

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2016

Public Authority: Torridge District Council
Address: Riverbank House
Bideford
Devon
EX39 2QG

Decision (including any steps ordered)

1. The complainants have requested information regarding an internal review of Torridge District Council's (the council) procedure for listing and delisting Assets of Community Value.
2. The council refused to comply with the request citing section 14(1) of the Freedom of Information Act (FOIA).
3. The Commissioner's decision is that the council has correctly relied on section 14(1) to refuse to comply with the requests.

Request and response

4. On 28 September 2015, the complainants made the following request for information:

"please could you provide us with a copy of the internal review of the Council's ACV listing review procedure and all other information held on this subject?"
5. The council responded on 9 October 2015 and refused to comply with the request stating *"s.14 of the Freedom of Information Act applies"*.
6. Following an internal review, the council wrote to the complainants on 13 November 2015 and upheld its decision that section 14 applied.

Scope of the case

7. The complainants contacted the Commissioner on 13 February 2016 to complain about the way their request for information had been handled.
8. The Commissioner sought confirmation from the council regarding whether it was relying on section 14(1) vexatious requests or section 14(2) repeated requests.
9. The council confirmed to the Commissioner that it was relying on section 14(1) vexatious requests.
10. The scope of this investigation is, therefore, whether the council is entitled to refuse to comply with the complainants' request on the basis of section 14(1) of the FOIA.

Background

11. The complainants had previously made an application to have a local public house listed as an Asset of Community Value (ACV) by the council.
12. This application was initially successful but the public house was subsequently removed from the ACV register after the owners of the public house appealed the decision.
13. The complainants were dissatisfied with the decision to remove the public house from the ACV register and complained to the council.
14. The council agreed to review its procedure for dealing with requests for ACV listing and subsequent appeals but upheld its decision to delist the public house.

Reasons for decision

15. Section 14(1) of the FOIA allows a public authority to refuse to comply with a request for information if it is considered to be vexatious.
16. The Act does not provide a definition of the term, however, in *'Information Commissioner vs Devon County Council and Dransfield [2012] UKUT 440 (AAC), (28 January 2013)'* (Dransfield), the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use and the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request.

17. The Tribunal concluded that 'vexatious' could be defined as the *"...manifestly unjustified, inappropriate or improper use of a formal procedure"* (paragraph 27).

The council's position

18. The council has explained to the Commissioner that it is relying on section 14(1) of the FOIA due to the burden and future burden placed on the council by the complainants' requests, correspondence and complaints.
19. The council has provided the Commissioner with the correspondence still held between the complainants and the council. The council has, however, explained that some correspondence will have been deleted and that the correspondence provided is not complete.
20. The correspondence provided to the Commissioner shows that the complainants contacted the council 39 times in the period 28 April 2014 to 7 November 2014. The Commissioner has not included correspondence legitimately chasing a response or acknowledging receipt in this figure.
21. The correspondence includes five requests for information, three requests for internal reviews and a 132 page complaint delivered to several council officers. The remainder was general correspondence raising queries about the procedure and disputing the council's decision.
22. The complainants made it clear in this correspondence that they had founded the local action group to save to public house and the requests and correspondence were made on behalf of the action group. This was made clear by the complainant's correspondence headers including the local action group in the address and signing off letters and emails as the local action group founders.
23. The complainants then contacted the council again on 27 August 2015 and requested the council *"advise us as to what stage the Council is at in respect of its review of the ACV listing review procedure"*.
24. The council responded and confirmed that a review of the ACV listing procedure had been performed. The council explained to the complainants that, in future cases, the council will ensure that communication with the nominating party will be improved.
25. The council also explained to the complainant that the policy regarding ACV listing was deemed to be compliant with the relevant legislation and therefore had not been changed.

