

Freedom of Information Act 2000 (Section 50)

Decision Notice

20 May 2009

Public Authority: Taunton Deane Borough Council
Address: The Deane House
Belvedere Road
Taunton
Somerset
TA1 1HE

Summary

The complainant requested information from Taunton Deane Borough Council (“the Council”) relating to documents leading to a claim made in an email that smoke detectors were required in bedrooms at a particular address. The Council refused to comply with the request on the grounds that it considered it to be vexatious under section 14 of the Freedom of Information Act 2000 (“the Act”). The Commissioner investigated and found that the Council had provided sufficient evidence for section 14(1) of the Act to be engaged. However, the Commissioner found that the Council breached section 10(1) of the Act for not responding within the statutory time limit and that the refusal notice issued by the Council was inadequate and in breach of section 17(5) and section 17(7). The Council is not required to take any further steps in respect of this complaint.

The Commissioner’s Role

1. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000. This Notice sets out his decision.

Background to the complaint

2. The complainant in this case had made a previous complaint about the Council to the Commissioner. The request which was the subject of this previous complaint, although worded differently, was for the same information as in this case. The Council aggregated that request with another related request made two months earlier and applied section 12 of the Act stating that compliance with the request

would exceed the appropriate limit. After investigating, the Commissioner upheld the Council's decision in that case.

The Request

3. On 29 October 2007 the complainant made the following request for information from the Council:

"I write to request under the Freedom of Information Act, any documents that led to Mrs James [Chief Executive] claiming in her 2002 email to Councillors that smoke detectors were required in the bedrooms at...(a particular address).

This does not mean every single piece of correspondence connected to...(a particular address), just that which led to the above."

The Investigation

Validity of the complaint

4. The Commissioner usually expects a complainant to have gone through the public authority's internal review procedure before accepting a complaint under section 50 of the Act. However, in view of the fact that the Commissioner had already investigated a request by the complainant to the Council for the same information, the Commissioner deemed it appropriate in this instance to consider the complaint without an internal review

Scope of the case

5. On 17 January 2008 the complainant phoned the Commissioner to complain that he and his wife had submitted two requests for information that had received acknowledgments but no proper responses. The complainant specifically asked the Commissioner to investigate a pattern of non response and the Council's general behaviour.
6. The Commissioner has considered whether the Council was correct to apply section 14(1) of the Act to the request at paragraph 3 and whether the Council responded to the request outside of the statutory time limits and in accordance with section 17 of the Act.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. On 25 January 2008 the Commissioner telephoned the Council to request that they respond to the request made on 29 October 2007. The Council stated that

they were likely to treat the request as vexatious. The Council agreed to issue a response by 4 February 2008.

9. The complainant telephoned the Commissioner on 4 February 2008 to inform him that he had still not received a proper response and stated that he believed the Council had deliberately failed to respond to this request.
10. The Commissioner telephoned the Council on 13 February 2008 to again chase a response to the request. The Council stated that the matter would be looked into and the Commissioner would be contacted the following week.
11. On 4 April 2008 the complainant contacted the Commissioner to inform him that he had still not received a response from the Council.
12. The Commissioner wrote to the Council on 10 April 2008 referring them to the previous contact and requiring them to respond to the complainant by 11 April 2008.
13. On 18 April 2008 the Council provided the complainant with a response to the request. The Council pointed out that the issue of smoke detectors at ...(a particular address) had been the subject of much correspondence between the complainant and the Council over many years and that a request concerning the matter made 24 May 2005 had been previously refused, a decision which the Commissioner upheld in May 2007. The Council referred to the Commissioner's Awareness Guidance 22 relating to vexatious requests and stated that;

"Whilst the request that you make does not, on its own, appear to contain anything that the Council might consider to be vexatious, we believe that your request must be considered in the context of the history of the issues".

