

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

### **Decision notice**

**Date:** 13 April 2021

**Public Authority:** Wiltshire Council  
**Address:** County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

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

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1. The complainant has requested information relating to why the council has not sought to recover a sum of money from him following a court judgement for costs placed against him. The Council has previously supplied the complainant with information, however, it has applied section 14(1) to this particular request.
2. The Commissioner's decision is that the council has correctly applied section 14(1) in this instance.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 25 December 2019, the complainant wrote to the council and requested information in the following terms:

*"I want to know the official committee(s) and dates(s) minute Council reasons why it doesn't want £105,814 plus interest of public funds which is due, and is coincidentally due to me."*

5. Having previously responded to similar requests, the council responded on 11 March 2020. It stated that it was refusing to respond to the request further on the grounds that section 14 of the Act applied (vexatious requests).
6. Following an internal review, the council wrote to the complainant on 11 September 2020. It said that a charge against the complainant's property had been removed but said that it was not able to revoke the underlying judgement of the Court. It did not specify that it was continuing to rely upon section 14, but it also did not provide any further information. It subsequently confirmed to the Commissioner that its response was intended to convey that it was continuing to rely upon the exemption claimed.

## Scope of the case

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7. The complainant initially contacted the Commissioner on 3 December 2019 to complain about the way his request for information had been handled. At the time the Commissioner provided advice regarding the complainant's rights under the Data Protection Act 2018 (the DPA) and the case was closed.
8. The complainant subsequently wrote back to the Commissioner expressing his dissatisfaction with the council's responses and requesting that the Commissioner consider his request under the FOI Act. He considers that the rewording of his previous requests to narrow the scope to minutes etc should allow the council to respond to his request under the FOI Act as personal data issues will not be included within such information.
9. The Commissioner therefore considers that the complaint is whether the council was correct to apply section 14 to refuse to respond to the request for information further.

## **Reasons for decision**

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### Background to the case

10. Following a legal case between the complainant and the council, the complainant had a court judgment costs awarded against him which resulted in a charge being put onto his property.
11. The council, and the council's insurers, have subsequently informed him that they have decided not to require the recovery of the costs, that they have withdrawn the legal charge they had against his property, and that they therefore no longer have any legal basis for enforcing recovery of the debt against either him or his property. As both the council and the insurance company have stated to him categorically that they will not do so the council also argues that they were would now legally be unable to do so, even if they subsequently attempted to.
12. The complainant remains concerned as the court judgement still finds that costs were awarded against him, however, the council has said to him that this is a matter which it is unable to assist him with and that he needs to take up with the court; the judgement was made by the court, not the council.
13. The council has previously responded to a similar request under the provisions of the DPA, and says that it has responded to similar requests on numerous occasions previously.
14. On 3 December 2019 the council disclosed to the complainant copies of his personal data, which included correspondence between the council and its insurers, under the provisions of his rights under the DPA. The council argues that this correspondence makes the reasons for non-recovery of the costs clear, and the council considers that this information responds to his question about the decision not to recover the debt. The complainant returned this information to the council and said that he wanted the council's response to be under the FOI Act.
15. The wording of the complainant's request of 25 December 2019 therefore seeks to avoid the request encompassing personal data belonging to him and to concentrate on reasons why the council did not seek to recover a debt of over £100,000 which it was owed.

### **Section 14(1)**

16. 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.

17. 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*<sup>1</sup> (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.
18. 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.
19. 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).
20. In the Commissioner's guidance, she suggests that 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.
21. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests, which are set out in her published guidance on vexatious requests<sup>2</sup>. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.

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

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

22. 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.
23. 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.

The complainant's position

24. The complainant argues that the council has over £100,000 owed to it by him and questions why it has not sought to recover this money. He argues that there is a public interest in the council seeking and recovering this money, and therefore any reasons why it has chosen not to do so should be made clear.
25. The council has explained to him previously that one of the reasons why it would not seek to recoup its costs from him was that it did not wish to leave him homeless. The complainant argues that that would not be the case and says that as he has told them this. He therefore considers that it cannot use this argument as an excuse for not taking action to recover its costs from him.

