

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2021

Public Authority: Bristol City Council
Address: City Hall
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant requested from Bristol City Council ("the Council") information relating to the Council's legal basis for applying to the court for permission to collect council tax debt. The Council refused the request under section 14(1) (vexatious requests) of the FOIA.
2. The Commissioner's decision is that the request was vexatious and the Council was therefore entitled to rely on section 14(1) of the FOIA to refuse to comply with this request.
3. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

4. On 22 February 2020, the complainant wrote to the Council and requested information in the following terms:

"1. In 2003 the format of the liability order, hitherto defined as forms A, B, and C and laid down by the Local Government Act 1992 was discarded but Parliament has never prescribed a replacement. Please provide the specific section or regulation

under the relevant Act of Parliament or Statutory Instrument which provides a replacement.

2. In practice, a Magistrates signs a certificate which is attached to the list of alleged non payers but this protocol is not one which complies with the regulations. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument which provides evidence of compliance with the regulations.

3. Without a stamped and sealed order as proof that a liability order has been granted please provide the proof of claim essential to the Local Authority should the case be appealed and moved to a higher court. Can you please forward proof of the contract you claim to have?

4. Please provide the specific section of regulation under the relevant Act of Parliament or Statutory Instrument which shows that your process, as outlined above complies with Article 6 of The European Convention of Human Rights regarding process.

5. The Council Tax Rule Book 12th edition unequivocally states that liability orders are not judgement debts when carried to a higher court. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument which shows that Bristol City Council is acting within the provisions of The Local Government Act 1992 and successive replacement Acts which is used as a constant justification for its legislative actions.

6. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument which provides evidence that the liability order does not refer to a statement/Bill, which invokes the Bill or Exchange Act 1888 and the Financial Services and Market Act 2000. Please provide evidence that under the schedules of 3 the LoBo loans, councils are not now trading and governed by the Financial Services and Market Act 2000.

7. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument which provides for councils' businesses taking out loans from banks owned by the Treasury and which proves that councils remain public servants, fit for purpose and afforded of the protection of the Local Government Act 1992.

8. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument which confirms that proceeding with the issue of a liability order after the offer of an appearance at court has been declined is not in clear breach of the Magistrates Court Act protocols of openness, fairness, lawfulness and full disclosure. CPR rules Part 1- Overriding Objective and, in particular, rules 1.1(2) and (a)-2(c)(i)(ii)(iii), 2(d) and 2(f).
9. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument which provides evidence that alleged liability orders are a judgement debt for the purpose of the Civil Procedures Rules and Magistrates Court Act of 1980; and in consequence can be enforced as a judgement debt in the county court or high court pertaining to bankruptcy.
10. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument which provides evidence that Bristol City Council cannot stand accused of maladministration due to the fact that form A has not been signed or stamped by a magistrate judge and the case has not been judged on an individual liability; it has been processed as a group liability therefore there is no openness, transparency, lawfulness or full disclosure.
11. According to the protocols laid down in The Local Government Act 2012, all public borrowing decisions should be transparent and presented in a way that is easily understood, especially when borrowing from private institutions. Please provide a copy of the schedule and a copy of the signed LoBo agreement of all LoBo loans entered into by Bristol City Council.
12. How many of these Lender option, Borrower option (LoBo's) do you have on your books?
13. When were they signed and by whom?
14. Who advised the council to enter the LoBo(s) and which brokerage firms did the council uses to arrange them?
15. Since each contact has been signed, has the Lender exercised its option and changed the interest rate?
16. If so, please specify the date of the interest rates and revised interest rate.

17. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument which shows that Bristol City Council is exempt from the House of Lords ruling that Councils are forbidden from taking out swap contracts (a form of derivatives) following a 1989 House of Lords ruling known as *Hammersmith and Fulham v Goldman Saachs* (Teaser rates start off at a fixed low rate for a pre-determined term after which the lender has the option to either accept the new rate or repay the entire loan).

