

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2016

Public Authority: The London Borough of Richmond upon Thames
Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Richmond upon Thames ("the Council") relating to a banning order placed on an individual.
2. The Commissioner's decision is that the Council has correctly applied section 14(1) of the FOIA.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 5 January 2016, the complainant wrote to the Council and requested information in the following terms:

"I should, therefore, be most grateful if you would now provide me with answers to the questions that I originally posed to [redacted name], namely:

1. Who originated the instruction banning LBR officers from corresponding with or replying to [redacted name] in regard to any matters relating to Fulwell/Squires in 2010?

2. Why was such a ban issued when it was known that [redacted name] was seeking specific information to place before the Examiner into the Draft District Management Plan which was about to take place?

3. Who, again in 2015, originated the instructions banning LBR officers from corresponding with or replying to [redacted name] in regard to any matters relating to Fulwell/Squires? Since officers had corresponded with [redacted name] in respect of this matter in the years following the Examiner's Report (in which, incidentally, he found that LBR's position was, and always had been, "false") it is clear that the original ban must have been lifted and that there had been a second banning.

4. Why was such a ban issued when it was known that [redacted name] was seeking specific information as to whether the new breaches of the covenants in their lease from LBR by D J Squires and Co. Ltd. (as admitted by LBR) were also breaches of the Statutory covenants under the 1942 Deed made in accordance with the Green Belt (London and Home Counties) Act 1938?."

5. The Council responded on 4 March 2016 and refused to comply with the request on the grounds that it was vexatious in accordance with section 14(1) of the FOIA. It also applied section 40(5) to the request.
6. The complainant disputed this and sent a lengthy email to the Council asking it to review its decision.
7. The Council sent the outcome of its internal review on 4 April 2016. The Council considered that section 14(1) had been correctly applied and it did not go on to consider section 40(5).

Scope of the case

8. The complainant contacted the Commissioner on 22 April 2016 to complain about the way his request for information had been handled.
9. The Commissioner has had to consider whether the Council was correct to apply section 14(1) of the FOIA to the request.

Reasons for decision

10. Section 14(1) states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

11. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *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.
12. 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) harassment or distress of and to staff.
13. 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).
14. 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.
15. 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.

¹ GIA/3037/2011

²

http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

The Council's arguments

16. The background to the request relates to a matter that has been ongoing for over 20 years, with the complainant being involved in the matter since 1998. The matter relates to *"Fulwell Golf Club, Squires Garden Centre, Twickenham Golf Club and other properties on the 213 acre site known as Fulwell Park"* ("Fulwell/Squires").
17. The Council explained that the complainant and interested parties have been in dispute with the Council about various planning and valuation issues in respect of the land above. The Council further explained that these disputes were considered a number of years ago by various external bodies including the Audit Commission, the Information Tribunal and the Local Government Ombudsman. The Council stated that there is no action for the Council to take in respect of these investigations. However, despite this, the complainant and other interested parties continue to write to the Council either directly or indirectly in connection with the matters.
18. In its initial response to the complainant, the Council stated:

"Having considered your request in the light of this decision it is clear it forms part of a wider pattern of behaviour that makes it vexatious. Your continued persistence after some 20 years and despite the conclusions of independent regulators has put an excessive burden on the officers responsible for dealing with the matter. Collectively, the Council has spent an inordinate amount of time responding to correspondence from you and interested parties on this topic".
19. In its view, the Council believe that the FOI route to continue this dispute is an inappropriate use of the legislation. The Council considered that it has spent enough time dealing with this matter and it was not in the public interest to invest further resources into the matter. The Council further considered that even if it respond to the request, it was very likely to lead to further correspondence on the matter given the experience the Council has had with the complainant and other interested parties.
20. The Council also argued:

"Collectively over some 20 years Council staff (including our shared Legal Services staff), have spent an inordinate amount of time dealing with the topic concerning Fulwell/Squires, responding to numerous investigations, dealing with considerable correspondence from the 'objectors', (the complainant and other interested parties) dealing with requests for information, dealing with internal reviews and providing advice and assistance where possible. This together with the time spent

over a number of years by the complaints team, the Planning Department, has meant a disproportionate amount of Council resource has been engaged with an issue that has already been independently reviewed by several outside bodies."