The council's position

26. The council's position is that the complainant has made numerous requests for this information, in various forms of words. It argues that it does not hold any information falling within the scope of the complainant's request beyond that which it has already disclosed. It also says that what information it does hold has been disclosed to him via the complainant's subject access request under the DPA.
27. The council has explained to the complainant that this was the most appropriate means of obtaining the information which is about him. However, the wording of the complainant's request is intended to facilitate a disclosure of information under the FOI Act rather than under the DPA by attempting to disassociate himself, personally, from the information. The complainant returned information provided to him under the DPA to the council and asked for his request to be considered under the FOI Act. In point of fact, the terms of his request will not have an effect on the status of this information in this case. The majority of the information both identifies and relates to him, and will be personal data for the purposes of the DPA.
28. For the absence of doubt therefore, the council confirmed that it has disclosed the complainant's personal data to him previously, on 3

December 2019. As that information is personal data relating to him, this information would also be also exempt from the council's response to the FOIA request under section 40(1).

29. This, however, digresses from the point that the application of section 14 effectively allows the council to state that it is not dealing with a request further because it considers it to be vexatious. The Commissioner's decision relates to whether the council applied section 14 correctly. If so, she does not need to consider whether any of the exemptions were applied correctly or not as the request is 'stopped' at that point.
30. The council argues that it has made clear, including in a personal meeting between the complainant and its executive director, that no further information is held which falls within the scope of the complainant's request for information. It argues that the complainant has been told this numerous times, but still continues to make reworded requests and arguments asking the council to disclose the information.
31. The council said that although it realised it could refuse the request on the basis that the information is personal data relating to the applicant, and that this has already been supplied to him, given the past history of requests made by him it believed that the best approach was now to address the request through the use of section 14, It said that it is *"of the opinion that [the complainant] has requested the same information several times previously and has been provided with a full description of the reasoning for not seeking to recover the costs against him on several occasions. He has also been provided, under data protection legislation, a document that could be considered the minutes of a committee discussing the recovery of the costs."*

#### The Commissioner's analysis

32. 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. 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 wrongdoing on the part of the authority.
33. 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 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.

34. The Commissioner recognises that the council has provided the vast majority of the information it holds to the complainant under its DPA response. It has also sought to re-assure the complainant on numerous occasions that neither it, nor its insurance company (which has the right of recovery) will take further action against the complainant to recoup the legal costs. The insurance company has also separately written to the complainant confirming its position to him. It has also sought to explain its reasons for not taking action to recover the costs, including in a meeting with senior council officers.
35. Whilst the Commissioner notes that the complainant has sought to reverse the argument to suggest his interest is about why the council is not seeking to recoup costs which are clearly owed to it, and which it is in the public interest to recoup, the Commissioner recognises that this argument is essentially being used to forward the complainant's wish to have a full explanation from the council as to why it has decided not to recover the money *from him*.
36. The council also argued that on 25 December 2019 the complainant returned all of the documents provided in accordance with a similar FOI request, and that these documents, in fact, provided the answers in respect of information he was seeking.
37. The council noted that the complainant has also asked the same question via his doctor and via his Member of Parliament previously and received the same response which it has always provided as to its reasons. The complainant however distinguishes this request from his previous by stating he is seeking council minutes which clarify the reason for not seeking to recover the debt. He believes that this is a different request to his previous as the minutes will not contain personal data relating to him within them.
38. In effect the council's position is that it has provided the complainant with all of the information which it holds previously, and has discussed and explained its position with him, and therefore it does not consider that responding to the current request would add anything new to the complainant's understanding of its position. When considered against the burden of continuing to provide responses to FOI requests, it considers that section 14 is therefore applicable.

The Commissioner's analysis

39. The Commissioner notes the council's argument that the complainant is essentially seeking to continue a matter which has already fully considered on a number of occasions. The wider issue has been resolved through the decision not to enforce the court's decision, and to remove any possibility of the costs being retrieved via the charge on the complainant's property. The council highlighted that the central issues involved behind the complaint were considered by the court in 2011, via a council review in 2013, and in a referral to the police in 2015 alleging unlawful behaviour by members and senior officers. The wider issue involving the complainant's reasons for going to court have therefore been considered on a number of occasions, by a number of separate independent bodies.
40. The Commissioner recognises the complainant's argument that there is money owed to the council (or its insurers) and that there is a public interest in the council seeking to obtain these funds. However, the council has explained its position to him on this point. Although he disagrees with the council's explanation, this does not make the council's response incorrect. Insofar as the council's obligations under FOI are concerned, the council simply needs to provide the information it holds which responds to the complainant's request.
41. The complainant admits that since the 2011 trial he has asked the council why it is not enforcing the judgement in over 200 letters, including, as mentioned previously, correspondence from his GP and his Member of Parliament. He has had information provided in response to his request via the DPA and has had correspondence and meetings with senior council officer over the issue. The Commissioner considers therefore that making a further FOI request in this manner is evidence of unreasonable persistence by the complainant. The council argues that the correspondence is merely a way of seeking to perpetuate the issue with the council.
42. In April 2019 the council also informed the complainant that it was not going to respond to any further requests over the same issue due to ongoing concerns about the impact which continuing the correspondence might have on his health.
43. The Commissioner recognises that the council is concerned that it has been left in an impossible position, and the only resolution it therefore has is to apply section 14 at this point in order to seek to draw a line under the issues involved.



