

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2016

Public Authority: Stevenage Borough Council
Address: Daneshill House
Danestrete
Stevenage
SG1 1HN

Decision (including any steps ordered)

1. The complainant has requested information regarding a commercial agreement to provide car park management.
2. Stevenage Borough Council (the council) refused to comply with the request citing section 14(1) of the Freedom of Information Act.
3. The Commissioner's decision is that the council has correctly relied on section 14(1) to refuse to comply with the request.

Request and response

4. On 7, 8 and 9 February 2016, the complainant requested a copy of the commercial agreement and terms and conditions proposed by Parkingeye Limited to provide car park management at a specified property.
5. The council responded on 16 February 2016 and refused to comply with the request citing section 14(1) of the FOIA and regulation 12(4)(b) of the Environmental Information Regulations 2004 (EIR).
6. Following an internal review, the council wrote to the complainant on 2 March 2016 and upheld its decision to apply section 14(1) and regulation 12(4)(b).

Scope of the case

7. The complainant contacted the Commissioner on 3 March 2016 to complain about the way his request for information had been handled.
8. The Commissioner notes that the request is for the "*commercial agreement and terms and conditions*" of the proposed management of an existing car park. It has not been necessary for the Commissioner to view the withheld information in this case, but he considers information about commercial terms and contractual conditions discussed between parties to be a step removed from information defined as environmental information at regulation 2(1) of the EIR.
9. The Commissioner therefore considers the scope of this investigation to be whether the council is entitled to refuse to comply with the complainant's request on the basis of section 14(1) of the FOIA.

Background

10. The complainant has made multiple requests to the council regarding the permissions held by organisations for signs and ANPR cameras at various local car parks.
11. From the correspondence received, the Commissioner understands that any sign larger than 0.3m² requires advertising permission and ANPR cameras require planning permission from the local authority, in this case, the council.
12. The car parks referred to in the correspondence provided to the Commissioner are owned by private companies and are not owned or managed by the council.
13. It is also clear from the complainant's correspondence that he believes that the public are being unfairly penalised by the parking charges applied via the signs identified. The complainant sets out to the council that he believes the parking charges are based on a contract between the organisation operating the car park and the car owner.
14. The complainant explained to the council that, without adequate advertising or planning permission, he considered these 'contracts' to be illegal and therefore the car park owners were profiting from the proceeds of crime. The complainant considers the council to be the enforcing authority and that it should take enforcement action against the organisations managing the car parks.

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 its initial response relied on section 14(1) primarily due to the escalating burden created in handling the complainant's requests for information, complaints and correspondence.
19. The council has provided the Commissioner with a contact log and copies of correspondence between the complainant and the council.
20. The contact log shows the complainant contacted the council 19 times in the period March-December 2015 and this increased by an additional 16 items of contact in the period 1 January 2016 to 16 February 2016. On 9 February 2016, the complainant sent 5 separate items of correspondence through the council's online feedback/complaints system. All correspondence relates to the issue of permissions for signs and ANPR cameras in local car parks.
21. The copies of correspondence provided to the Commissioner include for the period 11 March 2015 to 16 February 2016:
 - 17 requests for information
 - 3 requests for confirmation of the council's position regarding enforcement following disclosure of information
 - 4 complaints, of which 1 was taken to stage 3 of the council's complaint's procedure
 - 3 objections to planning applications

- 6 items of general correspondence
22. The Commissioner notes that 2 of the 35 items of contact are the complainant legitimately chasing a response and therefore he does not consider these items can be taken into account when evaluating the burden created by the complainant's correspondence.
 23. The council explained to the Commissioner that responding to the complainant's increasingly frequent and lengthy correspondence placed a significant and disproportionate drain on staff time and resources. Its view is that a public authority's time and resources should not be disproportionately burdened by complying with requests that relate to planning matters that have undergone "*proper public consultation and scrutiny*" as this creates a detriment to other customers and residents.
 24. The council explained that it considered the complainant's correspondence had the effect of harassing the council and its staff members.
 25. The council considered the increasing volume of correspondence, requests and complaints from the complainant as well as the content of the correspondence provided proof of this harassment.
 26. The council directed the Commissioner to an email dated 5 November 2015 which made accusations of "*maladministration*" and claimed "*officers need training*".
 27. In an email dated 21 January 2016, the complainant also stated "*You had told [named business] they could continue committing these crimes and keep the proceeds of these crimes*", "*some people may conclude SBC [the council] are aiding [named business] in its criminal devour*" and "*please explain why you are supporting these crimes.*" These accusations were made after the council had confirmed it would not be taking enforcement action against the named car park owners who had been identified as displaying parking signs without the relevant permissions.
 28. The council explained to the Commissioner that, taken in context with the history of correspondence, the request had the effect of disrupting the council's officers to the detriment of other customers and residents and was aimed to cause annoyance. The correspondence highlighted to the Commissioner included the quantity of complaints, instant email responses to information provided and placing pressure on Planning Officers to agree with statements and comments made by the complainant.
 29. The council also explained to the Commissioner that the complainant had been given the opportunity to exercise his right to lodge objections