The Council refused the request as vexatious stating that they had taken into account the following factors:

- "The information you seek has been the subject of much debate and correspondence between us over a number of years, most of which you will already have in your possession.
 - It is considered that the purpose of your request is to harass the Council, and not to obtain information that you already have in your possession.
 - It is also considered that your request is merely intended to reopen issues that have been disputed several times before, including with the ICO."
14. The Commissioner wrote to the Council on 9 May 2008 requesting that further information be provided by 6 June 2008 in support of the vexatious claim. In particular, the Commissioner sought details of how the request would impose a significant burden.
 15. The Council responded on the 7 July 2008. It supplied an extract of the Council's internal imaging system demonstrating the volume of correspondence and length of time the issue has been live and a document detailing files held that may contain correspondence relating to the request. The Council also provided an

estimation of the time it had taken to deal with another request relating to the same property, namely 25 hours, stating that it envisaged the current request would take a similar length of time to address. However, the Council did emphasise that it;

“is not claiming in this case that it is necessarily a question of time taken to reply to the request otherwise it would have claimed the appropriate exemption under the act [sic]. The issue is one of ... (the complainant) or members of his family utilising the Freedom of Information Act via this request which the Council considers vexatious on the following grounds:

- It causes disruption or annoyance to the Council
- It can otherwise fairly be characterised as obsessive or manifestly unreasonable
- It clearly does not have any serious purpose or value.”

16. By letter of 11 July 2008, the Commissioner requested that the Council provide further information relating to whether the issue of the smoke detectors had been satisfactorily resolved by 8 August 2008. As no response was received by this date, the Commissioner wrote again on 13 August 2008 warning that an Information Notice would be issued if the information requested on 11th July 2008 was not received by 27 August 2008.
17. The Council responded on 26 August 2008 providing evidence on the issue of the smoke detectors and correspondence with the complainant since resolution of the matter.
18. On 9 October 2008, the Commissioner wrote to the complainant requesting information as to whether the issue of the smoke detectors had been previously resolved.
19. The complainant responded on 20 October 2008 supplying correspondence between him and the Council. The letter also contained allegations of the Council's misconduct.
20. The Commissioner wrote to the Council on 27 October 2008 asking for further information to support its claim that the request is vexatious. The questions focused on the resolution of the issue, the amount of correspondence, the information relevant to the request and how the request has the effect of harassing the Council.
21. After chasing the Council for a response to the above letter on three occasions in March 2009, the Council provided a response on 28 March 2009 and further clarification was sought and provided during a telephone call on 2 April 2009.
22. The Commissioner also discussed the background to the case with the complainant during a telephone conversation on 4 March 2009.

Findings of fact

23. Neither the Council nor the complainant has been able to provide the Commissioner with a copy of the original email referred to in the request. However, the Council did provide the Commissioner with an email from a Councillor to the complainant which contained the following cut and pasted extract from an email from the Chief Executive to the Councillor:

“1. Smoke Alarm – ...(a particular address).

The requirement was to upgrade the existing alarm system so that detectors are sited in accordance with BS 5839: Part 1 for an L2 type system. This standard requires sensors in the bedrooms, circulation areas, head of stairways, cellars, storage areas or common parts, lounges and dining rooms. A heat detector must be provided in all kitchens and rooms containing cooking appliances.

Whilst it is accepted that some smoke detectors may already be in place, the system is incomplete.

The above information is provided purely in response to your question and does not in any way relieve ... (the complainant) of the need to comply with the Notice served on him under Section 352 of the Housing Act 1985, on 16th May 2001.”

24. The Council believe that the only way to resolve the issue of whether smoke detectors are required in the bedrooms is to inspect the property. The Council has stated this position in numerous pieces of correspondence with the complainant and arranged re-inspections which have not taken place due to denial of access. The complainant refuses to accept the Council's position.

