

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 2 December 2019

**Public Authority:** Liverpool City Council

**Address:** Cunard Building  
Water Street  
Liverpool  
L3 1AH

#### **Decision (including any steps ordered)**

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1. The complainant requested from Liverpool City Council (the Council) information broadly concerning the arrangements relating to stray dogs. The Council refused the request under section 14(1) of the FOIA on the basis that it was vexatious.
  2. The Commissioner's decision is that the Council failed to provide sufficient evidence to support its position that section 14(1) applies. Therefore, the Council is not entitled to rely on section 14(1) of the FOIA with regard to the request.
  3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
    - Issue a fresh response to the request without relying upon section 14 of the FOIA.
  4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.
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## Request and response

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5. On 5 November 2018 the complainant wrote to the Council and requested information in the following terms:

*"Please can you provide me with the following information from 1st January 2015 to 31st December 2015 and from 1<sup>st</sup> January 2016 to 31st December 2016:*

*1. Total number of dogs collected by the dog warden or by any person or company subcontracted to provide a dog warden service by the Council.*

*2. Total number of dogs returned to owner within 7 days.*

*3. Total number of dogs boarded at an establishment for the boarding of stray dogs within 7 days of being collected.*

*4. Total number of dogs disposed in compliance with Section 149(6) Environmental Protection Act 1990 after 7 days. If the dogs were gifted to a person, who in the opinion of the Council, would care properly for the dog, please provide the name and address of that person or persons.*

*5. Please provide details of the procedure adopted by the Council dog warden when forming an opinion, during the exercise of the powers conferred by Section 149(6) Environmental Protection Act 1990, as to whether the person to whom the dog is to be gifted will care properly for the dog. If there is no set procedure, please advise as to which factors are considered by the dog warden when forming any such opinion.*

*6. Total number of dogs euthanised within 7 days of having been collected.*

*7. Total number of dogs euthanised 7 days or more after collection.*

*8. Total number of dogs returned to, or kept by the finder of the dog, where the finder of the stray dog stated that they desired to keep the dog.*

*In relation to each of the above queries, please provide a separate breakdown from 1st January 2015 to 31<sup>st</sup> December 2015 and from 1st January 2016 to 31st December 2016."*

6. On 12 December 2018 the Council responded and refused the request under section 14 (vexatious requests) of the FOIA.

7. On 8 January 2019 the complainant requested an internal review of the Council's response.
8. On 21 January 2019 following an internal review, the Council upheld its original position.

### Scope of the case

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9. The complainant contacted the Commissioner on 24 February 2019 to complain about the way his request for information had been handled.
10. The following analysis considers whether the request was vexatious by virtue of section 14(1) of the FOIA.

### Reasons for decision

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#### Section 14(1) - Vexatious requests

11. 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.
12. 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 & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure." The Tribunal's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is 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.

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

14. 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).
15. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests, which are set out in her published guidance<sup>2</sup>. 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.
16. The task for the Commissioner is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal. In doing so she has taken into account the representations of the Council and the evidence that is available to her. In this decision notice, the Commissioner will also refer to her published guidance on defining and dealing with vexatious requests.

### **The Council's position**

17. The Council confirmed that it had applied section 14(1) of the FOIA to all of the complainant's information requests.
18. The Council provided the Commissioner with its reasons for applying section 14(1) of the FOIA and it also supplied copies of previous correspondence relating to the request.
19. The Council said that taking into account the extent and number of requests received from the complainant on the same subject matter; namely arrangements relating to stray dogs, it considers the application of section 14 of the FOIA is appropriate in these circumstances.
20. The Council provided a table which lists the requests submitted by the complainant:

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

<b>Date</b>	<b>Reference</b>	<b>Subject</b>
12/06/18	603173	Seized Dogs
27/06/18	606341	Officer appointed for dealing with stray dogs
10/07/18	608714	Stray dogs
10/07/18	608748	Stray dog contract
13/07/18	609525	Dog disposal
13/08/18	617355	Animal Wardens Ltd
05/11/18	643865	Seized dogs

