

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 August 2016

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

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the social and health care provision of the council and copies of certain policies and procedures.
2. The council responded refusing to deal with the requests, citing section 14(1) of the FOIA.
3. The Commissioner's decision is that the council has acted appropriately by refusing to comply with the complainant's requests under section 14(1) of the FOIA. She therefore does not require any further action to be taken.

#### Request and response

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4. On 14 April and 6 May 2016, the complainant wrote to the council and requested information in the following terms:

"Under the FOI request, please send me a copy of

1- The internal policy and procedure staff at London Borough of Richmond upon Thames, Adult and Community Services Mental Health should use to carry out a Care Act 2014 Assessment

2-Please provide a copy of the internal procedure staff must follow if the in terms of a request for the assessment to be conducted in a CCTV room, or facilities for video recording the assessment in the past the staff had manipulated the assessment"

"1-please send me a copy of the policy social and health care service has for its staff to make sure that they respect and protect human rights of the residents in the borough who use their services

2-Please send me a copy of the policy of the positive steps staff must take to ensure the human rights of service users aren't breach"

"Under the FOI please send me a copy of the council procedures to investigate allegations of abuse by staff inflicted in vulnerable adults at risk of abuse by staff.

Under the Data Protection Act 1998 [DPA], please provide me with a copy of the phone notes and a copy of the form filled by [name redacted] yesterday 5 May 2016 about my data I provided to her."

5. The council responded on 13 May 2016. In relation to the complainant's DPA request the council confirmed that it would respond in due course. In relation to the complainant's FOIA requests, the council advised that it is not obliged to comply with them, as it considers section 14(1) of the FOIA applies.
6. The complainant corresponded with the council on 13 May 2016 on receipt of the refusal notice and this correspondence was treated by the council as a request for an internal review.
7. The council carried out an internal review on 10 June 2016 and notified the complainant of its findings. It upheld its application of section 14(1) of the FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 13 May 2016 to complain about the way her request for information had been handled. This was prior to the internal review being completed by the council but this process was then completed by 10 June 2016. The complainant stated that she did not agree that section 14(1) of the FOIA applied and required access to the requested information as a matter of urgency to assist with court proceedings.

### **Reasons for decision**

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9. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.

10. 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* (GIA/3037/2011). 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.
11. 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.
12. 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).*

13. 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.
14. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests, which can be accessed via the following link:

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

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 arguments*

15. The council confirmed that the complainant has made 28 requests to the council within the last three years all of which have had to be individually logged, acknowledged, considered and responded to, which has taken up a substantial amount of the council's time and resources.

The council advised that the requests have put an excessive burden on officers in the council and this continues, as the requests continue. The requests stem from the complainant's continued dispute with the council relating to allegations of abuse against the council, its staff, the NHS and the local Clinical Commissioning Group (CCG). The complainant has made numerous complaints on this issue dating back to 1995 and these complaints have been independently reviewed by the Local Government Ombudsman (LGO) in 2006, 2011, 2014 and 2015. The council explained that no fault was found in the actions of the council and matters had also been taken to the High Court and again not upheld.

16. The council explained that the complainant is already considered to be unreasonably persistent and vexatious under its complaints procedure and it will no longer accept complaints from the complainant on the topic of abuse by council staff. This decision was taken on 25 May 2010. Further letters advising the complainant of this status were issued on 4 October 2010 and 12 May 2016. The council confirmed that this was one issue the LGO considered in 2013 and a decision letter of 17 March 2013 advised the council that it could find no fault on its application or the methodology it applied.
17. The council also drew the Commissioner's attention to the LGO's earlier decision letter from 2011 and in particular to comments about the complainant's continuing complaints. It referred to them as repetitive in nature and commented that no new information had been raised by the complainant for it to consider. The LGO stated that this complaint simply continued to repeat previous assertions that the complainant had been abused for years. Assertions which had already been thoroughly investigated and from which no fault was found.
18. In addition the council referred to the LGO's decision letter from 2014. This advised the complainant that it would not investigate her complaint; it had already considered her complaint about historical allegations of mistreatment, reached a decision and will not do so again.
19. The council advised that it responded to all previous requests in accordance with the FOIA but had deemed two of these to be vexatious in 2013 (refusal notice dated 29 October 2013). There was a process for the complainant to appeal this initial and earlier application of section 14(1) of the FOIA via its internal review process and even to the Commissioner but the complainant failed to do so. Instead no further requests were made for six months and then they commenced again. Initially the council responded even where the requests were asking for information which had already been provided. But then it reached a point when it considered again the continuing pattern of submitting request after request, often for information already supplied and relating to the same topic and long running dispute was placing a significant burden upon the council in terms of time and resources. It felt it was no

longer in the wider interests of the public to continue to provide the same or similar information relating to or connected with a dispute that has been ongoing for 20 years and which has already been independently scrutinised. The council stated that it warned the complainant that it was considering applying section 14(1) of the FOIA again to her requests on 2 February 2016. Yet further requests were then submitted resulting in the council issuing its refusal notice on 13 May 2016.

