

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 June 2017

**Public Authority:** Cumbria County Council  
**Address:** The Courts  
Carlisle  
Cumbria  
CA3 8NA

#### Decision (including any steps ordered)

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1. The complainant has requested information relevant to the provision of section 5(2) of the Local Government and Housing Act 1989, and actions which the complainant believes Cumbria County Council's Monitoring Officer should have taken in respect of this provision. The Council has refused the complainant's request on the grounds that it is vexatious and the request is therefore subject to the Council's application of section 14(1) of the FOIA.
2. The Commissioner's decision is that Cumbria County Council has properly applied section 14(1) to the complainant's request and it is therefore it is not required to comply with that request.
3. No further action is required in this matter.

#### Request and response

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4. On 26 October 2016, the complainant wrote to Cumbria County Council and requested information in the following terms:
  1. *"Has Cumbria County Council received explicit or implicit instructions from HM Government for the Monitoring Officer for the purpose s of the Local Government and Housing Act 1989 S5(2) not to comply with the provision in order not to compromise the judicial decisions of the Employment Tribunal and Employment Appeal Tribunal?"*

2. *Have you as Chief Executive directed that the Monitoring Officer should not operate S5(2) for the same reason?*
3. *Does the provision of S5(2) still contain the wording "at any time" and is it still currently in force?*
4. *Has Cumbria County Council received explicit or implicit instructions from HM Government not to allow Cumbria Police and Crime Panel to investigate complaints against Cumbria Police and Crime Commissioner via the Monitoring Officer?*
5. *Have you as Chief Executive directed that Cumbria Police and Crime Panel should not investigate complaints against the Cumbria Police and Crime Commissioner in regard this matter?*
6. *It would be contrary to the provisions of the Freedom of Information Act 2000 not to respond to the request within four working weeks as happened when I sought details of how much these cases had cost Cumbria County Council in 2008. S10(1).*
7. *Has this contravention of law been reported to the full Council under the provisions of the Local Government and Housing Act 1989?*
8. *Do you accept that Cumbria County Council contravened the provisions of the Sex Discrimination Act 1975 in victimising me and by reason that I was not interviewed for two cleaning jobs and by reason that I had previously made a complaint against Cumbria County Council?*

*This was confirmed in an interview with the former Chief Executive, Mr Peter Stybelski on December 18<sup>th</sup> 2006, the meeting arranged by Councillor Keith Little who also attended the meeting. Mr Stybelski advised me that there would be no report to the full council under provisions of the 1989 Act as the matter was not serious enough to warrant a S5(2) report."*

5. On 27 September 2016, the Council responded to the complainant's request on 27 September 2016, making a partial disclosure of information. The complainant was informed that a response to his questions 1, 2, 4 and 5 would follow.

6. The Council answered the complainant's question 3 by informing him that S5(2) of the Local Government and Housing Act 1989 was still in force and that it contained the words "at any time".
7. In respect of his question 6, the Council informed the complainant that his request – FOI 2008-0129 was received on 30 April 2008 and responded to on 28 May 2008, within the statutory deadline.
8. The Council informed the complainant that it did not hold information relating to his question 7 and it advised him that his question 8 was a statement and not a request for information.
9. On 1 October 2016, the complainant wrote to the Council to request that it conducts an internal review and to complain about its failure to respond to his questions 1, 2, 4 and 5.
10. The complainant pointed out that section 10 the FOIA does not allow an extension of the time in which the Council is expected to respond to his request. He also pointed out that the Council's answer to question 6 referred to the wrong information request and he referred the Council to the Information Commissioner's decision notice of 7 November 2008 under reference FS50166601.
11. The complainant also stated that he did not agree with the Council that his questions 7 and 8 were statements and not requests. He asserted that his question 7 begins with "Do you agree that" and question 8 is a continuation of question 7.
12. On 4 October, the Council's Monitoring Officer wrote to the complainant about his complaint against the Police and Crime Panel. The Monitoring Officer noted that the complaint dates back 'some fourteen years' and that the complainant had complained to a number of bodies including the Employment Tribunal, the County Council, the police and the IPCC. The Council noted that the IPCC had not upheld the complainant's complaint and had determined there was no failure of the Police and Crime Commissioner to hold the Chief Constable to account.
13. The Council noted that the remedy the complainant seeks is that a report is made to the full council under section 5(2) of the Local Government and Housing Act 1989. The Monitoring Officer pointed out that the duty to make such a report falls "to him" if it is considered necessary, and that neither the complainant nor the Panel could insist that this report is prepared.
14. Given that the Monitoring Officer could find no complaint for the Panel to deal with, the decision was taken to close the complainant's file and to inform him that the Council would not enter into any further correspondence on this matter.

