

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2020

Public Authority: Folkestone and Hythe District Council

Address: Civic Centre
Castle Hill Avenue
Folkestone
CT20 2QY

Decision (including any steps ordered)

1. The complainant has requested information regarding the Head of Paid Service's diary. The Council refused the request as vexatious.
2. The Commissioner's decision is that Folkestone and Hythe District Council is entitled to refuse the request as vexatious under section 14(1) of the FOIA.

Request and response

3. On 15 September 2019 the complainant wrote to Folkestone and Hythe District Council and requested information in the following terms:

'Please provide me with any information on:

The Head of Paid Service of Folkestone & Hythe District Council (F&HDC), Dr Susan Priest Diary (electronic/paper) for the financial year 2018/19'

4. The Council responded on 11 October 2019, refusing the request under section 14(1) of the FOIA as it considered it vexatious in nature.
5. The complainant requested an internal review of the response on 12 October 2019. The Council responded on 6 November 2019, maintaining its reliance on section 14(1).

Scope of the case

6. The complainant contacted the Commissioner on 6 November 2019 to complain about the Council's application of section 14(1) to his request. The Commissioner therefore considers the scope of the case to be whether the Council is entitled to rely on this exemption to refuse to comply with the request.

Reasons for decision

Section 14(1)

7. Section 14(1) of FOIA states that:

'Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious'

The Council's View

8. This is the second request from the complainant that Council has deemed vexatious. The first, received three weeks earlier, is the subject of decision notice FS50892765. The Council has considered these requests separately, but the contextual information provided is the same.

9. The Council states that it has received over 390 requests over the last 7 years from the complainant, and has provided responses and information for the vast majority of these. Of these requests, over 70 had been made between April 2019 and the Council's response to this request, constituting 11% of the team's caseload (number of requesters = 686). For the fiscal year 2018/19, the complainant made 91 requests constituting 8% of the Governance Team's caseload (number of requesters = 423). The figures provided clearly demonstrate a disproportion to the number of overall requests, and requestors. Between September 2018 and October 2019, the Council received 309 emails from the complainant, predominantly relating to information access requests, and issued 367 emails in response, largely relating to the same).
10. The Council has not taken the decision to refuse the request as vexatious lightly and recognises that the deprivation of the right of access to public information is a serious matter. In order to ensure this decision was taken proportionately, a balancing assessment was conducted that took account of the serious purpose or value of the request, any vexatious indicators, and the significant background context associated with this case. Additionally, the Council sought detailed legal advice prior to proceeding with this course of action in order to ensure a proportionate approach was adopted.
11. In addition to the volume of requests, the Council has explained that requests are frequently unnecessarily complex in their use of case law, public interest arguments and with reference to legislation that are of dubious relevance. Nonetheless these elements still require thorough analysis by staff in order to respond. These requests routinely take far longer than normal to process on account of their complexity, ambiguity, overlapping elements with prior requests, volume of requested data, or sensitivity of requested data.
12. This volume of correspondence has at times been accompanied with a range of obstructive behaviours that have resulted in the Council imposing conditions on contact earlier this year. These include limitations on the complainant's access to Council premises and restricting correspondence to a single point of contact. Examples of these behaviours have included:
 - a. Harassing Council Officers both before and after public meetings by demanding answers to questions that could otherwise be put to the Council at a more appropriate time and through more appropriate channels, causing alarm and distress to a number of Council Officers, some of whom have feared for their personal safety;

