

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

### **Decision notice**

**Date:** 5 December 2022

**Public Authority:** The London Borough of Harrow

**Address:** Civic Centre  
Station Road  
Harrow  
HA1 2XF

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

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1. The complainant made three multi-part requests for information to Harrow Council (the 'Council') for internal email chains about penalty charge notices ('PCN'), together with related questions about the Council's Parking Service. The Council initially refused the requests under section 12 of FOIA (exceeds cost limit). At internal review, the Council amended its position and instead cited section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the requests were vexatious and therefore the Council was entitled to rely upon section 14(1) of FOIA to refuse them.
3. The Commissioner does not require any steps.

#### **Request and response**

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4. On 20 September, 28 September and 8 November 2021, the complainant, an employee of the Council, made three multipart requests for information to the Council (the 'three requests'). These requests are set out in Annex A to this notice.
5. The Council's response on 18 November 2021 states that it aggregated the three requests but refused to provide the requested information. It cited the following exemption as its basis for doing so: section 12 FOIA (exceeds cost limit). In the alternative, it said it would refuse to provide

the information on the basis that the requests are vexatious, relying on section 14(1) of FOIA.

6. The Council provided the outcome of an internal review on 27 January 2022 and revised its original response to refuse the three requests as vexatious, on the basis of section 14(1) of FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 19 February 2022 to complain about the way their request for information had been handled.
8. This notice covers whether the Council correctly determined that the three requests were vexatious.

### **Reasons for decision**

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#### **Section 14(1) – vexatious requests**

9. 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.
10. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)<sup>1</sup> 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.
11. 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.
12. 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.
13. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to

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

be annoying, disruptive or which have a disproportionate impact on a public authority. The Commissioner's guidance on what may typify a vexatious request stresses, however, that it is always the request itself, and not the requestor, which is vexatious. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.

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")<sup>2</sup>. 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:
  - 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. 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).
18. Sometimes it will be obvious that a request is vexatious and other times it will not. In considering such borderline cases, the key is to weigh up any purpose and value that the request represents against any disruption, irritation or distress that compliance with the request may

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

cause the public authority. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request. The UT stated in Dransfield that:

“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 arguments**

19. In its internal review response dated 27 January 2022 the Council explained that its review letter related to the three requests as well as the complainant's separate request relating to job descriptions in Parking Services dated 23 September 2021 (together, the 'Requests').
20. The Council explained that answering the complainant's Requests would impose an unreasonable burden by obliging the Council:

“to sift through a substantial 3 volume of information to isolate and extract the relevant details and spend a considerable amount of time considering any exemptions and redactions.”
21. The Council also stated that it had answered previous requests from the complainant on the same subject and in addition, the current pressure on Council resources was even greater than usual due to the ongoing pandemic and resultant financial and operational issues facing the Council. The Council also said it had had to seek legal advice on responding to the Requests which was a further strain on its stretched resources. The Council highlighted the current lack of resources available to deal with the Requests, including the extent to which it would be distracted from delivering other services.
22. Next, the Council referred to the context and history of the Requests. The Council explained that the complainant made a whistleblowing complaint in 2019 in relation to the matters that are the focus of the complainant's three requests. The Council states that the whistleblowing complaint was fully investigated and that an internal audit report was produced. The main facts of the report were presented to the Parking Team and the management actions required to be implemented to improve processes and eradicate mistakes were explained. The Council state that the recommendations from the internal audit report were fully implemented. In addition, the Council notes that following the internal audit report, the complainant complained directly to External Audit about the matters forming the subject of the three requests.