Analysis

Procedural matters

Section 10 Time for compliance and Section 17 – Refusal of request

25. Section 17(5) states:

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

26. Section 10(1) states:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

27. The complainant's request for information of 29 October 2007 was refused on 18 April 2008 on the grounds that it was considered to be vexatious under section 14(1) of the Act, after the time limit set in section 10(1) had elapsed.
28. Section 17(7) provides that –
- “A notice under section (1), (3) or (5) must –
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.”
29. The Council failed to make the complainant aware of its internal review procedure and the complainant's right to complain to the Commissioner should he have been dissatisfied with the outcome of any internal review process in breach of section 17(7)

Section 14 – Vexatious or repeated requests

30. The Commissioner has considered whether the Council correctly applied section 14(1) of the Act to the complainant's requests for information.

Vexatious requests

31. Section 14(1) states:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.

32. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states:

“Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?”

Context and history

33. As stated in paragraph 13, the Council have considered the request in the context and history of the issue. A request may not be vexatious in isolation but when

considered in context it may form a wider pattern of behaviour that makes it vexatious. This was the view of the Tribunal in *Betts v Information Commissioner EA/2007/0108* (19 May 2008). In that case the Tribunal considered not just the request but the background and history to the request as part of the long drawn out dispute between the parties. That request was considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.

34. The Commissioner notes in his Awareness Guidance on the subject of vexatious and repeated requests that it is the request, not the requester, that must be vexatious and therefore consideration has been given to the five questions set out at paragraph 32.

Could the request fairly be seen as obsessive?

35. In his Awareness Guidance on the subject of vexatious and repeated requests the Commissioner recognises that obsessive requests are usually a very strong indication of vexatiousness. The guidance states that:

“Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered”.

36. The Council have provided evidence of at least 275 occasions of contact with the complainant on the issue of his property at ... (a particular address) since the Council made their position on the issue clear 4.5 years prior to the request in this case.
37. The Council also provided evidence that the issue had also being referred to them by the complainant's Member of Parliament, and the Council again considered the issue but did not find grounds for altering its position. Evidence was also submitted that the complainant's Councillor, as part of his responsibility to assist constituents, had considered the issue and agreed with the position of the Council. The fact that the complainant persists with the issue despite being in possession of the Councillor's view that the Council's stated position is valid is characteristic of an obsession as per the Information Tribunal in the cases of *Welsh v Information Commissioner EA/2007/008* (16 April 2008) and *Coggins v Information Commissioner EA/2007/0130* (13 May 2008).
38. The Council has also drawn the Commissioner's attention to the fact that the request would not furnish the complainant with information that he has not previously been made aware of or supplied with on the many occasions he has raised the issue in the past. The Council has not explicitly stated that all information of the description specified in the request has previously been supplied or that it is a repeated request. However the Commissioner is of the view that it is highly unlikely that provision of the information requested would make any material difference to or satisfy the complainant.
39. The Commissioner believes that, although the request may appear reasonable in isolation, the available evidence demonstrates the continuation of a pattern of

behaviour and in view of the volume of correspondence and fact that the issue has been reviewed within the relevant department of the Council and by a Councillor it can be fairly characterised as obsessive. The Commissioner's view is also based on his knowledge of the complainant's relationship with the Council gained during his investigation of four other complaints made about the Council by the complainant.

Is the request harassing the authority or causing distress to staff?

40. The Commissioner notes in his Awareness Guidance on the subject of vexatious and repeated requests that;

"The focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing."

41. The complainant's request by itself does not contain any evidence of deliberate harassment. However, when put into the context of his long-standing dispute with the Council and the correspondence connected to that coupled with the Council's position that the matter cannot be resolved without re-inspection of the property and the fact that responding to the request would not furnish the complainant with information that has not previously been supplied to him, the request can be said to have the effect of harassing the Council.

42. This is supported by the Information Tribunal's decision in the case of *Ahilathirunayagam v Information Commissioner and London Metropolitan University EA/2006/0070* (20 June 2007) where the Tribunal found the request to be vexatious by taking into account the following matters:

"...(ii) The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the detailed content of which had previously been debated with the University ...

