

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2020

Public Authority: Teignbridge District Council

Address: Forde House
Brunel Road
Newton Abbot
Devon
TQ12 4XX

Decision (including any steps ordered)

1. The complainant has requested information from Teignbridge District Council regarding complaints of fraud, intimidation and failure to investigate named staff properly. Teignbridge District Council did not comply with the request, citing section 14(1) (Vexatious requests) of the FOIA.
2. The Commissioner's decision is that Teignbridge District Council has applied section 14(1) appropriately. However, she considers that it has breached sections 10(1) (Time for compliance) and 17(1) (Refusal of a request) of the FOIA.
3. The Commissioner does not require Teignbridge District Council to take any steps as a result of this decision.

Request and response

4. On 27 August 2018, the complainant wrote to Teignbridge District Council (the council) and requested information in the following terms:

"Please provide a copy of any evidence or records held, as relied upon by Managing Director Phil Shears,

1) to identify that complaints of fraud, intimidation, and failure to properly investigate, against officers [name redacted], [name

redacted], [name redacted], [name redacted] *have been considered in accordance with the directives of the Constitution.*

2) how the basic human rights procedures have been considered where the complainant has been subject to threats and intimidation.”

5. The council responded on 13 November 2018. It confirmed that it had reviewed the records it held, which consisted of correspondence previously exchanged between the council and outside bodies. It explained to the complainant that he already had copies of these. The council also explained that, as these contain personal information about him and other individuals, it was not permitted to release them under the FOIA. It cited sections 40(1) and (2) (personal information) of the FOIA.
6. The council also pointed out that the Information Commissioner's guidance suggests that where requested information relates to the requester's personal information it should be provided where possible, under the General Data Protection Regulations. It also explained that in order to help resolve the complainant's query it was attaching the email content previously sent to him by the former Chief Executive, an extract from the External Auditor's report and a previous response that all refer to the internal investigation, for his information. It also explained that this was being provided to him personally and not under the FOIA.
7. In relation to the second part of the request, the council confirmed that it did not hold information regarding human rights procedures.
8. Following an internal review the council wrote to the complainant on 8 March 2019. It explained that in relation to the first part of his request, it had, over a period of several years, disclosed all relevant information either under Data Protection law (his own personal information), or under the FOIA. In relation to the second part of his request, the council explained that it did not hold any recorded information. The council also explained that it considered that section 14(2) (Repeated requests) of the FOIA applied to the present request.

Scope of the case

9. The complainant contacted the Commissioner on 3 April 2019 to complain about the way his request for information had been handled. He explained that he believed that the council was purposely not providing information that should already be in the public domain.
10. During the Commissioner's investigation, the council explained that it was no longer relying on sections 40(1) and (2), therefore the

Commissioner will not consider the council's application of section 40 any further.

11. The council confirmed that it considered that the request was vexatious and was therefore relying on section 14(1) (Vexatious requests) of the FOIA.
12. The Commissioner will therefore consider the council's application of 14(1) and the length of time taken to deal with the request.

Reasons for decision

13. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
14. The term 'vexatious' is not defined in FOIA. The Upper Tribunal (Information Rights) (the Tribunal) considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield* (GIA/3037/2011). 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.
15. The Tribunal also assessed the question of whether a request is truly 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.
16. However, the Tribunal cautioned that these considerations were not meant to be exhaustive and explained 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)
17. In her guidance on section 14¹ the Commissioner has identified a number of "indicators" which may be useful in identifying vexatious

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

requests. These include burden on the authority and unfounded accusations. However, the fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious.

18. In the Commissioner's view, 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. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible ie would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
19. In particular, the Commissioner accepts that there may be cases where a request could be considered as vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority.
20. In her guidance, the Commissioner suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

Evidence from the parties

21. The complainant explained that he considered that the council had failed to supply information within specified timescales. He also pointed out that in his request for a review, he had provided extensive detail to ensure that there could be no confusion as to the detail requested, which should ordinarily be in the public domain and easily accessed.
22. The council explained that the background to the present request for information was that in 2006 the complainant submitted a planning application, which was rejected by it. Subsequently, the complainant had made various allegations against members of staff. The council also explained that it considered that the present request was:
 - intended to cause unjustified burden, annoyance and disruption, and
 - have the effect of harassing the council and its staff due to the making of unfounded allegations against the council and its employees.

Intention to cause unjustified burden, annoyance and disruption

23. As explained above, the council explained that the complainant's dissatisfaction stems from the fact that he was unhappy because a planning application he had submitted previously, was unsuccessful. The

council also explained that although it has made many attempts to help him over the years, he continues to remain dissatisfied. His information requests, complaints and allegations have imposed an extremely significant burden on the council over a long period of time.

24. In addition, the council explained to the Commissioner that in 2008-2009, it had dealt with 10 requests for information from the complainant regarding planning and policy issues. It had also dealt with requests for the result of investigations it had carried out, including being asked for evidence held by the council showing that officers had been investigated. The council also confirmed that it had dealt with requests relating to his original planning application.
25. Furthermore, the council explained that in January 2019 the complainant was advised by its Solicitor and Monitoring Officer (responsible for council legality) that it would not respond to any further correspondence it receives in connection with such matters. Additionally, the council explained that there were over 200 items of correspondence involved in the many complaints over the years and that it had even had to apply a special exception to its data retention policy in order to retain evidence of the recurrent nature of enquiries to support decisions such as the one taken in the present case.