- b. Staying in public spaces outside the Council offices after public meetings have concluded in order to watch Council Officers leave the building and walk to their cars;
 - c. Taking photographs of Council Officers before public meetings have commenced;
 - d. Engaging senior officers, junior staff and Councillors with voluminous amounts of correspondence on a variety of matters. This would frequently be conducted in parallel with FOI requests for the same information;
 - e. Making allegations or complaints about current or former Council staff, while failing to provide substantiating evidence;
 - f. Consistently lodging formal objections to the Council's financial accounts each year since 2015. None of these objections have been upheld by external auditors as being materially relevant. This has resulted in the accounts' sign-off being routinely delayed, with additional costs incurred in order for the external auditors to investigate the submitted complaints;
 - g. Filing a request for erasure upon receiving the first s14 refusal based on his prior behaviour, in an attempt to delete evidence relied upon for that refusal.
13. Processing the complainant's enquiries has placed 'an extraordinary strain' on the resources of the information governance team, finance officers, and other departments and staff holding information relevant to the requests. The perception that these requests form part of an obsessive campaign relating to the Council is demoralising for staff members, who do not believe there is any reasonable prospect of the requests abating, regardless of any assistance or responses offered.
14. The pressures associated with processing the complainant's enquiries and requests previously resulted in staff sickness from stress and anxiety. This has been a contributing factor to previous staff turnover, with a member of the team resigning earlier this year, and another officer taking substantially reduced hours in response to stress related health concerns. The Council has struggled to recruit internally to the team, at least in part due to the widespread knowledge of these issues.
15. The Council has explained that the complainant writes for a blog that comments on local matters. In this capacity he has identified himself as a 'citizen journalist'. Historically this site has been predominantly but not exclusively focused on the District Council and its staff.

16. The Council has attempted to assist the complainant with his enquiries for an extended number of years, but says it faces a situation whereby its ability to provide statutory services to other members of the public is being directly affected by the time it is taking to respond to all the requests and enquiries received by the complainant. This in combination with the detrimental ongoing impact on staff, has led to the Council exploring s14 as a remedy to what appears to be an ongoing manifestly unjustified, inappropriate and improper use of a formal procedure.
17. The Council recognises that in this case, the request would likely be considered reasonable on balance and if looked at in isolation. However, the Council has applied section 14(1) on the basis of the disproportionate nature of the wider case history and context. While there is a public interest in the requested materials, this is balanced against the far larger factor of the historic and ongoing cumulative burden imposed on the Council, and the resulting excessive diversion of resources from other important public functions.
18. The Council has made reference to the Tribunal case, *Betts v ICO (EA/2007/0109)*, which noted:

"the Appellant could not be criticised for seeking the information that he did. Two years on, however, and the public interest in openness had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated requests..."
19. The Council concludes that *'whilst there is a reasonable purpose to the request, it does not outweigh the far larger factor of the excessive cumulative burden imposed up to this point.'*

The Complainant's View

20. The complainant does not consider that the Council has applied section 14(1) of the FOIA appropriately. If the request was voluminous in nature, he maintains that the Council should have responded under section 16 of the Act – advice and assistance – and engaged with him. Instead it has assumed the request is 'scattergun' in nature.
21. The complainant states that he has made the same request to other authorities who have duly complied, and that there is value and public interest in disclosure of the information.

22. The complainant draws attention to two tribunal decisions – one First Tier¹ and its subsequent appeal to the Upper Tribunal². The former found that 'vexatious' **could** be defined as the '*...manifestly unjustified, inappropriate or improper use of a formal procedure.*' The emphasis on 'could' was made by the complaint. He goes on reference the Upper Tribunal decision where the emphasis should be '*on an objective standard*' and that the starting point should be whether there is a reasonable belief that information requested would be of value to the requester, the public, or any section of the public. The decision-maker should consider all the relevant circumstances of the case to reach a balanced conclusion as to whether it is vexatious.
23. The complainant highlights the purpose of the FOIA to provide a right of access to official information, thereby holding public authorities to account. He recognises that it maybe annoying and irritating, as well as dissatisfying and disappointing for politicians, councillors and other officials to have to expose possible or actual wrongdoing. However, in light of the FOIA's intentions, these can't necessarily be regarded as vexatious.
24. The complainant gives examples of a range of examples where he considers the Council has misappropriated funds, and that his information requests are a legitimate way of exposing such activities and the intention has never been vexatious.
25. By disclosing the HoPS's diary, the complainant maintains it will:
 - Demonstrate accountability and whether the public is getting value for money;
 - Provide procedural aspects of how the HoPS operated and made decisions;
 - Show the focus and weight placed on particular issues by the HoPS and Council;

¹ Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)

² Dransfield v Information Commissioner and Devon County Council [2015] EWCA Civ 454 (14 May 2015)

- Demonstrate the workload of the HoPS, including meetings and the topics of those meetings.
26. The complainant also expresses concern about an ongoing crisis at East Kent Housing, which the Council partly owns in partnership with other councils, and with whom the HoPS regularly meets. He also names two other organisations with whom the HoPS meets, which may exclude employees of other companies and therefore demonstrate a level of prejudice by the HoPS.
27. The complainant asserts that none of his requests are vexatious, and suggests that the Council is afraid the complainant will pass on the information to other members of the blog and publish the information.

