

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2019

Public Authority: Bournemouth Borough Council
Address: Town Hall
St Stephens Road
Bournemouth
BH2 6DY

Decision (including any steps ordered)

1. The complainant has requested information with regards to staffing structures. Bournemouth Borough Council (the council) refused the request under section 14(1) of the FOIA as it considered it to be vexatious.
2. The Commissioner's decision is that section 14(1) of the FOIA is engaged.
3. The Commissioner does not require the council to take any steps.

Request and response

4. Following the council's response on 9 May 2018 to a previous request, the complainant requested the following information from the council on the 10 May 2018:

"Thank you for your response, which, as I am sure you anticipated, creates even more questions .

From a previous e-mail it is recorded that the post of Service Director Childrens Social Care was replaced with the post of Service Director Children, Young People & Families as part of a restructure.

1)Can you tell me when this restructure occurred, and which Committee approved/scrutinised the proposal, including the financial implications.

2) Since there was a 3 month period when nobody was fulfilling the post of Service Director Children Young People & Families , resulting in a saving of circa £35K, with nobody being paid an Honorarium, this must have meant that the additional work created by this post was minimal or non existent. This being the case was consideration given to deleting the post.

3) In addition in this 3 month period any duties performed by this post were undertaken by another member of staff. Was consideration given to awarding that person the post rather than engaging expensive Agency Staff, if so when and by whom

4) The post of Service Director Children , Young People & Families is not shown in the Corporate Organisation Structure for April 2017, June 2017 or January 2018. Since this might mean that there are also others can you please give details of all Executive Directors/Directors/Service Directors not detailed in these Structure documents and the reason for this.

5) Can you confirm that the cost of all Executive Directors/Directors/Service Directors was included in the Budget for 2018/19. If not which posts have been introduced at what cost.

6) The Org Chart Key attached to the January 2018 Corporate Organisation Structure indicates that there are now only Directors and not Service Directors below the Executive Directors level. Can you inform me when the decision was taken to re-designate these posts and by whom

7) Was Ms [name redacted] post made redundant? If not was it retitled since it is very similar to the post of Service Director Children, Young People & Families which would cause confusion”

5. The council responded on the 16 May 2018 refusing the request under section 14 of the FOIA as it determined it was vexatious.
6. The complainant then contacted the Commissioner on the same day to complain about the council's refusal. The Commissioner advised the complainant that he would firstly need to ask the council to carry out an internal review before she can investigate the complaint.
7. The council provided its internal review response on the 28 June 2018 upholding its refusal of the request.

Scope of the case

8. The complainant contacted the Commissioner further disputing the refusal of his request.
9. The Commissioner considers the scope of the request is to determine whether the council is able to rely on section 14 of the FOIA to refuse the request.

Reasons for decision

Section 14(1) of the FOIA – vexatious requests

10. 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.
11. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC v 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 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 and unjustified level of disruption, irritation or distress.
13. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in her published guidance². 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

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

14. The council has provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA. In doing so, it has considered the history and context leading up to this request being made.
15. The council has told the Commissioner that the complainant has a long history of correspondence with numerous officers within the council pre-dating his information requests.
16. The council has stated to the Commissioner that the persistent and repetitive nature of the complainant's correspondence in relation to this subject matter and the subsequent submissions of information requests has caused an oppressive burden and strain on the council's resources and time in having to deal with them.
17. It has also pointed out to the Commissioner that prior to this request, it advised the complaint on 23 April and 2 May 2018 that his requests and enquiries on senior management restructuring was bordering "vexatious" as per section 14 of the FOIA.
18. The council has advised the Commissioner that when it responds to the information requests, the result is additional questions being raised by the complainant.
19. The council has told the Commissioner that this behaviour demonstrates that the complainant will not be satisfied with any response the council provides and he will inevitably submit numerous follow up enquiries no matter the information provided.
20. The council has explained to the Commissioner that it is has spent an excessive amount of time and effort in responding to previous requests on this subject matter and concludes that this request along with the potential follow up questions, that will most likely come, only adds to the grossly oppressive strain already being placed on the council's time and resources in dealing with the complainant's requests.
21. The council has provided the Commissioner with a spreadsheet of requests it has received on this subject matter from the complainant, from May 2017 to this request. It shows that it has received 16 requests from the complainant over a 12 month period.
22. It has advised the Commissioner that it has received requests from the complainant on other matters which have also led to additional questions once answered.
23. The council has provided the Commissioner with a spreadsheet of the all of the other requests it has received in 2017 and 2018 along with subsequent additional questions received. The spreadsheet shows that from 24 January 2017 up to 10 May 2018 the complainant has made 15

other information requests and 14 further pieces of correspondence containing additional follow up questions to responses were received.