Harassing the council and its staff due to the making of unfounded allegations against the council and its employees

26. The council explained that the complainant has a history of making allegations of fraud, obfuscation, intimidation, blackmail, corruption etc. against staff. Additionally, the council explained that the complainant resurrects similar complaints periodically, which include personal accusations and unfounded allegations against officers.
27. In addition, the council explained that since 2006, the complainant had made allegations of fraud, maladministration, misrepresentations, bias prejudice reporting, calculated deception and unlawful practice, to various third parties including, the Legal Services Ombudsman/Solicitors Regulation Authority, the Police and the Crown Prosecution Service. The council provided the Commissioner with a table of correspondence from the complainant, including a description of each item of correspondence. The Commissioner notes that some of the complaints made to third parties are about some of the named individuals who are the subject of the present request. The council confirmed that none of these complaints had been upheld.
28. The council also provided the Commissioner with examples of defamatory information submitted by the complainant about council officers. The Commissioner notes that the complainant has accused members of staff, amongst other things, of using threatening behaviour

and behaviour which amounted to blackmail, in their dealings with him. She also notes that in correspondence to the council, the complainant asks a question about whether monies received from the council from central government on pilot schemes for affordable housing had all been "squandered" on officer handouts and payoffs.

29. In addition, the Commissioner notes that the complainant has accused named members of staff of fraud and cover ups and also talked about being denied his basic human rights. The council also provided the Commissioner with a complaint made by the complainant to it in January 2019, in which he names all of the individuals who are the subject of his present request. In that complaint, the complainant made the following accusations: Threat and intimidation amounting to blackmail; unsubstantiated claims of third party investigations; denial of incontrovertible evidence; determined efforts to frustrate the complaint and failure to conform with the adopted Constitution.
30. The Commissioner also notes that in a letter to the council from the complainant, he used the following heading

"Bringing the Planning System into Disrepute

Cronyism, Prejudice, Pre-Determination and Misuse of Public Funds".

The Commissioner's view

31. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. 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.
32. As the Tribunal in *Dransfield* observed:
- "There is...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".*
33. In her guidance, the Commissioner recognises that 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.

34. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
35. The Commissioner recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
36. The Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

Was the request vexatious?

37. The Commissioner has considered both the complainant's and council's arguments regarding the information request.
38. She notes the complainant's argument that he believes that the requested information should be in the public domain.
39. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a history of previous information requests between the parties
40. The Commissioner considers that, viewed in isolation, the request in this case may not seem to impose an unreasonable burden and is arguably not without a serious purpose.
41. However, she has taken into account the council's explanation that the complainant's dissatisfaction stems from a failed planning application in 2006.
42. The Commissioner notes the fact that before making the present request, the complainant had complained to the council about the individuals named in his present request. She considers that if he is dissatisfied with the council's handling of his complaint, he should have gone back to the council in the first instance. The Commissioner does not consider that the FOIA regime can be used to reopen issues already raised.
43. The Commissioner notes the council's explanation (and examples provided to her), regarding previous allegations made by the

complainant against council staff; including allegations of using threatening behaviour and behaviour which amounted to blackmail.

44. The Commissioner also notes the council's explanation that in the past, the complainant has complained to third parties about staff, including the ones named in this present request and that none of his complaints have been upheld.
45. The complainant is clearly dissatisfied with the council; the Commissioner considers that the present request is a continuation of that dissatisfaction.
46. Taking into account the background of the case, the Commissioner considers that the request appears to be a means of furthering his own disagreement with the council, which can be considered an inappropriate use of information rights under the FOIA.
47. Furthermore, taking into consideration the findings of the Tribunal in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner considers that the council was correct to find the request vexatious.
48. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Procedural issues

49. The complainant submitted his request on 27 August 2018. The council responded on 13 November 2018.

Section 10 – Time for compliance Regulation 5(2)

50. Section 10(1) provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.
51. The Commissioner considers that the council has breached section 10(1) as it took approximately 2½ months to respond to the request.

Section 17 – Refusal of a request Regulation 14(1)

52. Section 17(1) provides that if a public authority wishes to refuse a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemption(s).

53. The Commissioner considers that the council has breached regulation 17(1) as it took approximately 2½ months to provide inform the complainant that it was relying on an exemption.

Other matters

54. The complainant requested an internal review on 22 November 2018. The council responded on 8 March 2019.
55. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
56. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review should normally be within 20 working days of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
57. The Commissioner notes that the council did not provide her with any reasons regarding exceptional circumstances. She is concerned that it took approximately 3½ months for it to complete the internal review.
58. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft 'Openness by design' strategy² to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her 'Regulatory Action Policy'³.
59. During the Commissioner's investigation, the complainant provided her with a link to a newspaper article⁴. He explained that although the story was only an overview of procedure, it was supported with 22 files of evidence which would be available to the Commissioner at her request.

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

⁴ <https://www.theprsd.co.uk/2019/06/17/teignbridge-pay-offs-looked-into-while-investigations-linger/>

The complainant also explained that he believed that it further demonstrated his concerns that the council is;

- Altering information by way of deliberate misreporting and misrepresentation.
- Blocking access with the intention of preventing disclosure of information held by the council.
- Concealing requested information that should be in the public domain.

60. The case was reviewed by the Commissioner's Criminal Investigations Team with a view to establishing whether an offence under section 77 of the FOIA⁵ had been committed. The review concluded that there was no evidence that such an offence had been committed.

Right of appeal

61. 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:

⁵ Section 77 of the FOIA provides that it is a criminal offence, punishable by a fine, where a request for information has been made to a public authority (PA) and the requester would have been entitled (in accordance with section 1 FOIA or section 7 DPA) subject to payment of any fee, to communication of any information requested but either the PA, an employee or officer of the PA, or any person subject to the direction of the PA alters, defaces, blocks, erases, destroys or conceals any record held by the PA, with the intention of preventing the disclosure of all, or any part, of the information to the requester.

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

62. 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.
63. 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

**Gerrard Tracey
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