23. The Council consider that the Requests constitute a 'fishing expedition' and a 'scattergun approach' seeking to go over ground already well-trodden, with a view to uncovering some alleged wrong doing by officers and/or the Council. Accordingly, the Council consider that the complainant is unreasonably and persistently pursuing issues that the Council has dealt with internally and has addressed.
24. The Council also explain that in July 2021 the complainant made an unfounded accusation to the police that the Council was committing criminal acts in its Parking Service. The Commissioner understands that the police took no action. However, the Council note that the three requests - made after the police complaint was concluded in the Council's favour - include unfounded allegations of wrongdoing against council officers, including dishonesty and conspiracy.
25. Further, the Council state that the complainant has submitted two employment tribunal claims, the first of which includes complaints about the Council's Head of Parking. In light of this, the Council considers that the complainant is motivated by personal interest and a vendetta or campaign against the Council, as evidenced by their persistence in repeating the same complaints and their refusal to engage with their managers to improve the Parking Service through the proper channels. The Council argues that the underlying issues to which the requests relate are best and properly dealt with by Council internal procedures and governance rather than in the glare of publicity.
26. The Council stress that the complainant has confirmed to the Council in his internal review request, that the complainant already has the emails chains requested. The Council argues that this shows that the complainant is not primarily seeking the release of information under FOIA, but rather that their aim is to seek to cause distress, disruption and irritation to the Council and to Council officers. The Council also note that the complainant copies into his requests for information and internal review the following: the corporate director, the chief executive, and the GMB union, and that this evidences the primary focus is the ongoing dispute with the Council, rather than access to information.
27. In light of all these circumstances, the Council argue that it is clear that the requests are primarily motivated by a desire to cause distress, disruption and irritation to the Council, and that the use of FOIA is therefore a manifestly unjustified, inappropriate and improper way for the complainant to pursue their personal grievances with the Council and with specific officers. The Council argue that the complainant's "campaign against the Council and its officers has been going on for years now on a number of fronts, and [the complainant does] not seem to be able to move on."

## **The complainant's view**

28. The complainant argues that the cost to the Council in disclosing the emails and other information would be minimal. In the internal review request the complainant also argues that the requests are not vexatious and that "there is no personal element to this." Rather, they explain that the request is of public interest as the Council has not informed the public that it was issuing PCN's 'outside of law'.

29. As referred to above, the complainant confirmed in his internal review request that he was already in possession of the requested emails: He said:

"I have explained to the FOI Team that a Director was recently sent the emails. So the Director can forward them to the FOI Team or I can send them to the FOI team myself. As said, I will be sending them to Chief Executive anyway for his view.... If needs be I know where the e-mails are I can prepare them myself in my own time and then they can be released... As said I have included the e-mails I have requested for the Chief Executive to view under separate e-mail. If there is anything that he thinks should not be released I would respectfully request a reason why."

30. The Commissioner also notes that in the complainant's complaint form to the Commissioner on 19 February 2022 he stated he wanted the Council to:

"Release the emails as requested. Put my requests on their Freedom of Info request log. Put the council replies on my FOI request log. If the council is insistent that the cost and trouble is too much I am quite happy to prepare the emails for release in my own time. I am not concerned about naming the employees. I have made that clear. I am willing to do the work required in my own. I want the public to be aware that PCN's have been issued outside of law and give the public the chance to recover the money they have paid. The Council at the very least should be making a statement to this effect. For a Public Body I don't see why this should be such an issue. Transparency and accountability should underpin the way Public Bodies go about their business. "

## **The Commissioner's decision**

31. 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. As previously discussed, there is a high bar for engaging section 14(1).

### **Value or serious purpose**

32. In cases where the issue of whether a request is vexatious is not clear cut, the key test is to determine whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
33. When considering this issue the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" (paragraph 38). The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
  - holding public authorities to account for their performance;
  - understanding their decisions;
  - transparency; and
  - ensuring justice.
34. In this instance the three requests appear to focus on an issue of concern about the Council's issuing of PCNs and it is one where it would be expected that a public authority would demonstrate openness and transparency. The complainant has a clear belief that maladministration, dishonesty or conspiracy has been committed, and believes the three requests to be a legitimate pursuit to uncover this.
35. However, even if the request does have a value or serious purpose, there may be factors that reduce that value. One such factor is if those matters have already been comprehensively investigated. Here the Council state that the matter has been fully investigated, that an internal audit report was produced, and its recommendations were fully implemented. In addition, the complainant has complained directly to an independent body, the police, who took no action. The Council has evidenced this by providing the Commissioner with emails from the Metropolitan Police.
36. In such cases, it is the Commissioner's view that the requester may be demonstrating unreasonable persistence by seeking to re-open the matter, or that their requests may become futile in light of the matter having already been conclusively resolved. The Commissioner considers the complainant to be genuinely pursuing a belief in fraudulent activity. However, given the period of time in which the complainant has pursued this issue and the unwillingness of the complainant to accept Council and Police evidence, he considers that this has gone beyond justifiability. Even with the acceptance of the three requests' serious purpose, it has reached a point, in light of contrary evidence, where the

serious purpose of the three requests has been mitigated by the complainant's unwillingness to accept such evidence.