18. The 1989 ruling declared that Local Authorities had no power to engage in interest rates swaps agreements because they were beyond the Council's borrowing power and all the contracts made were null and void. Their actions were held to contravene the Local Government Act 1992. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument which provides proof that Bristol City Council is still acting under the confines of the Local Government Act 1992 despite taking LoBo loans such as the examples enclosed.

19. Please provide copies of Consolidated audits of Financial Statement (CAFR) of Bristol City Council for the year 2018/2019 of all public liability debt, in particular the statutory instrument or certificate or financial instrument you are using pertaining to Council Tax number 20010913191 and Birth certificate number FE345021.

20. Please inform me of any differences in procedure carried out at present by Bristol City Council to that specified in the guidance by the Justices Clerks Society Procedure in Liability Orders of 2011.

21. In whose employment is the legal advisor specified in (2) of the guidance at point 16?

22. 'Council has considered the issues and in light of the procedures operating in their courts'. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument that provides one party, in this case the council, to lawfully or legally occupy the position of prosecutor, judge and beneficiary in a court room.

23. Please provide the specific section or regulation under the relevant Act of Parliament or Statutory Instrument that makes it lawful and transparent for Bristol City Council to print summonses on Magistrates Court paper passing off (uttering on paper) council paperwork as that sent from the court.

24. Point 5 of the Justices Clerks' guidance states that 'The Court and its staff should not give the impression that the council is in charge of the process'. Please provide proof that this not Fraud by Misrepresentation under the Fraud Act 2006."

5. On 2 April 2020 the Council wrote to the complainant and refused this request citing section 14(1) of the FOIA (vexatious requests).
6. On 13 April 2020 the complainant wrote to the Council and expressed dissatisfaction with its response. The complainant wrote to the Council again on 24 April 2020 to request an internal review.
7. Following an internal review the Council wrote to the complainant on 15 May 2020. It stated that it maintained its reliance on section 14(1) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 27 May 2020 to complain about the way his request for information had been handled.
9. The scope of this case and the following analysis is to determine if the Council was entitled to rely upon section 14(1) of the FOIA in order to refuse this request.

Reasons for decision

Section 14(1) – 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 (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*

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

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 Dransfield case, the Upper Tribunal also found it instructive to assess 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.
13. 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).
14. 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 or unjustified level of disruption, irritation or distress.
15. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests². 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 complainant's position

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

17. In submitting his complaint to the ICO, the complainant stated that he considers the Council's response to be unacceptable and that it had failed to meet its obligations under the FOIA.
18. The complainant further explained that he considers the Council to be using section 14 as a means to prevent the requested information being disclosed. The complainant does not consider this to be in the public interest.
19. In his letter to the Council of 13 April 2020, the complainant also explained that he requires the requested information to carry out his own due diligence.

The Council's position

20. In her correspondence to the Council the Commissioner explained her approach to investigating the application of section 14(1). She asked the Council to provide detailed representations in support of its position that the request in this case was vexatious. In line with her standard approach, she asked the Council to provide:
 - details of the detrimental impact of complying with the request
 - why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value, and
 - if relevant, details of any wider context and history to the request if the Council believes that this background supports its application of section 14(1), including relevant documentary evidence to support such a claim.
21. The Council provided the Commissioner with its arguments as to why it applied section 14(1) of the FOIA. The Council also provided details of the background and history surrounding this request.
22. By way of background, the Council stated that this request relates to an ongoing dispute between the complainant and the Council regarding Council tax debt. The Council stated that in 2018 it received a series of letters from the complainant within which he contested his liability for Council tax and raised complaints against the Council. The Council stated that in June 2019, it applied to the courts for a liability order which resulted in the complainant being ordered by the court to pay his outstanding Council tax debt to the Council. The Council considers that this information request was submitted in response to the court's ruling. This is because the requested information concerns the legal basis for the Council's application to the court for permission to collect council tax debt.

