

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2016

Public Authority: 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 from the London Borough of Richmond upon Thames (the 'Council') information regarding an individual and a banning order.
2. The Commissioner's decision is that the request is vexatious and the Council has correctly applied section 14 of the FOIA to refuse the request. Therefore, the Commissioner does not require the Council to take any steps.

Request and response

3. On 22 February 2016, the complainant wrote to the Council and requested information in the following terms:

"As you I know [named individual] has, at your suggestion, put all his correspondence with the Council into the Public domain.

Therefore please can I now have the answers to my two questions submitted in May last year namely -

1. *The name of the Officer who authorised the 2010 letters to [named individual].*
2. *The name of the Officer who authorised re-invoking the ban on [named individual] in 2015."*

4. On 18 March 2016 the Council responded. It considered the request to be vexatious under section 14(1) of the FOIA and it also applied section 40(5) to the request.
5. On 28 March 2016 the complainant wrote to the Council and made a complaint against its decision.
6. Following an internal review, on 20 April 2016 the Council wrote to the complainant. The Council considered that section 14(1) had been correctly applied and it did not go on to consider its application of section 40(5).

Scope of the case

7. The complainant contacted the Commissioner on 16 May 2016 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the case is to determine whether the request is vexatious and if the Council is entitled to rely on its application of section 14 of the FOIA.

Reasons for decision

Section 14 – vexatious requests

9. Section 14(1) of the FOIA 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.
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*.^[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.

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 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 position

15. In determining whether the request falls under the exemption set out under section 14, the Council considered a number of indicators and took into account the present or future burden caused by the request (its context and history). It said that whilst the request in isolation seeks information relating to an individual and a banning order, the Council believes it should be considered in a wider sense and taken in context given that such a request would normally be refused under the Data Protection Act.
16. The Council explained that the complainant's request stems from a history of correspondence with the Council which covers more than 20 years on the topic of:

"Fulwell Golf Club, Squires Garden Centre, Twickenham Golf Club and other properties on the 213 acre site once known as Fulwell Park ["Fulwell/Squires"]"
17. The Commissioner notes that the complainant and interested parties have been in dispute with the Council about various planning and valuation issues in respect of this particular land. The Council reported that these disputes were considered a number of years ago by various external agencies including the Audit commissioner, the Information Tribunal and the Local Government Ombudsman. The Council considers that there is now no action for the Council to take regarding these disputes.
18. The Council argued that the complainant and interested parties continued to contact the Council either by writing directly or indirectly, about their concerns with their issues of the land in question.
19. The Council considers that it can no longer continue to divert a disproportionate amount of resources to matters that have already been independently investigated and have been concluded a long time ago.
20. The Council argued that the request forms part of a wider pattern of behaviour. It added that the complainant's continued persistence after 20 years bearing in mind the conclusions of independent regulators has put an excessive burden on the relevant Council officers dealing with the matter. It further argued that it had spent an inordinate amount of time responding to correspondence from the complainant and the interested parties regarding this topic.
21. The Council considers that it is not in the public interest to invest further resources into this issue and that using the FOIA to continue this dispute is an inappropriate use of this legislation.

22. The Council considered whether responding to the latest requests would lead to further correspondence from the complainant and his associates about this matter. The Council said that it would be likely given the history and context of the correspondence and believes that the latest request is bordering on the obsessive.

The complainant's position

23. The complainant disputed the Council's refusal to comply with his request and its application of section 14. He argued against the Council's decision to define his request as vexatious and said that it is beyond comprehension and an insult to his reputation and integrity. He therefore demanded an immediate retraction by the Council and he asked the Commissioner to determine that the Council's use of section 14 is flawed.
24. The complainant disputed the Council's statement that he continued to write to the Council in connection with these matters. He argued that he had no contact with the Council since 2011 except regarding his FOI requests and added that the majority of the emails in 2011 were not to the Council but addressed to the Examiner and his clerk.
25. The complainant said that none of their quoted reports were direct investigations into the topic in question ("*the Squires matter*") and that in each case there were appeals against the Council's and the District Auditor's decisions. The complainant argued that none of the investigations dealt directly with enquiries into the Squires matter, and he added that neither did his FOI request. He stated that his request is "*very simple*" for the names of the Officers who authorised the banning of a named individual on two occasions.
26. The complainant reiterated that his latest FOI complaint has no direct connection with the Squires matter. He explained that over a considerable period of time the Council had failed to answer or consider his arguments on two legal considerations. He provided the Commissioner with a detailed explanation of why he and his associates had been persevering with their enquiries up to 2011.

The Commissioner's position

27. The Commissioner has considered the information provided by both the complainant and the Council. The Commissioner has also had regard to her own published guidance and case law.
28. In considering the Council's argument and the history of the complainant's requests, it is clear that this has caused an unjustified level of disruption to the Council. The Commissioner notes the length of time the complainant has persisted with his requests for information and

concerns relating to the topic in question and she considers this to be unreasonable persistence.

29. The Commissioner notes the complainant's persistence in pressing for a further investigation of an enquiry relating to the matter back in May 2002. She also notes that in February 2003, the complainant was interviewed in relation to the topic of this particular land. The Commissioner acknowledges the Council's supporting evidence which contained a copy of an independent report setting out the history and background information concerning the request. She accepts that this is a long standing matter which has created a voluminous amount of correspondence regarding the dispute about the land in question.
30. The amount of time the Council has spent in responding to the complainant's correspondence relating to this topic has, in the Commissioner's view, placed an excessive burden on the Council.
31. The Commissioner accepts that the Council can no longer continue to divert its resources to matters that have already been investigated and concluded years ago. She acknowledges the Council's position that there is no action for it to take regarding the complainant's disputes.
32. The Commissioner notes that the request is for the name of the Officers who authorised the banning of a named individual on two occasions. She does not consider that there is any serious purpose to the complainant's repeated contact to the Council about requests for information and concerns regarding this matter.
33. The complainant's dispute with the Council has resulted in requests for information and submitting complaints which the Commissioner finds to be a misuse of the FOIA. It appears to be that the complainant is disputing the Council's decision and that he is trying to seek reasons as to why this decision should be reversed. The Commissioner recognises that there is no public interest to support the complainant's request for information.
34. Having considered all the circumstances of this case, the Commissioner accepts that the repetitive nature of returning to the public authority with the same or similar requests has imposed an unreasonable burden on the Council.
35. The Commissioner has therefore determined that the Council is entitled to characterise the request as vexatious and has consequently applied section 14(1) of the FOIA.

Right of appeal

36. 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

37. 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.
38. 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

Rachael Cragg
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