37. This approach is supported in this ICO decision notice FS50324650<sup>3</sup> and in these Tribunal cases.<sup>4</sup>
38. It is also important to note that FOI disclosures are considered to be to the whole world. Whilst there may be an appropriate means by which the complainant might have been able to question the Council's position, this would not be via a disclosure of the information containing the personal data of the Council staff to the wider public in response to an FOI request. The employment tribunal claims and complaint to the Police were the correct approach to have this aspect fully considered. It is noted that the employment issues are ongoing at the time of this Decision Notice.

## **Burden**

39. The Council argued that the amount of work that would be involved in dealing with the Requests would impose an unreasonable burden on the Council. The Council also stated that it had answered previous requests from the complainant on the same subject(s).
40. The Council did not specifically provide evidence to the Commissioner of the burden which responding to the Requests would impose on it. The Council has said that the work involved would be "to sift through a substantial 3 volume of information to isolate and extract the relevant details and spend a considerable amount of time considering any exemptions and redactions."
41. However, the Commissioner considers that there is a high threshold for refusing a request on such grounds and a public authority is most likely to have a viable request when:
  - The requestor has asked for a substantial volume of information and

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<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2011/590772/fs\\_50324650.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2011/590772/fs_50324650.pdf)

[Ahilathirunayagam vs ICO & London Metropolitan University \(EA/2006/0070, 20 June 2007\)](#); [Welsh vs ICO \(EA/2007/0088, 16 April 2008\)](#); [Betts vs ICO \(EA/2007/0109, 19 May 2008\)](#)



- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO and
  - Any potentially exempt information cannot easily be isolated because it is scattered through the exempt material.
42. The Commissioner cannot be expected to agree with an application of section 14(1) on the basis of unreasonable burden when he has been given no quantifiable information. For example, he does not know how many previous requests from the complainant on the same subject there have been, nor how they were responded to. Nor does he know the amount of information that the Council holds that falls within the scope of the Requests. He also does not know how long it would take the Council to suitably redact any information for disclosure. The Council has not carried out a sampling exercise to support its position.
43. In addition, the Commissioner does not consider the email chains and other information requested to be a large amount of information to process and prepare. The requests are fairly precise and clear and consist of a moderate amount of recorded information to process for disclosure under the FOIA. This is far from the volume of information that could potentially fall within the threshold. Requests considered by the Commissioner previously to which this argument has been supported have involved exceptional circumstances; large volumes of information and a task of redacting such volumes that would not be straightforward but rather complex and very time consuming. He accepts that personal data would need to be redacted but this would be a fairly straightforward process in this case considering the likely contents of the emails, the number of emails to review and the Council's experience of Data Protection issues.
44. Similarly, the Commissioner does not consider that a 'scattergun' approach has been taken here. When a request appears to be part of a completely random approach, lacks clear focus or seems to have been solely designed for 'fishing' for information without any idea of what might be revealed, the Commissioner may agree that a scattergun approach has been taken. However, the Commissioner considers this is not the case here. The requests were clearly focussed. The complainant is also well aware of what information such searches may reveal, as is the Council.
45. This is not an exceptional case but rather, in terms of size and work involved, a request comparable to the average request public authorities of this size often receive. Therefore, the Council has failed to convince the Commissioner that preparing this information for disclosure would impose a grossly oppressive burden.