15. On 30 October 2016, the complainant wrote to the Information Commissioner to complain about the Council's failure to respond to his request for an internal review. The complainant advised the Commissioner that he had written to the Council's Chief Executive about a conflict of interest in having the Head of Legal Service/Monitoring Officer acting as a complaints officer with regard to the Cumbria Police and Crime Panel and complaints raised with a Cumbria Police and Crime Panel member – a County Councillor. The complainant advised the Commissioner that the Chief Executive had responded to his complaint on 28 September 2016 and appeared to have suggested that her response, and that of the Council's Monitoring Officer, could be construed as a response to his request for internal review.
16. On 16 November the Council wrote to the complainant to advise him that his request is considered to be vexatious and therefore subject to the Council's application of section 14(1) of the FOIA.

### **Scope of the case**

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17. The complainant contacted the Commissioner on 19 November 2016 to complain about the way his request for information had been handled. The complainant informed the Commissioner that the Council was maintaining the position that its letter of 4 October serves as a response to his original request for information. The complainant advised the Commissioner that the remaining information requests, which the Council had not responded to, were considered by the Council to be vexatious.
18. On 28 January the complainant provided the Commissioner with detailed grounds in rebuttal of the Council's position.
19. The Commissioner has investigated whether the Council is entitled to rely on section 14(1) of the FOIA on the grounds that the complainant's request of 26 August is vexatious.

### **Reasons for decision**

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#### **Section 14 – Vexatious requests**

20. Under Section 14(1) of FOIA a public authority is not obliged to comply with a request for information where the request is vexatious.

21. The term 'vexatious' is not defined in the Act. The Commissioner has therefore adopted the Upper Tribunal's approach taken in *Information Commissioner v Devon County Council & Dransfield*.<sup>1</sup> In the Dransfield case the Upper Tribunal defined a vexatious request as, the "...manifestly unjustified, inappropriate or improper use of a formal procedure" and in making this decision the Tribunal determined that the concepts of 'proportionality' and 'justification' should be central to any consideration of whether a request is vexatious.
22. In the Dransfield case, the Upper Tribunal 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 and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff.
23. The Upper Tribunal stressed that the considerations listed above were not exhaustive and 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).
24. Following the approach taken by the Upper Tribunal, the Commissioner has considered whether the complainant's request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to its serious purpose and value. In the Commissioner's opinion a balancing exercise is required which weighs the impact of the request on the Council against its purpose and value.

#### *The Council's representations*

25. The Council accepts that it provided the complainant with only a partial response to his request for information and that it failed to provide the answers to his remaining questions within a reasonable timescale.
26. Having considered the remaining unanswered questions at internal review, the Council determined that it should refuse the complainant's request by applying Section 14.
27. The Council has advised the Commissioner that the complainant has been in contact with the Council for some considerable time and the

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<sup>1</sup> UKUT 440 (AAC) (28 January 2013) paragraph 27

extent of his correspondence cannot be understated. Since 2006, the Council's Information Governance Team has dealt with five information requests, an internal review and two referrals to the Information Commissioner.