"...(iv) The background history between the Appellant and the University...and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before..." (*para 32*)

43. The Commissioner also took into consideration the evidence supplied by the Council that it had met with the complainant in an attempt to resolve the issue.
44. The Commissioner has further considered evidence submitted by the Council which details 20 incidents whereby the complainant was found to have harassed the Council between 1999 and 2006. This is evidence of a pattern of behaviour and displays the context in which the request in this case was made and why as such, the request can be viewed as having the effect of harassing or causing distress to the Council.

Would complying with the request impose a significant burden in terms of expense and distraction?

45. The Council explained that the complainant had been in regular correspondence with it regarding the issue of smoke detectors at ... (a particular address) and provided evidence to demonstrate that they would need to search through over 20 boxes and files in order to respond to the request.
46. The Council also explained that due to the fact that the complainant and his family refer to the subject of smoke detectors in correspondence relating to other issues it would be difficult to extract the information relevant to this particular request.
47. In order to demonstrate why dealing with the request would be extremely time consuming and costly the Council supplied evidence of the amount of time taken to deal with a request from the complainant relating to fire doors at the same property stating that they envisaged responding to the request in this case would take a similar amount of time to address. The Council further stated that it is not stating that it is just a question of time otherwise it would have claimed the appropriate exemption under the Act.
48. The Commissioner is satisfied that the request in this case imposed a significant burden in terms of expense and distraction. The Commissioner has considered it reasonable to take into account the previous requests made by the complainant, the volume of files held by the Council together with the significant amount of related and overlapping correspondence generated as a result of the issues with the complainant's properties.

Is the request designed to cause disruption or annoyance?

49. The Council have submitted that the complainant's request serves no purpose other than to cause disruption or annoyance to the Council. As set out above, the Council provided evidence of 20 incidents whereby the complainant was found to have harassed the Council between 1999 and 2006 in order to display the complainant's previous behaviour and current aim. However, as this factor relates to the requester's intention and the complainant has not explicitly stated that he wants to cause disruption or annoyance in relation to this request, the Commissioner cannot conclude that this element of vexatiousness is present.

Does the request lack any serious purpose or value?

50. The Commissioner's Awareness Guidance 22 relating to vexatious requests states that;

"It is not appropriate to use lack of value as an argument simply because you cannot imagine what the value might be. You must demonstrate that a request has no purpose or value, rather than simply suggest that because the requester did not provide a reason there cannot be one."

The Council have submitted that the complainant's request clearly does not have any serious purpose or value but have not demonstrated why this is the case therefore the Commissioner cannot conclude that this element of vexatiousness is present.

51. Although not all of the five factors listed above can be demonstrated, the Commissioner is satisfied that on balance, taking into account the context and history, the request is vexatious.

The Decision

52. The Commissioner's decision is that the public authority complied with the Act in that section 14(1) was applied correctly.
53. However, the Commissioner also finds that the public authority failed to comply with the following procedural requirements:
- section 10(1) for not responding within the statutory time limit.
 - section 17(5) for the late issue of the refusal notice.
 - section 17(7) for failing to make the complainant aware of its internal review procedure and the complainant's right to complain to the Commissioner should he have been dissatisfied with the outcome of any internal review process in breach of section.

Steps Required

54. The Commissioner requires no steps to be taken.

Other matters

55. During the course of his investigation, the Commissioner has encountered considerable delay on account of the Council's reluctance to meet the timescales for response set out in his letters.

Accordingly the Commissioner does not consider the Council's approach to this case to be particularly co-operative or within the spirit of the Act. He will therefore be monitoring the authority's future engagement with the ICO and would expect to see improvements in this regard.

Right of Appeal

56. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 20th day of May 2009

Signed

**Nicole Duncan
Head of FOI Complaints**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Refusal of Request

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”