

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2022

Public Authority: Dudley Metropolitan Borough Council

Address: The Council House
Priory Road
Dudley
West Midlands
DY1 1HF

Decision (including any steps ordered)

1. The complainant requested information from Dudley Metropolitan Borough Council ("the Council") relating to a tenant case against a landlord, the action taken by the Council and other information. The Council refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore the Council was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps.

Request and response

4. On 3 September 2021, the complainant made the following request for information to the Council:
 - "1. Keenly, report typed by [redacted name] on 7/10/19 or soon after that date, explicitly mentioning the disrepairs spotted at this building
 2. Keenly, relevant copies and hard evidence that improvement notice issued by [redacted name] or [redacted name] on 22/9/20 was served upon these landlords along with the concerned dates Has she not already had copies.

3. Keenly, emails shared between caseworker [redacted name] and [redacted name] or any call recordings held accordingly.
4. Keenly, suggested improvement notice issued by [redacted name] to these landlords before 14/2/20 as suggested in his letter dated 17/2/20 for court
5. Keenly, copies of tenancy agreements for these six other flats as held on record ever since [redacted name] became involved without any formal information about [redacted name] leaving to move on to environmental, maybe.
6. Keenly, documented evidence of progress with regards to the alleged court case put up against these landlords for allowing a woman with child move into flat four after it had been sealed by [redacted name] about two years ago.
7. Keenly, the email received by [redacted name] from [redacted name] during early September 2019 might assist in the court case.
8. Keenly, an email received by [redacted name] from the local member of parliament and any response to the same.
9. Keenly, correspondence or call recording between [redacted name] and [redacted name] during early last year about camera removals.
10. Keenly, details of the council employee who took a decision not to share any information with a solicitor dealing with personal injury cases.
11. Keenly, the details for landlord or manager of second floor flats.
12. Keenly, reasons for [redacted name] and [redacted name] having accepted tenants of flats two and three alongside four as belonging to a complete household classifying them on family basis even though they are from different countries if not skin colours bluntly so that these landlords could get away with certain legalities being adhered.
13. Keenly, any tenancy agreements held for the three flats on second floor.
14. Keenly, original agreements that have been chemically tested as being genuinely for that time period as dated, between [redacted name], [redacted name], [redacted name], [redacted name], [redacted name] and any other parties with common interest in this

building.

15. Keenly, complete history of any gas safety and energy efficiency certificates that ever existed for this building.

16. Keenly, council tax records to certify who has been paying accordingly during different phases since the last twenty years."

5. On 7 September 2021, the complainant made another request for information to the Council, as follows:

"1. Recording from bodycam worn by [redacted name] on 31/8/21 during her visiting here.

2. Copy of any letter issued by [redacted name] to me during the last two months.

3. Evidence of confirmation from the relevant department that any such letter was typed.

4. Similar confirmation about the letter dated 6/4/21 allegedly been genuinely holding typing records accordingly."

6. On 5 November 2021, the Council combined the requests. It responded and said the request was being refused under section 40 and section 42 of FOIA.

7. Following an internal review, the Council wrote to the complainant on 15 November 2021 and revised its position stating the request was vexatious under section 14(1) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 4 December 2021 to complain about the way their request for information had been handled.

9. This notice covers whether the Council correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
11. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)¹ states, it is established that 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.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
13. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
14. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)². Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
15. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The four broad themes considered by the Upper Tribunal in Dransfield were:

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

- the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
17. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

“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” (paragraph 82).

The Council's view

18. In its submission, the Council put forward its version of events that had preceded the complainant's request. In its view the complainant was simply using her request as
- “a manifestly unreasonable and obsessive approach”...and
“In particular, the complainant focuses her dissatisfaction on the activities of specific named officers (as evidenced in the material attached) where she appears to have a distrust with any officer that she has dealings with”
19. The Council provided the Commissioner with supporting evidence showing a number of requests made by the complainant over a period of two years.
20. The Council explained the complainant has made several complaints to it relating to the landlord and property, and that this has contributed to the burden placed on the Council in dealing with the excessive correspondence.

The Commissioner's decision

21. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
22. The Commissioner acknowledges that the Council considers that the motive of the requester is to continue matters that have already been addressed as business as usual.

23. The Commissioner also notes that the Local Government Ombudsman has addressed complaints about the Council and the complainant continues to bring the same issues in their information requests to the Council.
24. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
25. The history of the complainant's contact with the Council and the context of the request provide strong evidence of unreasonable persistence and unreasonable burden.
26. The complainant is clearly trying to continue their grievance via the information request and indeed the wording of the request (as the Council notes) shows this. The complainant's grievance about a landlord and property repairs has previously been concluded. The complainant's repeated attempts to reopen through FOIA an issue previously investigated do not represent a proportionate use of the legislation.
27. The Commissioner believes that the request was vexatious and therefore the Council was entitled to rely on section 14(1) of FOIA to refuse the request.

Right of appeal

28. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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

**Catherine Fletcher
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