to the planning applications regarding these matters and had appeared before the planning committee to articulate his concerns. The council set out that it therefore considered the complainant had had full opportunity to make his views known.

30. The council stated that despite consent for the parking signs and ANPR cameras being granted, the complainant continued to question and dispute the council's decisions by making complaints, information requests and attempting to coerce staff to agree with his arguments.
31. The council described how it had explained to the complainant, during the complaints process, the decision it had reached. However, the complainant refused to accept the council's legitimate powers, under the planning legislation, not to take enforcement action and to grant consent.
32. The council also set out to the Commissioner that the complainant has the right to appeal to the Local Government Ombudsman, if he suspected maladministration. To its knowledge he had not done so.

The complainant's position

33. The complainant made arguments against the application of section 14(1) in his request for an internal review of the council's initial refusal notice and in his complaint to the Commissioner.
34. The complainant explained that his requests for information led to the identification of illegal signs in 4 car parks and breaches of planning regulations with respect to ANPR cameras in the same car parks which resulted in the council taking "*limited action*".
35. The complainant also explained that his "*other communications*" were for clarification of the information received or further documents that had been brought to his attention as a result of the information he received.
36. The complainant believes that the application of section 14(1) has been used "*to avoid scrutiny of the failings*" of the council and believes the requested document will reveal evidence of irregularities regarding car park planning permissions and the council's failure to prosecute various organisations.

The Commissioner's position

37. It is clear to the Commissioner that the complainant is not satisfied with the operation of the council and how it conducts itself. He understands that the complainant has his 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.

38. 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.
39. Whilst the Commissioner is unable to comment on a public authority's application or enforcement of other legislation, he does note that in the first instance the council acted, following the complainant's request, and planning permission was sought for the signs identified by the complainant.
40. He also notes that in correspondence dated 5 January 2016, the council explained to the complainant:

"Local Planning Authority can only consider the visual impact of the signs and their impact on public safety. The specific content of the advert or the role that it performs cannot be considered. Therefore the points that you raise about the signs creating an unlawful contract is not something that the Local Planning Authority is able to control and as previously advised this issue remains a private issue between the landowner, the parking management company and the individual".

41. The council also advised the complainant that he may wish to contact Hertfordshire Trading Standards if he has concerns regarding the content of the signs and provided a link to this organisation.
42. In response to his stage 3 complaint, the complainant was also advised that he could contact the Local Government Ombudsman should he feel his complaint had not been adequately resolved.
43. The Commissioner also notes that the request set out at paragraph 4 was made to the council in emails dated 7 February 2016 and 8 February 2016 and via the online feedback service on 9 February 2016.
44. In considering this case, the Commissioner looked to the Dransfield case Upper Tribunal decision for guidance. Paragraph 70 addresses the issue of future burden.
45. The Commissioner considers future burden to be the key issue in this case. The council has set out the increasing frequency and length of the complainant's correspondence and requests and the burden this has placed on the council.
46. Having reviewed the correspondence provided, the Commissioner considers the history of the complainant's correspondence demonstrates that if the public authority had provided a response to the request of 8

February 2016, it is unlikely that the complainant would be satisfied with this information and would have entered into protracted correspondence and further requests with the council.

47. 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.
48. The Commissioner has balanced the purpose and value of the request against the detrimental effect on the council. He has taken into account the numerous previous requests including the complainant's 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.

Right of appeal

49. 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

50. 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.
51. 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
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