not withdraw his comments about [named Council officer].

- 2 April 2015                      Email from Chief Operating Officer to the complainant and to the Youth Club chairman. She has arranged for an investigation to be undertaken by an Executive Director with no previous involvement.
- 18 April 2015                      Email from Executive Director to the complainant proposing a meeting to discuss matters.
- 20 April 2015                      Complainant accepts the idea of a meeting.
- 1 June 2015                        Emailed letter from complainant to Chief Operating Officer. Complains that [named Council officer] and other officers are waging a 'vendetta' against the Youth Club through their interpretation of the terms of the lease. Asks Council to intervene
- 4 June 2015                        Email from Customer Relations Team Manager to the complainant. Letter has a bearing on Executive Director's investigation, and was forwarded to her for consideration
- 22 June 2015                        Emailed letter from complainant. Alleges that [named Council officer] told the Mayor of Arundel that his intention was to 'get rid of' Arundel Youth Club and to 'get Arundel Youth Club out of the building'. Refers again to a 'vendetta'.
- 24 June 2015                        Email from Chief Operating Officer to complainant informing him that his allegations have been passed to the Executive Director as they refer directly to the matters under investigation. *[named Council officer] denies making these statements*
- July 2015                              Complainant complains to Chief Operating Officer that his letters of complaint, marked 'private and confidential', have been shared with officers.