26. The complainants then wrote to the council with a five page complaint copied to five members of the council in which the request at paragraph 4 was made.
27. The council explained to the Commissioner that the previous requests for information resulted in protracted correspondence between the complainant and the council.
28. The council set out to the Commissioner that the complainants were informed on 19 November and 8 December 2014 that further requests could be deemed vexatious.
29. The council explained to the Commissioner that all requests and correspondence relate to the council's decision not to list the public house as an ACV.
30. The council also explained that its published procedure was followed during the above decision and this decision became the subject of an ongoing and lengthy complaint by the complainants.
31. The council explained to the Commissioner that the complainants had complained to the Local Government Ombudsman (LGO) regarding the handling of the decision to delist the public house. The council provided evidence that this complaint was not investigated as the LGO could find no evidence of fault in the council's decision making.
32. The Commissioner notes, however, that the date of the LGO's decision falls after the application of section 14(1) and it is not apparent at what point the complaint was made to the LGO.
33. The council explained to the Commissioner that the complainants' requests for information related to a matter that had been resolved. The council considers there is no merit in reconsidering the issue or dealing with correspondence when there is no prospect of reaching a different outcome.
34. The council explained to the Commissioner that the council considers the complainants are unreasonably persistent and had previously submitted several FOIA requests about the same issue in quick succession before the council had time to deal with earlier enquiries.
35. The council set out to the Commissioner that it is a small public authority with one part time officer who handles all information requests under the FOIA, Environmental Information Regulations and the Data Protection Act. It explained to the Commissioner that it does not have the resources to entertain non-genuine, frivolous or vexatious requests.

36. In the internal review response, the council explains to the complainants that whilst it understands the matter is important to the complainants and their action group, it is a relatively trivial matter to the council and, as a disproportionate amount of resources have been spent on this matter, it cannot justify committing further resources to the issue.

The complainant's position

37. The complainants made arguments against the application of section 14 in their request for internal review and their complaint to the Commissioner.
38. The complainants explained that the requests were made to gather information to make a complaint against the council's decision to delist the public house from the ACV register.
39. The complainants also explained that they intend to put a proposal to the Department of Communities and Local Government and it is therefore in the public interest to have the information requested.
40. The complainants explained that there is public interest in the information requested as the local action group, set up to prevent the public house from remaining closed, has 300 members.
41. The complainants argue that they were promised a change in policy following their complaint to the council and the council has failed to honour its promise with respect to this.
42. In the request for internal review of the handling of their request, the complainants explain that they consider it reasonable and justified to request a copy of the internal review of procedures and all other information on this subject.

The Commissioner's position

43. It is clear to the Commissioner that the complainants are not satisfied with the operation of the council and how it conducts itself. He understands that the complainants have their reasons for pursuing information from the council which may, to some extent, be in the public interest with regard to informing the public on the operation and decision making of the council.
44. The Commissioner considers that allegations of misconduct by those in public office should not be dismissed lightly. However, in this instance, he has no evidence in support of these allegations.
45. Whilst the Commissioner is unable to comment on a public authority's application of other legislation, he does note that the LGO has decided

not to investigate the council and the decision to delist the public house from the ACV register.

46. In considering this case, the Commissioner looked to the Dransfield Upper Tribunal decision for guidance. Paragraph 70 addresses the issue of future burden.
47. The Commissioner considers future burden to be one of the key issue in this case. The council has provided evidence of the disproportionate frequency and length of correspondence from the complainants and explained the burden this has placed on the council.
48. Having reviewed the correspondence provided, the Commissioner considers the history of the complainants' correspondence demonstrates that the complainant is unlikely to ever be satisfied with the council's decision and reasons for it. He considers that if the council had complied with the request, there is a high likelihood that correspondence would continue with no end in sight for the council.
49. The Commissioner has considered the public interest in disclosure. He considers that whilst interest may be held by the village residents, the wider public interest is not served by public authorities spending already limited resources on issues that have no realistic possibility of a different outcome with further correspondence.
50. The Commissioner does take note of the nine month time period between the complainants being informed that another request may be deemed vexatious and their next contact with the council. However, this contact leads directly to a five page complaint containing a request for information. This lends further weight to the consideration that the complainants are unlikely to be satisfied and end correspondence on this matter.
51. The Commissioner considers that in the interests of openness and transparency, public authorities should accept a level of burden when responding to requests for information. In this case, however, the Commissioner notes that the council have provided the complainant with explanations and information regarding the decisions made beyond that required by the FOIA.
52. The Commissioner has balanced the purpose and value of the request against the detrimental effect on the council. He has taken into account the previous requests including the complainants' responses to the information provided. He is satisfied that providing a response to this request would prolong correspondence and place an unfair burden on the council in a manner which would be disproportionate to the value of

the request. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Other matters

53. The Commissioner notes that in its initial response and internal review, the council did not specify whether it was relying on the application of section 14(1) or 14(2).
54. The complainants therefore made arguments against section 14(2) 'repeated requests' in their request for internal review. Whilst any relevant arguments against the application of section 14(1) would have been unlikely to change the council's decision to uphold section 14(1), the council has a duty to specify the exemption it is relying on under section 17(1)(b).

Right of appeal

55. 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

56. 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.
57. 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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