24. As well as this, the council has provided a further spreadsheet to the Commissioner. This spreadsheet is a list of emails the council has received from the complainant which it has extracted from its system. This is a snapshot of emails and any that appeared to be duplicates were removed. It shows that from 21 January 2017 to 10 May 2018 over 117 emails were received.
25. This list of emails only shows the subject line of the email and includes the requests for information made and additional question from the other spreadsheets provided. The council states that this demonstrates the volume of correspondence it has been receiving over a 15 month period from the complainant.
26. The Commissioner sees that this amount of correspondence being received from one individual over a 12-15 month period of time would have a significant impact on the council's resources in having to respond.
27. The council has explained to the Commissioner that it does not consider the request to be vexatious in isolation but when considered in context to the previous requests made, it has added to the burden being placed on the council's resources in having to continually deal with his requests.
28. The council has told the Commissioner that it has had consideration to the *Commissioner v Devon CC and Dransfield Upper Tribunal decision*, in that the present or future burden on the public authority may be inextricably linked with the previous course of dealings. The council believes that the impact of complying with the request would be likely to cause an unjustified level of disruption, irritation and distress and would be disproportionate in relation to the request itself and the inherent purpose of value as the council is of the view that the issues have already been comprehensively addressed.
29. The council expands on this in telling the Commissioner that it has already responded to a number of FOIA requests on the subject matter of senior management restructuring that followed the departure of its former Chief Executive as well as providing links to reports on its website, and addressed a number of additional questions following on from each request.

30. Two of these requests on this subject matter have been through the Commissioner's complaint process, resulting in decision notice FS50700212³. This decision notice upheld the council's applied exemptions and is currently under appeal to the Information Tribunal.
31. The second one was resolved informally with the council providing further information to the request following a dispute that more information was held.
32. The council has also made the Commissioner aware that following his complaint to the Commissioner about this request being refused, the complainant has raised an objection to the accounts for 2017/18.
33. The council considers this relevant because an individual does not have to pay directly for exercising their rights to raise an objection under the Accounts and Audit Regulations 2015. Any resulting costs incurred by the council form part of its running costs but indirectly, local residents pay for the cost through their council tax.
34. The council see this as a pattern of behaviour against it as the complainant has lodged similar objections (on varying subjects) between 2013/14 and 2017/18, none of which changed the auditor's unqualified opinion in those years. The council highlights that these are not without a cost to the public purse which it calculates to be around £20,000 (not inclusive of staff time) incurred for unsuccessful objections raised by the complainant.
35. However, the 2017/18 objection to the accounts happened after this request was made, and the Commissioner can only take into account evidence prior to a request being refused. Nonetheless, the Commissioner understands the council's reasoning that further interactions will continue on this subject.
36. The Commissioner can, though, consider the previous engagement with the council regarding the previous objections made by the complainant.
37. The complainant has told the Commissioner that he has requested the information so that he, as a member of the public, can fully understand the staffing structure of the council. As, he says, it is "*constantly changing titles, award honorariums and market premiums*" without any justification or reference to any scrutiny committee.

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2259326/fs50700212.pdf>

38. The complainant argues that the staffing structure must be readily known and should be in the public domain. The complainant also states that the information is required to clarify the situation that has transpired as part of an on-going police investigation.
39. The council states that this investigation is in relation to the Leader of the council, following concerns raised by the previous Chief Executive. The council states this is not linked to the structure of children's services.
40. The council has told the Commissioner that in this case, it has taken into consideration the fact that there will always be some public interest in disclosure to promote transparency and accountability, greater public awareness and understanding of senior management structures within a public-sector organisation including for example, the accountability for spending public money.
41. The council also explained to the Commissioner that in its internal review it did advise the complainant that information about the senior management restructuring that followed the departure of its former Chief Executive is available within a number of reports on the council website.
42. The council also points out that it provided the complainant with links to these reports and has provided information about the senior management restructuring in previous FOIA responses. The council considers that this information will have furthered the complainants understanding of the decision-making processes that were followed and that it adequately answered the questions raised by way of FOI requests and follow up enquiries.
43. The council has also taken into consideration the public interest in protecting public authorities from exposure to disproportionate burden or to an unjustified level of distress, disruption or irritation in handling information requests.
44. Regarding the subject matter relating to senior management, the council concludes that it has responded to numerous requests, additional questions and enquiries (outside of the FOIA) from the complainant and says it did not reach the point of applying section 14 of the FOIA quickly or without careful consideration.
45. It makes the point that section 14 is concerned with protecting the resources (in the broadest sense of the word) public authorities from being squandered on disproportionate use of the FOIA. On reviewing the request and the history and context, the council maintains that it has correctly applied section 14 of the FOIA in this case.

46. The Commissioner has considered the above, and considers that it is important for the public to understand a public authorities staffing structure, and in particular for its senior staff levels.
47. The Commissioner is very mindful of an individual's rights to seek information from public authorities and the value that this has on ensuring transparency.
48. But the level of enquiries to a public authority needs to be balanced against any burden being placed on it in terms of time and resources in having to respond.
49. The Commissioner agrees that in isolation, this request may not appear overly burdensome, but when considered in context to the history and volume of previous requests that the council has received from the complainant, she accepts that this would be placing a burden on the council's resources in having to deal with the enquiries.
50. In this case the Commissioner is of the view that the request has now reached the point where it can be seen to be disproportionate and unjustified when compared to the cost and burden being placed on the council's resources in dealing with it.
51. The Commissioner also agrees with the council's view that that responding to the request will only result in further requests being made by the complainant which will only add to the burden already being placed on the council's resources in having to respond.
52. The Commissioner, on consideration of the above, finds that the council are able to rely on section 14(1) of the FOIA to refuse the request.

Right of appeal

53. 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

54. 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.
55. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF