

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 March 2016

Public Authority: Lincolnshire County Council
Address: County Offices
Newland
Lincoln
LN1 1YL

Decision (including any steps ordered)

1. The complainant has made two requests to Lincolnshire County Council for information concerning the Mental Health Prevention Fund. The Council initially provided the complainant with explanations about the way this fund operates. Latterly the Council determined that both requests should be refused in reliance on section 14(1) on the grounds that they are vexatious.
2. The Commissioner's decision is that Lincolnshire County Council has correctly applied section 14(1) of the FOIA to the complainant's requests.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 13 November and 23 November 2015, the complainant made two requests for information to Lincolnshire County Council. The terms of the complainant's requests are:

Request 1

"I would like to know why in 2012 Older People were prevented from having access to any benefits provided by the Mental Illness Prevention Fund, and why the implementation of this fund was not looked into by the Adults Scrutiny Committee."

Request 2

"Since the implementation of the Mental Health Prevention Fund early in 2012, more than £1.4 million pounds of public money has been spent.

I would like to know what the outcomes are for the 100,000 people in Lincolnshire who are entitled to benefits provided by this fund and the age groups of the people who have benefitted."

5. The Council responded to request 1 by explaining the background, purpose and funding arrangements of the mental illness prevention fund. It assured the complainant that the fund is regularly audited and that the funds are being used appropriately.
6. The Council responded to request 2 by explaining how the fund operates. The Council also advised the complainant that it does not hold specific information pertaining to individual persons who have benefitted from this funding and consequently it is unable to provide him with the information he had requested.
7. The complainant wrote to the Council again having received its responses to his requests. He stated that, "...I am dissatisfied with the answer from LCC. The response is not to the point and leaves too many questions unanswered. I would like my request to go before the Internal Review Panel".
8. On 14 December 2015, the Council wrote to the complainant to advise him of its final decision. The Council determined that both requests should be refused in reliance on section 14(1) – where the requests are considered to be vexatious, and the Council set out its reasons for this decision.

Scope of the case

9. The complainant contacted the Commissioner 16 December 2015 to complain about the way his request for information had been handled.
10. The Commissioner has investigated whether Lincolnshire County Council is entitled to refuse the complainant's requests in reliance on section 14(1) of the FOIA on the grounds that the requests are vexatious.

Reasons for decision

11. Under section 14(1) of FOIA, a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
12. The term 'vexatious' is not defined in the legislation, however 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.
13. 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 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) and harassment or distress of and to staff.
15. However, the Upper Tribunal also cautioned 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.

¹ UKUT 440 (AAC) (28 January 2013)

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 representations to the Commissioner

18. The Council has provided the Commissioner with background information which is relevant to the complainant's request. The background information contains a chronology of the Council's and complainant's dealings with one another over a period which began in 2012.
19. The Council advised the Commissioner that the complainant's requests have stemmed from a complaint he submitted in 2012. The complaint was that Lincolnshire County Council was being discriminatory by not providing specific funding to assist people over the age of 65 to recover from an episode of mental illness, whereas it did provide funding to people between the ages of 18 and 65.
20. The Council responded to the complainant's complaint on 6 September 2012. The Council provided him with an explanation of how it provides funding to different age groups and how that funding is provided and administered. The Council stated that, "The amount of funding committed by the Council towards Older People's services is considerably more than Adult Mental Health Services for people aged 18 – 65". The Council made clear to the complainant that it has not acted in a discriminatory manner.
21. The complainant continued to contact the Council following his receipt of its response. He also raised a complaint about the Council to the Local Government Ombudsman and to his MP about this matter. The Ombudsman determined that she could not consider his complaint on the grounds that it was not a personal matter, but rather one which related to Council policy.
22. The complainant was provided with a copy of the response the Council had sent to his MP. Having received this response, the complainant

² http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

telephoned the Council to ask for a discussion about the Council's funding for mental health services for the over 65s. Despite the information and explanations provided, the complainant still maintained his position that the Council's actions were discriminatory and that a specific fund for the over 65s should be available.

23. On 23 October 2015, the Council provided the complainant with additional feedback in relation to his claim of discrimination. The Council's email referred to the complainant having attended a meeting with the Council, Lincolnshire Partnership Foundation Trust, the Shine Network and the Adult Care Scrutiny Committee in order to discuss his concerns with all relevant parties.
24. The Council confirmed to the complainant that a recent audit of the scheme had shown it to be properly administered.
25. On 12 November 2015 the complainant again contacted the Council. He asserted that the Council had failed to answer his original query and he stated his intention to continue to address these issues.
26. The Council has advised the Commissioner that throughout its dealings with the complainant it has attempted to take a conciliatory approach. It has engaged with him by having meetings and through its continued correspondence. However, despite its engagement, the complainant continues to submit requests on this same subject.
27. The Council now considers that a continued engagement with the complainant on this matter would be a disproportionate use of its resources, particularly given the information it has already supplied to him and the correspondence it has entered into.
28. The Council considers that the complainant's correspondence and requests requires a diversion of its officers' time and that the level of communication cannot be justified, where it is unlikely to result in any satisfaction for the complainant or a resolution to his complaint.
29. The Council asserts that the complainant is demonstrating an unreasonable level of persistence in an attempt to reopen an issue which it believes has been comprehensively addressed. Furthermore, it believes that the complainant's allegation of discrimination has no cogent basis and that he has no evidence or grounds for such an assertion.
30. The Council has advised the Commissioner that its experience of dealing with the complainant's previous requests is such to lead the Council to believe that he will not be satisfied with any future response it could make and that any response is likely to result in the submission of numerous follow-up enquiries.

The Commissioner's conclusion and decision

31. The Commissioner has considered the representations made by the Council in support of its application of section 14.
32. It is evident to the Commissioner that the Council has endeavoured to meet the complainant's information requirements concerning mental health provision for the over 65s: It has done so with good will and a necessary degree of customer engagement. This engagement has taken place over a considerable time and it is clear to the Commissioner that considerable time and resources have needed to be spent by the Council to ensure that it has met the complainant's information requirements.
33. The Commissioner is persuaded that the Council is likely to be correct in asserting that further engagement with the complainant on this subject is likely to lead to further correspondence and request.
34. The Commissioner has decided that the Council is entitled to rely on section 14 in respect of the requests made by the complainant on 13 November and 23 November 2015. He makes this decision on the grounds that these requests are made in the context of a continued attempt by the complainant to establish wrong doing by the Council where none has been shown to exist.
35. The Commissioner considers that the point has been reached where it would be a fruitless exercise to respond to requests on a subject which has generated correspondence for more than three years. The point has been reached where the Commissioner must agree with the Council that the complainant's requests require disproportionate and unjustified work. The Commissioner cannot support a drain on the Council's resources at a time when those resources are particularly limited and where the value of the requests is a questionable value to the wider public.
36. The Commissioner wholly accepts the point made by the Council when it says that the complainant is arguing points rather than asking for new recorded information.
37. The Commissioner also accepts that Lincolnshire Partnership Foundation Trust's administration of the fund has been audited and has been found to be sound: He notes that it has been shortlisted for an award.
38. For the avoidance of doubt, the Commissioner's decision is that Lincolnshire County Council is entitled to rely on section 14 in respect of the requests made by the complainant on 13 November and 23 November 2015 respectively.

Right of appeal

39. 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

40. 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.
41. 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
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