28. In outlining its position, the Council has referred to the approach taken by the Commissioner in case FS50624048 and the decision of the First Tier Tribunal in *Perrin v ICO* (EA/2016/0259) and it has taken into account the impact, purpose and value of the complainant's request together with its background and history.
29. Having reviewed the Council's previous responses to the complainant's requests and correspondence, the Council has taken the view that there is evidence to suggest that the complainant will not accept its responses and he will continue to attempt to reopen issues that have been resolved or responded to many years ago.
30. The Council has advised the Commissioner that it simply does not hold the information which is required to answer the complainant's questions and it has assured her that the Council remains committed to its duty to appropriately process requests under the FOIA.
31. In this case, the Council's attempt to deal with the complainant's request has had a significant impact on the Council and its workload: According to the Council, the complainant's request has caused disproportionate and unjustified disruption to the Council's Information Governance Team Manager, its Legal Services Department and to its Monitoring Officer, all of whom have all endeavoured to understand and respond to his requests in the past.
32. The Council points out that the matter underlying the complainant's request is now more than fourteen years old and therefore the records relating to these matters and the individuals who created them are no longer with the Council. There has been a loss of 'organisational memory' and the opportunity for the usual system retrieval of relevant information has also been lost.
33. It is the Council's view that the complainant has chosen to use the FOIA as a means to pursue a long-standing personal grudge and this, it asserts, constitutes an inappropriate use of the Act.
34. The Council also asserts that the purpose and value of the complainant's request has diminished over the particularly long period since the complainant's matter arose.
35. The Council concedes that it is a significant step to refuse a request under Section 14. In this case however, the Council argues that it is essential to use this provision to prevent the misuse of the FOIA by

persons pursuing personal grudges and to safeguard the limited resources it has available for responding to information requests.

36. The Council has provided the Commissioner with evidence which it considers illustrates the complainant's request is "going over old ground" and which shows that he fails to accept the responses the Council has previously provided. The Council's evidence also demonstrates that the complainant corresponds with senior council employees to obtain the same information as that described above. On the Council's opinion, this behaviour "casts doubt on the integrity of those he contacts and over time this has started to have a demoralising effect on them".
37. In summary, the Council argues that the burden of the complainant's request is substantial and despite being provided with information in the past there is no sign that the applicant will stop submitting his requests unless the Council takes preventative action.

#### *The complainant's position*

38. The complainant has provided the Commissioner with background information which he considers provides necessary context to his information request. This information is summarised below:
39. In the period 1993/94, during a period when the complainant was employed by Cumbria County Council, the complainant alleges that the Council contravened the provisions of the Sex Discrimination Act 1975 and the Equal Opportunities Commission's Code of Practice.
40. Ultimately the complainant's matter was resolved by the parties entering into a COT3<sup>2</sup> agreement.
41. The complainant asserts that the Council was assisted in its contravention of the Sex Discrimination Act and the Equal Opportunities Commission's Code of Practice by his then trades union – NUPE. He has advised the Commissioner that, subsequent to a COT3 agreement, an application was made to the Industrial Tribunal (now Employment Tribunal) whereby he alleged further victimisation in regards to two applications for employment as a cleaner.
42. The Complainant has advised the Commissioner that an attempt was made to mislead both the Employment Appeal Tribunal interlocutory

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<sup>2</sup> COT3 agreement: This is a legally binding contract between parties in a dispute. The purpose of the contract is to settle actual or potential complaints being taken to an Employment Tribunal. The agreement is recorded on ACAS form COT3.

hearing and the subsequent Industrial Tribunal hearing, by the withholding of the complainant's skeleton argument until the last possible moment prior to the interlocutory hearing. The complainant asserts that a subsection of the Sex Discrimination Act 1975 was removed from his skeleton argument and he argues that this action was "a consequence of the improper relationship existing between Cumbria County Council and NUPE and an interpretation of the law by the Court of Appeal in an earlier case".