The Commissioner's View

28. Section 14(1) of the FOIA 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.
29. Despite the complainant's history with the Council, it is important to remember that for the purposes of FOIA, it is the request that may be deemed vexatious, and that requests are motive and applicant blind. The FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
30. Whilst there is no definition of the term vexatious in the FOIA, Tribunal decisions have provided insight and guidance in determining a request as vexatious. As the complainant cites, in *IC v Devon County Council & Dransfield*, the Upper Tribunal took the view that the ordinary dictionary definition of vexatious is of limited use, as deciding whether a request is vexatious depends on the circumstances surrounding that request. The Tribunal commented that vexatious could be defined as the *'manifestly unjustified, inappropriate or improper use of a formal procedure'*. This definition clearly establishes that the concepts of proportionality and justification are relevant considerations in deciding whether a request is vexatious.
31. In the Dransfield case, the Tribunal also found it instructive to assess 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) harassment or distress of and to staff. However consideration of a request as vexatious is not a tick box exercise and the Tribunal noted *'there is, however, no magic formula – all the circumstances need to be considered in reaching what is ultimately a*

value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.'

32. The Commissioner has issued guidance on dealing with vexatious requests³. The guidance includes a number of indicators that may help to identify a request as vexatious. However, these indicators are neither exhaustive nor definitive, and all the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious. Congruous with the Tribunal comments in the Dransfield case regarding circumstantial consideration, the Commissioner's guidance states: *'The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies.'*
33. The Council has supplied the Commissioner with a spreadsheet detailing the range of requests made by the complainant this year, as well as a reasonable sample of its responses to previous requests. This has provided her with evidence of the Council's thorough and proper response to many of the complainant's requests, as well as serious consideration of matters the complainant raises in his requests for internal reviews.
34. The Council has also provided the Commissioner with statistical information over several years that shows an increasing number of requests made by the complainant, which constitute a significant percentage of the IG Team's caseload.
35. The burden imposed on the Council of responding to the complainant's requests, along with a sustained and continuous stream of communication on associated issues, has taken its toll on the service, affecting both the retention and recruitment of staff. Whilst managing public expectations and demands is a core business of public authorities, the sheer volume of requests made by the complainant has, cumulatively, resulted in the service experiencing a demand that is having a serious impact on its functioning.

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

36. This request is, on the face of it, perfectly reasonable. Holding senior officers to account for their time and conduct is central to maintaining standards in public life. However, when looked at in the context explained by the Council, this reasonableness has to be questioned. The balancing exercise in the value of the request verses the burden of the authority is the key issue in this case. The Commissioner's guidance states:

'A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden.'

37. Whilst citizen journalism through FOIA requests can play an important role in raising issues and awareness amongst local communities, this has to be balanced against the burden this places on services for the constant supply of information. Referring to the broad issues identified in the Dransfield ruling, of particular consideration in this case is the distress experienced by staff in dealing with the volume and complexity of the requests it receives from the complainant, the reported behaviour of the complainant towards staff, and the excessive *aggregated* burden that complying with so many requests is placing on the authority. She therefore does not consider that it would be either beneficial or appropriate to offer advice and assistance under section 16 of the FOIA, as the complainant maintains.

38. Given both the practical and emotional strain the nature and volume of requests is placing on the Council's services and IG team, the Commissioner concludes that the Council is entitled to consider the request as vexatious and refuse to comply with it under section 14(1) of the FOIA.

Right of appeal

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

Website: 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

Andrew White

Head of FOI Complaints and Appeals

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