21. The Council argued that the officers within the Council should not be expected to be subject to such levels of public scrutiny of their performance. The Council considers that *"this type of request to be bordering upon an abuse of the FOIA and there is no justification for officers to, in practice, cease their everyday activities and generate statistical data for an individual where there is no legitimate reason to do so."*
22. The Council further argued that the complainant's latest request, when considered in the context of his multiple detailed requests, is specifically designed to cause disruption to the relevant officers and Service Areas identified by generating additional administrative and bureaucratic work.
23. The Council said that the publication of information may aggravate animal rights groups, and therefore it would give rise to legitimate concerns by service managers with regards the potential for demonstrations on and off the Council premises. The Council considered that this would have an impact on its ability to undertake its duties without fear of threat or intimidation.
24. The Council also raised concerns about a number of social media posts by the complainant, which it stated raised concerns as to the safety of the Council's officers.

### **The complainant's position**

25. The complainant confirmed that there is a serious purpose to his requests. He explained that having carried out research for a number of months, and as a result of several FOI requests submitted to various local authorities, he said that he has established numerous facts and specific figures regarding arrangements for stray dogs which he finds concerning.

26. The complainant also explained the basis for his current request for information, and that this was to establish whether there are similar issues for the years 2015 and 2016. He considers that there is a public interest in these matters, and believes there is a public interest in providing greater transparency on the situation concerning unclaimed stray dogs and the Council's dealings with particular dog's homes.

### **The Commissioner's position**

27. There are many different reasons why a request may be considered vexatious, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgment about whether a request is vexatious.
28. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow theme. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
29. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.
30. The Commissioner acknowledges the background of this case, and it is clear that the complainant had made seven FOI requests to the Council relating to the same subject matter between June 2018 and November 2018. She also notes the correspondence and the nature of other material generated as a result of the complainant's approach to the Council. It shows correspondence between the Council and the complainant during 2018 relating to the complainant's concerns about stray dogs.
31. Whilst the request in this instance may not impose a significant burden in order to comply with it, the Commissioner recognises that the aggregated burden of dealing with the complainant's overall contact with the Council may have placed an increased strain on the Council's resources. Subsequently, this has limited the time that staff are able to spend on responding to other information requests and performing its other duties.

32. The Commissioner does not accept the Council's argument regarding the officers within the Council "*should not be expected to be subject to such levels of public scrutiny of their performance....*" She considers the scrutiny which would be provided would be greater oversight on the Council's actions regarding stray dogs, and of the Council's knowledge and oversight of any third parties which undertake part of these duties on its behalf. The Council did not provide any details as to how a disclosure of the requested information would have an effect on individual Council officers' work.
33. The Commissioner acknowledges that there is a serious purpose to the request. It is clear that the complainant has concerns about arrangements the Council has in place following the collection of stray dogs. His concerns are partly discernible from the questions he has asked of the Council in this request.
34. The Commissioner does not consider that there is any deliberate intention to cause annoyance to the Council. She understands that the complainant is frustrated by the Council's responses over an important issue, and he is seeking this information in order to have a clearer understanding of this.
35. The Commissioner accepts that there is a wider public value in explaining what happens to unclaimed stray dogs found in Merseyside, and in knowing whether the Council is lawfully exercising its statutory powers relating to the seizure, kennelling and treatment of stray dogs.
36. Whilst the Commissioner appreciates that the information the complainant has requested is of interest to him, she also accepts that the wider public would have an interest in how the Council handles the issue of stray dogs, and in the processes, checks and procedures which it has in place to handle this. However, the Commissioner has to consider whether the request is of sufficient wider public interest or value that it would be reasonable for the Council to comply with it, despite the burden it argues would be involved in doing so.
37. The Commissioner has given consideration to the findings of the Upper Tribunal in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1) of the FOIA. Taking into account all of the above factors, the Commissioner finds that the Council has failed to provide sufficient evidence or arguments to support its assertion that this request was vexatious. Therefore, she concludes that the request does not engage section 14(1) of the FOIA.

38. The Commissioner's decision is that the Council was not entitled to rely upon section 14(1) of the FOIA to refuse to comply with this request. At paragraph 3 above the Council is now required to issue a fresh response to this request.



## Right of appeal

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39. 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@justice.gov.uk](mailto:grc@justice.gov.uk).

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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 .....**

**Ben Tomes  
Team Manager  
Information Commissioner's Office  
Wycliffe House  
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