43. The attempt to mislead the Tribunals was raised by the complainant at the beginning of the Industrial Tribunal hearing and consequently it was necessary to have a short adjournment.
44. The subsequent revised Decision of the Tribunal was given in a thirteen page report. The complainant asserts that the Tribunal's report contains three lies, related to the facts of the case, which he considers destroyed his case.
45. The complainant submitted a request to the Employment Appeal Tribunal for a review of the Industrial tribunal's decision. This was rejected on the grounds that the case had been determined correctly.
46. The complainant then made an out of time application to the Employment Appeal Tribunal which he based on human rights contraventions and an alleged lack of independence of the judiciary. This appeal failed and the complainant was ordered to pay costs.
47. After the complainant's appeal was dismissed, the complainant approached the Committee for Standards in Public Life (The Nolan Committee) in regards to the right to a fair trial. The Committee advised the complainant that there was nothing it could do to help him. Instead, the Committee advised the complainant of the role of the Monitoring Officer under the provisions of the Local Government and Housing Act 1989.
48. In 2002 the complainant submitted a dossier to his MP in which he alleged misconduct in public office and perverting the course of justice primarily in respect of the Council but also in respect of the tribunal system. The complainant asked his MP to put this dossier before Cumbria Constabulary. The Commissioner understands that the complainant's MP did not accede to the complainant's request.
49. It is the complainant's position that the Council and its successive Monitoring Officers have refused to investigate his concerns and to comply with the provisions of the Local Government and Housing Act 1989 despite the Council's acknowledgement in 2006 that the Council had contravened the law. The complainant believes that a full report would compromise the Council's previous Monitoring Officers and also the Tribunal.



50. The complainant has advised the Commissioner that whilst Employment Tribunal rules allow his case to be corrected at any time, this is now being refused by an Employment Tribunal Judge.

*The Commissioner's decision*

51. The Commissioner has considered the representations made by the Council and those made by the complainant.
52. It is clear to the Commissioner that the complainant is seeking information from the Council which he believes can be used to overturn a decision of an Industrial Tribunal made many years ago.
53. In the Commissioner's opinion, it is extremely unlikely the Council has retained recorded information relevant to the complainant's request. To that end the Commissioner is obliged to accept the Council's assurance referred to at paragraph 31 above.
54. The evidence shows that the complainant has been corresponding with the Council about this matter for some considerable time; at least as far back as 2006. During this period, the complainant has made other requests for information relating to this particular matter, and at least one of these requests has been considered by the Commissioner under section 50 of the FOIA.
55. In the Commissioner's opinion, the complainant's persistence in pursuing his matter with the Council over this lengthy period has crossed a line whereby his current request has become burdensome and disproportionate.
56. The Commissioner considers that the Council is right to be mindful of effect that the complainant's request has on its staff and on its available resources.
57. The complainant's request concerns a matter which is of interest primarily to him. It is information, which, if it was held by the Council, would be of limited interest to the general public and therefore, in that context, the complainant's request has only limited value.
58. The complainant's objective in making his request is clear: It is equally clear that the complainant is unlikely to be successful overturning a tribunal decision made many years ago, particularly given the facts of the case which the complainant himself has provided.
59. It is obvious to the Commissioner that the Council has endeavoured to purposefully engage with the complainant over the many years since the Tribunal made its decision. And it is equally obvious that the complainant has seldom been satisfied with the responses and explanations which the Council has given him.

60. Having considered this complainant, the Commissioner has decided that the Council has correctly applied section 14(1) of the FOIA to the complainant's request. The Council is therefore entitled to refuse to comply with the remaining parts of the complainant's request.
61. The Commissioner has considered the terms of the complainant's request. She has noted that the complainant has not identified any particular document which he requires the Council to disclose to him. Instead the complainant has asked the Council a number of questions which require the Council to either confirm or deny, or for the Council to provide particular explanations for something it may or may not have done. In the Commissioner's opinion, the complainant's questions are unlikely to constitute a request for recorded information.

## Right of appeal

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62. 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)

63. 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.
64. 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** .....

**Alun Johnson**  
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