

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2017

Public Authority: Southwark Council

Address: PO BOX 64529

London

SE1P 5LX

Decision (including any steps ordered)

1. The complainant requested from Southwark Council copies of all leaseholder loan applications for the period January 2016 to the present day.
2. Southwark Council refused to provide the requested information citing Section 14(1) of the FOIA (vexatious requests).
3. The Commissioner's decision is that Southwark Council has correctly applied Section 14(1).
4. The Commissioner does not require Southwark Council to take any steps to ensure compliance with the legislation.

Request and response

5. On 23 November 2016 the complainant wrote to Southwark Council (the Council) and requested information in the following terms:

"Please provide me with copies of all leaseholder loan applications for the period January 2016 to the present day".

6. The Council responded on 24 November 2016. It confirmed that it held the requested information but refused to disclose it under Section 14(1) of the FOIA on the grounds that the request was vexatious. The Council pointed out that since the beginning of June 2015, the complainant had submitted 20 requests relating to Section 146 notices, loans/charging orders and possessions.

7. On 24 November 2016 the complainant requested an internal review.
8. Following an internal review the Council wrote to the complainant on 19 December 2016. It stated that it was upholding its original decision to treat the request as vexatious under Section 14(1) of the FOIA. It pointed out that since January 2016 the complainant had made a number of requests for loan application forms for various periods and four of these had been treated as vexatious. It added that the total number of requests relating to Section 146 Notices, loans and charging orders and possessions was 20 and provided the complainant with an appendix summarising these.
9. The Council stated that as 20 requests were on closely related subjects they should be viewed together in order to consider their cumulative impact.

Scope of the case

10. The complainant contacted the Commissioner 19 December 2016 to complain about the way her request for information had been handled. Specifically she said that she wanted to see the requested information.
11. The scope of the Commissioner's investigation will be to consider whether the Council has correctly applied Section 14(1) of the FOIA to the complainant's request.

Background

12. This Decision Notice should be read in conjunction with the Commissioner's earlier one under reference FS50655545 and dated 23 March 2017.
13. In the earlier Decision Notice FS50655545 the Commissioner found that similar requests made by the complainant for leaseholder loan applications for the periods 2010-13 and 2012 were vexatious. These requests were made on 27 April and 14 October 2016 respectively and the Decision Notice sets out the reasoning behind the Commissioner's findings in detail.
14. The request which is the subject of this Decision Notice is for the leaseholder loan applications for the period January 2016 to the present day and was made on 23 November 2016.

Reasons for decision

Section 14 vexatious requests

15. Section 14(1) of the FOIA provides that a public authority is not obliged to comply with a request that is vexatious.
16. 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.
17. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
 - the burden imposed by the request (on the public and its staff);
 - the motive of the requester;
 - the value or serious purpose of the request; and
 - any harassment or distress of and to staff.
18. Consistent with that Upper Tribunal decision, which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance on section 14(1)² states:

"Section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress".
19. Her guidance recognises that sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious, but that in cases where the issue is not clear-cut the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

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<http://administrativeappeals.decisions.tribunals.gov.uk/judgmentfiles/j3680/%5B2015%5D%20AACR%2034ws.rtf>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

- 20. This will usually mean weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request.
- 21. As the Commissioner has already carried out this balancing exercise in her earlier Decision Notice, FS5065545 dated 23 March 2017 she does not intend to rehearse the Council's and complainant's arguments in this decision as they are the same as for the previous one.
- 22. The Commissioner therefore finds that the request which is the subject of this Decision Notice is vexatious under Section 14(2) of the FOIA for the same reasons as those set out in her Decision Notice FS5065545.

Right of appeal

- 23. 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

- 24. 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.
- 25. 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
Group Manager
Information Commissioner's Office
Wycliffe House

Reference: FS50660502

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