## **Context & history**

46. The context and history of the request is often a major factor in determining whether the request is vexatious and may support the view that section 14(1) applies.
47. The Commissioner acknowledges that, in this case, the Council told the Commissioner and provided some evidence that there has been previous engagement with the complainant on these issues. He accepts that those previous dealings relate to the subject matter of the Requests in this case and that the complainant has made allegations to the Police about a member of staff and brought two sets of Employment Tribunal proceedings against the Council.
48. The Commissioner does accept there was a serious value to the three requests in this case. But when considered in the context of its previous dealings with the requester, the Commissioner considers the three requests can be considered vexatious. It is not necessary for there to be a single underlying grievance linking the requests.
49. The Commissioner also notes that this approach is supported by case law in *Betts vs ICO*.<sup>5</sup> This case suggests that even if a request was not vexatious in isolation, it could be considered vexatious when viewed in context. Therefore, a dispute between the Council and the complainant has resulted in ongoing FOIA requests and persistent correspondence over several years. This has continued despite the Council's disclosures and explanations. In the Commissioner's view, this demonstrates a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the Council.
50. The Commissioner considers that the Requests in this case, while not burdensome, can be considered to be a burden when seen in context of the history of the dispute.

## **Motive & harassment**

51. The motive of the requester is relevant when considering whether the request is vexatious under section 14(1).
52. The motivation of the complainant was that he was seeking evidence to strengthen his position against the Council in relation to an issue which

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<sup>5</sup> <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i61/betts.pdf>

had already been considered by the Council in an investigation and by the Police.

53. The complainant's requests are not abusive or aggressive. Nevertheless, the tenacity with which they have pursued their arguments will be felt as harassing by council officers. The Commissioner also notes that council officers may feel irritated and harassed by dealing with the same complainant and the same issues when it has responded to the complainant's requests previously.
54. The Commissioner notes that the three requests make unsubstantiated allegations of dishonest behaviour or wrong doing. The complainant also appears to be pursuing a personal grudge by targeting a particular Council officer by making a complaint to the Police. The Council therefore argues that the complainant's motive is to attack the Council rather than being a genuine attempt to obtain information.
55. Crucially, this is supported by the fact that the complainant has requested information which they already possess.
56. In the Commissioner's opinion, this indicates that the complainant's intention is to cause annoyance to the Council as a means of venting their anger at a particular decision taken by the Council (the audit report recommendations). Further, this demonstrates that the complainant is taking an unreasonably entrenched position, rejecting attempts by the Council to resolve the issues out of hand; and showing no willingness to engage with the Council.
57. The Commissioner's guidance states that such behaviour also undermines a requester's arguments that their request is a serious attempt to access information which will be of use to them (page 16).
58. In summary, the Commissioner has taken into account all of the above, and considered whether, on a holistic basis, he considers that the Requests are those that typically characterise vexatious requests - and he finds that they do. While the three requests do have a value or serious purpose, there are several factors that reduce that value, namely, the complainant's unreasonable persistence by seeking to re-open the matter, the context and history of the Requests showing an ongoing campaign to pressure the Council, and the fact that the complainant has requested information which they already possess.
59. In the Commissioner's opinion, this indicates that the complainant's intention is to cause annoyance to the Council and therefore the Council was entitled to rely on section 14(1) of FOIA to refuse the Requests.

## **Other Matters**

60. Although it does not fall within the scope of this decision notice the Commissioner wishes to offer some good practice advice to the Council. Where the Council believes that the context or history strengthens the argument that the request is vexatious, then the Commissioner expects the Council to provide any relevant documentary evidence or background information to support this claim. Although it was possible to reach a decision without it in this case, the Commissioner notes that it asked for but did not receive information from the Council about the whistleblowing complaint and the internal audit report. The Council need to make sure that, in future, the evidence provided to the Commissioner is sufficient detail to contextualise the history of the request.
61. The Commissioner also notes that the Council failed to carry out an internal review within 20 working days and took considerably longer. The section 45 Code of Practice advises public authorities to carry out an internal review promptly and within 20 working days. As the Council failed to do this and took considerably longer, the Commissioner would like to remind the Council of the requirements of this Code.

## Right of appeal

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62. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

63. 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.
64. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex A – requests for information**

### **1. 20 September 2021**

"This Freedom of information request relates to the release of e-mails held by the council.