21. To support its position, the Council also referred to the Commissioner's guidance on unreasonable persistence by requesters attempting to reopen matters that have been comprehensively address by the public authority or otherwise subjected to some form of independent scrutiny. The Council acknowledged that the request in question related to a banning order, however, it considered that it is directly related to the Fulwell/Squires matter that has already been investigated by outside bodes. In coming to this conclusion, the Council explained that it had considered the background, context and history of the request and came to a view that it was not a separate issue.
22. The Council also considered the burden of complying with the request, not simply answering the request but also, the additional follow up correspondence that would be a consequence of responding to it. The Council explained that it has spent a significant amount of time already dealing with the issue and it expressed concerned that responding to the request would not be the end of the matter and result in further requests and correspondence. The Council believed that this would *"place a strain on what are finite resources of the Authority and would hamper the delivery of mainstream services and answering legitimate requests"*.
23. To conclude, the Council argued that it:

"cannot continue to divert disproportionate amount of resources to matters that have already been independently investigated and long since concluded".

The complainant's arguments

24. The majority of the complainant's arguments refer to the issue that the complainant and other related individuals have had with the Council regarding Fulwell/Squires.
25. However, the complainant did state:

"I fully agree that LBRT's refusal, to provide the information that I have requested, can be described as "vexatious". It is also "offensive" but I did not expect otherwise, as it is in keeping with the Council's long history of misbehaviour in this matter. LBRT's officers have, in the past, been prepared to prevaricate, to dissimulate, to deceive, to destroy evidence, to interfere with mail and even to lie, in order to cover up possible fraud and corruption".

26. The complainant explained that since 2011, he has not taken any action regarding the Fulwell/Squires matter until the individual who had the banning order placed on him, asked the complainant to take this matter up for him. The complainant argued that this was because the individual *"could not obtain a reply to the questions as to who had originated his banning and for what reason himself since the Council used his banning as an excuse not to provide him with the answers that he sought"*.

27. He further argued:

"The Council is now attempting to use the long delays, caused by its own deliberate actions and failings, as an excuse under section 14 to argue that any questions associated with this matter are vexatious and that it should be permitted to continue to ignore its duty to restrain unlawful activity on the land".

The Commissioner's view

28. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority. The Commissioner has acknowledged and considered all arguments provided by the Council and the complainant. When coming to a decision, he has further acknowledged that there is a long standing issue between the complainant and other interested parties and the Council.

29. The Commissioner is aware that the request does relate to a banning order which could be considered as a separate matter. However, the Commissioner accepts the Council's view that this request stems back to the Fulwell/Squires matter and the Council is entitled to take into account the wider history and context of the request when determining whether it is vexatious. As evident in the complainant's correspondence with the Council, the complainant is attempting to bring up matters that have been considered and concluded by independent third parties.

30. In determining whether the Council was correct to class the request as vexatious, the Commissioner has considered whether there is any purpose and value in the request. The Commissioner appreciates that the complainant has an interest in the requested information and all

matters involving Fulwell/Squires. However, when considering whether the request is of value to the greater public interest, the Commissioner considers that there is very little public interest in the requested information.

31. The Commissioner's guidance³ states:

"The key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. This should be judged as objectively as possible. In other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority".

32. Applying this to the request in question, the Commissioner does not consider that the purpose and value of the request are enough to justify the distress, disruption and irritation that would be incurred by the Council by complying with the request. The Council has dealt with the matter regarding Fulwell/Squires for over 20 years. The Commissioner considers that it is not an appropriate use of the Council's time and resources to continue to correspond on this matter.

33. The Commissioner further considers that the tone and content of the complainant's internal review request supports the Council's view that the request falls under section 14. The internal review request refers back to matters that have been investigated and concluded by third parties. This shows a persistent behaviour from the complainant. It also indicates that any response provided by the Council is unlikely to satisfy him which would then lead to further correspondence on the matter.

34. The Commissioner accepts the Council's arguments at paragraph 19. She does not believe that the FOIA is the correct route for the complainant and interested parties to continue their dispute with the Council.

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

35. In coming to a determination, the Commissioner refers to paragraph 16 in FS50605008⁴ which states:

"The Commissioner's guidance on vexatious requests states that to show unreasonable persistence, a public authority must demonstrate that the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority or otherwise subjected to some form of independent scrutiny. Where, as here, this is the situation, the Commissioner considers that a public authority is entitled to say 'enough is enough'."

36. The Commissioner concludes that the Council is entitled to say "enough is enough".
37. On the basis of the arguments set out above, the Commissioner has determined that the Council was correct to refuse to comply with the request on the grounds that it is vexatious in accordance with section 14(1) of the FOIA.

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1560389/fs50605008.pdf>

Right of appeal

38. 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

39. 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.
40. 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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