

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2024

Public Authority: London Borough of Bexley
Address: Bexley Civic Offices
2 Watling Street
Bexleyheath
Kent
DA6 7AT

Decision (including any steps ordered)

1. The complainant submitted an information request to London Borough of Bexley (the Council) for information relating to Bexley Constitution and Codes of Governance.
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 further steps as a result of this decision notice.

Request and response

4. On 24 June 2023, the complainant submitted three separate requests to the Council and requested information in the following terms. For ease, the Commissioner has numbered the requests to align with the Council's response:

"1. Page 56 of "Codes and Protocols", Part 5 of Bexley Constitution and Codes of Governance, says:

"Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted".

Can you please provide the full list of reasons why a proposed petition could be deemed "inappropriate"?

2. Page 56 of "Codes and Protocols", Part 5 of "Bexley Constitution and Codes of Governance", says:

"If a petition has more than 2,000 signatures, this would be sufficient to trigger a debate at a Full Council meeting.

This means that the issue raised in the petition will be discussed at a meeting which all Councillors can attend". (*Italics added*).

Can you please confirm that "full council meeting" refers to a meeting of the full council. ("A meeting which all councillors can attend" is a broader concept).

3. Page 56 of "Codes and Protocols", Part 5 of "Bexley Constitution and Codes of Governance", says (*emphasis added*):

"If a petition has more than 2,000 signatures, this **WOULD BE SUFFICIENT** to trigger a debate at a Full Council meeting".

Page 3 of "London Borough of Bexley Petitions Scheme" document says (*emphasis added*):

"If a petition contains more than 2000 signatures it **MAY** be debated by the Full Council unless it is a petition asking for a Council officer to give evidence at a public meeting".

Can you please confirm that a petition with over 2,000 signatures - not deemed "vexatious, abusive or otherwise inappropriate" (cf. a related question about what "inappropriate" is) - will be debated at a full council meeting if requested by the organiser or provide the full list of reasons why it could not be debated at a full council meeting."

5. A response was provided on 14 July 2023 in which the three requests were responded to as one, and were refused under section 14(1) of FOIA.
6. Upon receiving this response, the complainant asked the Council to conduct an internal review on 14 July 2023. After contact by the Commissioner, the Council provided its internal review response on 26 October 2023 and maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 12 September 2023 to complain about the way their request for information had been handled.
8. The complainant stated that the "bundling of responses" to three separate requests was "confusing". However, the Commissioner considers that as the requests were all submitted on the same day, and were all related to page 56 of 'Codes and Protocols', the Council was entitled to respond to them as one request.
9. The Commissioner has therefore considered the Council's handling of the request, in particular whether it was entitled to refuse the request on the grounds that it 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. There is no public interest test.
11. The term 'vexatious' is not defined in FOIA. The Commissioner's guidance¹ suggests that if a request is not patently vexatious, 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.

¹ [Dealing with vexatious requests \(section 14\) | ICO](#)

12. FOIA gives individuals the 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. The Upper Tribunal considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield². The Tribunal commented that vexatious could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure.”
14. 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.

The Complainant's view

15. The complainant stated that the Petitions Scheme is a “contentious subject for the Council”, and that the rules are sometimes “vague and contradictory”. Therefore, the complainant believes there is a public interest in forcing the Council to clarify its rules.
16. The complainant further explained that the Council's references to a previous FOI request and a Local Government complaint are a “red herring”, and that the information has not been requested before.

The Council's view

17. In its initial response, the Council informed the complainant that it has deemed their request to be vexatious as it relates to “seeking information regarding the Council's Petition Scheme”, which the Council has previously responded to.

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

18. It further explained that the requests are an attempt to reopen an issue which has "already been comprehensively addressed" by the Council, the Local Government and Social Care Ombudsman and the Information Commissioner³.
19. In highlighting administrative burden, the Council explained that "an inordinate and disproportionate" amount of Council Officer time has been spent dealing with the requests, and that it can no longer "justify the time and expense", in corresponding further regarding requests in relation to the Petition Scheme. It further explained that the repeated requests are causing undue pressure on service delivery.
20. In regards to the motive of the requester, the Council stated that the complainant is dissatisfied with the Council's Petition Scheme, and that the "FOI procedure is being utilised to address dissatisfaction with the Scheme", which the Council believes is inappropriate and contrary to the purpose of FOIA.
21. Looking at the value and purpose of the request, the complainant argues that they have repeatedly raised concerns about the "ambiguity of the Council's Petition Scheme rules". The Council states that the initial request was of benefit to the complainant in seeking clarification regarding the Petition Scheme. However, it argues that the complainant's ongoing requests are driven by their belief that the Petition Scheme be revised, to address their aim that a petition should be considered at full Council.
22. In highlighting the issue of harassment and distress, the Council explained that the repeated requests are designed to cause "disruption or annoyance or harass the Council by submitting requests for further information which a reasonable person would consider too futile".

The Commissioner's decision

23. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025926/ic-212149-q1h4.pdf>

24. As per the Commissioner's guidance on section 14(1) of FOIA, consideration of the background and history of the request can be taken into account. Therefore, the Commissioner is mindful that the complainant has submitted numerous requests over the past 18 months, five of which relate to the Petition Scheme and signatures and have been submitted over the past eight months.
25. Furthermore, as the Commissioner's guidance states, if the request does have a value or serious purpose, there may be factors that reduce that value. For example, if a matter has already been investigated and/or if the matter has been subject of some form of independent scrutiny.
26. The Commissioner would, however, remind the Council that it must keep in mind its underlying commitment to transparency and openness and consider each request on its own merit. Furthermore, he is keen to stress that it is the request itself that is vexatious and not the person making it.
27. Whilst the Commissioner accepts, that in their original request, regarding the Publication Scheme, the complainant requested the information for some common good, he is of the view that subsequent requests, based on this subject, are for the complainant's own private interests rather than the wider interests of the public.
28. In the circumstances of the case, and on the basis of evidence provided, the Commissioner is satisfied that the Council was entitled to consider that the request was vexatious and therefore rely on section 14(1) of FOIA to refuse it.

Other matters

29. There is no obligation under FOIA for a public authority to provide an internal review. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
30. In this case, the Council took more than 75 working days to respond to the internal review. The Commissioner reminds the Council of the Code of Practice and urges it to respond in a timely manner.

Right of appeal

31. 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

32. 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.
33. 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

Joanna Marshall
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SK9 5AF