23. The Council also explained that it receives a significant amount of correspondence from the complainant. The Council stated that, as a result of this correspondence, the complainant has been provided with a single point of contact at the Council. However, the Council explained that the complainant continues to address correspondence to various officers within the Council, instead of the allocated single point of contact.
24. In its internal review response to the complainant, the Council argued that complying with the request would place a significant burden on the Council by diverting staff from essential duties. The Council considers the request to comprise of 24 separate requests which would *"require the reallocation and diversion of already limited Council resources"*.
25. In its internal review response, the Council also stated that it does not consider the request to have an obvious purpose, and therefore considers the request to place an unjustified and disproportionate burden on the Council.
26. In its internal review, the Council also took into account the wider context surrounding the request which is detailed above. From the previous correspondence exchanged with the complainant, the Council considers that he will not be satisfied with any responses provided or information disclosed. The Council predicts that, should it respond to this request, the complainant will submit further requests and follow up enquiries.
27. In its submissions to the Commissioner, the Council made reference to the indicators of a vexatious request as outlined in the Commissioner's guidance on section 14(1) of the FOIA, including:
 - Burden on the authority
 - Disproportionate effort
 - Futile requests
28. The Council argued that the request has *"no benefit to the wider public"* and it considers *"that the complainant is pursuing a highly personalised matter related to council tax which has little value to the public at large"*.
29. The Council explained that the complainant's correspondence, *"can be difficult to understand and answer because they are written in verbose, legal-type jargon"*. The Council has provided evidence of this to the Commissioner to substantiate its point. This consists of a number of letters from the complainant to the Council in which the complainant discusses his ongoing dispute with the Council regarding the non-

payment of council tax and a subject access request from the complainant to the Council. The Council considers the complainant's information request to follow this pattern. It stated the following:

"Many of the questions are unclear and it is difficult to understand what information is required. From our previous dealings with [the complainant] we do not believe that a request for clarification would be successful or help us easily identify whether we hold the information".

30. The Council explained that its replies to the complainant are usually followed up with further letters from the complainant.
31. The Council argued that this request is an attempt by the complainant to distract and divert the Council's limited resources. The Council considers that to research whether it holds this information and prepare the response would place a significant burden on the Council's resources. The Council estimates that it would take 12-16 hours to respond to the complainant's request. It argued that this would be in addition to the 26.2 hours the Council has already spent on dealing with the complainant's non-payment of council tax. Ultimately, the Council considers this request to be burdensome and to be *"an unjustified disruption on their ability to deliver mainstream services and answer legitimate requests"* and as such, has applied section 14(1) to the request.

The Commissioner's position

32. The Commissioner would like to highlight that 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.
33. 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. 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.
34. The Commissioner's guidance emphasises 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 complying with it. Aspects that can be considered in relation to this include the purpose

and value of the information requested, and the burden of the request upon the public authority's resources.

35. However, the Commissioner is also keen to stress that in every case, it must be the request itself that is vexatious, and not the person making it.
36. The Commissioner acknowledges the Council's argument that the request for information is related to the complainant's ongoing dispute with the Council regarding the non-payment of council tax. From the evidence provided by the Council, it is clear to see that a significant amount of correspondence has been exchanged regarding the Council tax matter. The Commissioner therefore accepts the Council's argument that the request for information stems from a personal matter.
37. The Commissioner considers that the complainant intended to use his information request as a means to reopen matters that have already been addressed and resolved in court. The Commissioner notes that if the complainant wished to contest the courts' decision, he could have done so using the proper court appeal procedures.
38. The Commissioner accepts the Council's argument that the request is of *"no benefit to the wider public"*. She wishes to reiterate that the purpose of the FOIA is to promote transparency and accountability to the general public and it does not serve as a mechanism for addressing personal grievances.
39. Furthermore, the Commissioner is of the view that compliance with this request would be unlikely to bring any resolution to the ongoing dispute between the complainant and the Council. Indeed, it appears more likely that compliance with this request would result in further correspondence from the complainant regarding the same issue.
40. 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 the above factors, the Commissioner's decision is that the request was vexatious and the Council correctly relied on section 14(1) in this case. Therefore, the Council was not obliged to comply with the complainant's information request.

Right of appeal

41. 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

42. 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.
43. 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
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