It relates to Parking Services.

The e-mails are with regard to CCTV Penalty Charge Notices served outside of the 28 day time scale for service between Jul 18 and Oct 18.

Please keep all the members of staffs names anonymous. You may refer to them by job description/title.

You may wish to obscure details of the PCN numbers for confidentiality on some of the e-mails.

The dates of the emails are supplied and the titles of the e-mail chains in brackets.

Email chain (CCTV PCN's) 9/10/18 ending 10/10/18 between Representation Officer (RO) and Interim Parking Manager (IPM).

Email chain 12/10/18 (CCTV PCN's) which has is a continuation of the above conversation

Email chain 12/10/18 (CCTV PCN's Bus stop) between RO and Internal Audit (IA)

Email chain 17/10/18 (Bus Lane and Aroute) between RO and IA.

Email chain 22/10/18 (Documentation) and attachments (CCTV PCN's) and (Peterborough Road UTurn) between RO and IA

Email chain 22/10/18 (Documentation) which is a continuation of the above conversation

Email chain 23/9/19 (Out of time PCN's) between RO and Senior Management

Email chain 25/2/20 (Out of time PCN's) between RO and Team Leader (TL).

I have the following additional questions.

On what date was the Parking Team informed of the error and instructed to cancel any PCN's issued out of time?

Please provide documentary evidence.

How many CCTV PCN's were issued out of time between July 18 and Oct 18?

Of these PCN's

How many were cancelled?

How many were refunded?

How many motorists were advised they had overpaid for a PCN that should have been cancelled as a procedural error as a result of running overpayment reports?

How many PCN's were paid? and the total amount collected for these PCN's with a procedural error?

How many PCN's issued out of time progressed to the charge certificate stage?

How many PCN's issued out of time progressed to the Notice of Debt recovery stage?

How many PCN's issued out of time progressed to the bailiff stage?

Please supply details of any statement made by the council informing the public since /10/18 that PCN's with a procedural error had been issued and were therefore invalid.

I wish to be anonymous.

For your records my name is [name redacted].

My address can be supplied if required".

## **2. 28 September 2021**

"Please find a Freedom of information request

My name is a [name redacted]

Please release the following emails about the UTURN at Peterborough Road.

Email chain dated 25/9/18 title (NO U-TURN) and attachments from Representation Officer (RO) to Interim Parking Manager (IPM)

Email chain 26/9/18 (U -TURN Review) and attachment from RO to IPM

Email chain 8/10/18 (RE U-TURN Review) from RO to IPM

Email chain 18/10/18 (Peterborough Road UTURN) and attachment between RO and Internal Audit (IA)

Email chain 18/1/19 (Questions for London Councils) between RO and IPM

Email chain 7/2/19 (Peterborough Road Grove Hill Road) between RO and Head of Service (HOS)

Email chain 31/7/19 (RE U-TURNS) between RO and IA

Email chain 7/8/19 (RE U-TURNS) between RO and HOS

Please remove the names from the e-mails and use the job titles instead."

### **3. 8 November 2021**

"I would like to request the following e-mails under the Freedom of Information Act

They relate to Penalty Charge Notices issued by CCTV.

12/9/17 title (RE:CCTV) Email exchange between Representation Officer (RO) and Team Leader of CCTV Operations.

14/9/17 (RE:CCTV) Email between Team Leaders (TL) and staff about CCTV

3/9/19 (CCTV PCN's) Email and attachment containing legislation to Internal Audit (IA) and Chief Exec and Director

10/10/18 trail (FW: Issues raised at training) between RO and IA

18/1/19 trail (RE: Questions for London Councils) tween RO and Interim Parking Manager (IPM)

15/8/19 (RE:Time of contravention on PCN's) and attachments between RO and IA.



23/8/19 8:02 Email trail between RO IPM Head of Service (HOS) and Director

Plus additional questions

-When did the council change its process?

-When did the council start to use software that allowed 2 photos on the PCN's?

-How many CCTV PCN's were issued between Sep17 and the date the council changed its process?

You may remove names of the staff involved in the emails

The email 23/8/19 contains a PCN number. This can be removed if need be."