44. The Commissioner has seen no evidence that the complainant has used abusive language, and she does not consider that the complainant's request is made with the intention of harassing or annoying council staff. The council has not sought to argue this point either.
45. Nevertheless, the Commissioner recognises that the receipt of a request over an issue which the council has sought to respond to on numerous occasions previously, and over a long period of time, would be distressing to the council officers and officials dealing with it. She also notes that the complainant has admitted that the whole situation is distressing, and he continues to feel that matters remain unresolved.
46. The Commissioner recognises that there is a wider value in the council providing an explanation as to why it chooses not to seek the recovery of any funds which are legally owed to it. A failure to do so effectively reduces the public purse, and the funds it has available to carry out its functions.
47. The Commissioner notes however that as the debt is owed by one individual, the complainant, the council would also be at risk of breaching the complainant's rights under the DPA if it were to disclose information regarding its reasons publicly.
48. The Commissioner recognises that this is not a case where the complainant is purposely acting vexatiously with a view to frustrating, irritating or antagonising the council. The complainant is concerned that the court judgement remains and considers that this leaves him in a position where the matter remains unresolved.
49. However, the council has sought to provide reassurances, and information, to clarify its decisions and to emphasise to the complainant that he does not need to be concerned about any future attempt to recover costs from him. It has repeatedly responded to his requests where it has been able to do so.

### Conclusions

50. The Commissioner considers that this is an unusual case. Although not all of the specific issues highlighted by the Commissioner in her guidance, nor in the Upper Tribunal's decision in the case of Dransfield, are present within this case, she must take into account the guidance of the Upper Tribunal, also in the Dransfield case, that decisions should be made on a holistic basis, taking into account all of the circumstances of the case.

51. The complainant's correspondence in this case outlines his fear that the council or its insurers will seek to recover the debt from him in the future. However, the council is only able to provide the information it holds which demonstrates that it will no longer seek to recover the debt, and that any legal claims it did have, have been dropped.
52. The council cannot provide the complainant with the information he is looking for in order to resolve his concerns. It does not hold any further information falling within the scope of the request beyond that which it has already disclosed to him previously. The complainant does not accept the council's disclosures provide the information which he is looking to receive. The council believes that the complainant's continued correspondence asking for the same information is merely putting a burden on the council's resources which, in the current climate, it argues it cannot sustain.
53. Effectively, the situation is at an impasse. A continuation of the correspondence over this issue is not in the interests of the council, nor of the complainant. Regardless of the number of further requests which the complainant might make, the council's responses will not change, nor will any further information be disclosed which might aid the complainant in understanding the council's position or resolving the complainant's concerns. A continued repetition of request and response will suit neither party's interests.
54. The Commissioner has taken a number of circumstances into account in reaching her decision on this complaint; the number of previous requests over this issue, the independent oversight of the wider issue, the relative lack of wider value in allowing correspondence to continue over this issue, the minor value of any disclosure which could explain the council's decisions (which have not already been disclosed via the complainant's DPA response), and the complainant's obvious distress over the situation as a whole. The council has sought to respond to the request as best it can over a number of years and responding to a large number of requests.
55. The Commissioner has not reached her decision lightly in this case and has fully taken into account the complainant's position. Whilst the complainant has clearly shown no intention of harassing the council, from the council's view, his continued persistence in seeking information, which it has already provided, would have the same affect as if it were. The additional issues with the complainant's health would also have concerned the council as he has raised this with them on a number of occasions.

56. The Commissioner sees no value in allowing the situation to continue further by deciding that the council was not correct to apply section 14 and allowing the correspondence to continue. She considers that to do so would be of significant detriment to both parties at this point.
57. The Commissioner is therefore satisfied that the council was correct to apply section 14(1) in this instance.

## Right of appeal

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58. 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)

59. 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.
60. 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**  
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**Information Commissioner's Office**  
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