20. It referred the Commissioner to its internal review response of 10 June 2016 and in particular to a comment made about the council's safeguarding for adults policy. The council stated that this policy has been provided to the complainant no less than six times yet despite this the complainant submitted another request on 18 May 2016 for the same document. These latest requests the subject of this notice are either repeated requests (or at least in part) or concern broadly the same subject as the complainant's numerous previous requests.
21. The council further stated that it was of the opinion that responding to these requests will only lead to further correspondence, requests and complaints and it is unlikely that the complainant would be satisfied regardless of the response provided. It stated that this was certainly the pattern of behaviour evidenced to date.

#### *The Commissioner's decision*

22. It is clear that the complainant has been corresponding with the council since 2005 complaining about the services she receives and making allegations of abuse by staff. Over this period the complainant has made numerous complaints about these issues and in the last three years 28 information requests. The Commissioner has been supplied with a detailed chronology of these requests and how they have been responded to and it is evident that all relate to the same topic and long running dispute. The Commissioner also notes that many ask for the same information again, despite this having already been disclosed. The internal review response to the complainant made reference to one policy (the council's safeguarding policy for adults) having been supplied six times, yet despite this, the complainant asked again for a copy of this policy in May 2016. It has confirmed that the complainant is in receipt of copies of all relevant policies and procedures, the most up to date versions and no changes or updates have been made since.
23. The numerous complaints already submitted to the council since 2005 have also been independently scrutinised by the LGO – in 2006, 2011, 2014 and 2015. The council furnished the Commissioner with copies of relevant decision letters from the LGO which highlight that no fault had been found and the complainant's concerns had not been upheld. In 2011 the LGO made reference to the repetitive nature of the

complainant's correspondence and complaints and advised that it had not received any new information since earlier investigations to look at. In 2014 the LGO confirmed that it would not investigate as it had already investigated the complainant's concerns and reached a decision and it would not be doing so again.

24. The Commissioner also notes from the correspondence she has received from the council that the complainant has involved her local MP, The Health and Care Professionals Council, the CCG and the High Court in these matters.
25. The complainant also received letters in 2010 and 2016 advising her that she had been categorised as unreasonably persistent and vexatious under the council's internal complaints procedure. The Commissioner considers such decisions are not taken lightly and only used as a last resort. She also notes that it was first applied five years after the complainant's correspondence and complaints commenced.
26. The Commissioner is also aware that the council deemed two requests in 2013 as vexatious under the FOIA. Although a period of six months then passed before requests recommenced, it is apparent that when they did, they all related to the same topic and long running dispute and often requested copies of information already provided. Despite this earlier application of section 14(1) of the FOIA, the council decided to respond to requests again up until the refusal notice was issued addressing the requests the subject of this notice on 13 May 2016. Prior to this the complainant was again warned that section 14(1) of the FOIA would apply if requests continued in March 2016.
27. The Commissioner is satisfied in this case that the council has already dedicated significant resources and time over the last three years to dealing with the complainant's requests. From the evidence provided and the persistent nature of these requests, the Commissioner considers it is fair to say that regardless of the responses the council provides requests and complaints will continue. All the requests relates to the same topic and the complainant's long running dispute over the last 20 years with the council and other public authorities relating to the care and services she has received. The council has confirmed that the complainant's concerns have already been independently scrutinised by the LGO on more than one occasion. The Commissioner is satisfied that the continuing requests are a means by which the complainant is trying to reopen matters already thoroughly investigated and is using the FOIA to sustain dialogue with the council about matters which have been independently scrutinised and no fault found. The Commissioner considers this is clear misuse of the FOIA and its purpose. The FOIA provides fundamental rights to the public to request access to recorded information held by public authorities. It should not been used to vent

dissatisfaction with matters which have already been dealt with, independently scrutinised and are considered closed.

28. In terms of serious purpose and value, the Commissioner understands the complainant considers the requested information has serious purpose and value to her personally. The information requested relates to the care and services the council provides to vulnerable adults. However, the Commissioner considers there is no serious purpose or value in the requested information (some of which has repeatedly been disclosed to the complainant before) for the wider public.
29. The Commissioner is satisfied that responding to the requests the subject of this notice will continue to cause disproportionate and unjustified levels of disruption, irritation and distress to the council. The council has already spent an overwhelming amount of time and resources dealing with the complainant's continuing requests, complaints and correspondence and it would be disproportionate and a misuse of already strained public resources to continue to do so. For these reasons the Commissioner is satisfied that section 14(1) of the FOIA applies.



## Right of appeal

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30. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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** .....

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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