

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 16 September 2010**

**Public Authority:** Isle of Wight Council  
**Address:** County Hall  
Newport  
Isle of Wight  
PO30 1UD

### Summary

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The complainant requested details of any complaints submitted about enforcing officers at the Isle of Wight Council (the "Council") who issue fixed penalty notices. In view of the history and context of the request, the Council believed the request to be vexatious and therefore claimed that section 14(1) of the Freedom of Information Act 2000 applied. The Commissioner has considered the case and is of the view that the issue of vexatiousness is not clear-cut. However, on balance, the Commissioner has decided that section 14(1) was applied correctly.

### The Commissioner's Role

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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 (the "Act"). This Notice sets out his decision.

### Background

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2. In June 2009, the complainant was issued with a Fixed Penalty Notice (FPN) because he had allegedly brought his dog on a part of a beach designated as a restricted area. The complainant subsequently sought to appeal the validity of the FPN and criticised the behaviour of the enforcing officer in serving the FPN.

3. The complainant has since indicated the need to be provided with additional information to help pursue his complaint against the enforcing officer.

## The Request

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4. In an email dated 9 September 2009, the complainant put the following request to the Isle of Wight Council (the "Council"):

*"I am writing to request information under the FOI Act regarding the officers the council employs (enforcing officers) who issue fixed penalty notices on the councils behalf.*

*I require details of any representations, complaints etc. which have been made to the council regarding the conduct of their enforcing officer, in the issuing of a FPN. Including details of any allegations that have been made, including, but not limited to:*

1. *The enforcing officers honesty in their version of events being brought into question*
  2. *The enforcing officer being rude*
  3. *The enforcing officer making threats*
  4. *The enforcing officer targeting individuals*
  5. *The enforcing officer issuing FPNs out of spite*
  6. *The enforcing officer assaulting individuals*
  7. *The enforcing officer stating they were not intending to issue a FPN but changing their mind on being informed that a complaint was to be made regarding their conduct*
  8. *The enforcing officer not giving their name when requested to do so*
  9. *The enforcing officer failing to mention in their notes, which are legal evidence, that witnesses were present, even if a witness was presented to the officer at the time and it was clearly stated that they were a witness*
  10. *The enforcing officer fabricating evidence"*
5. On 30 September 2009, the Council responded to the request by informing the complainant that it considered the request vexatious for the purposes of section 14(1) of the Act. To support its refusal, the Council claimed that the complainant was attempting to reopen issues that had already been addressed and the request therefore had no serious purpose or value.

6. Later the same day, the complainant asked the Council to review its refusal. Among other points, the complainant asserted that the Council should already be aware that he required the requested information in order to support a complaint that he planned to refer to the Council about the conduct of one of its enforcing officers. The complainant also believed that the Council had erroneously conflated the requests he had submitted as webmaster of a website with this request which he had submitted in a personal capacity.
7. The Council notified the complainant of the outcome of its internal review on 8 October 2009. This upheld its decision to refuse the request on the grounds that it was vexatious.

## **The Investigation**

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### **Scope of the case**

8. On 18 October 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that, despite the Council's arguments to the contrary, he considered that his complaint against the enforcing officer had not yet been exhausted. He was therefore entitled to the requested information in order to progress his complaint.

### **Chronology**

9. On 8 December 2009, the Commissioner emailed the Council to ask that it expand on the arguments it wished to present for its application of section 14(1).
10. The Council responded on 4 January 2010. It provided some background to the circumstances of the case and included a list of the requests and complaints it had received from the complainant over the past 12 months.
11. On 12 January 2010, the Commissioner telephoned the Council about the information it had provided and asked that it elaborate on certain points. These further submissions, which included a copy of a letter previously written to the Council by the complainant, were subsequently received by the Commissioner on 28 January 2010.

12. On 20 February 2010, the Commissioner emailed the complainant about the case. As part of a series of communications exchanged about the issues involved, the complainant informed the Commissioner on that same date of his strong belief that he had been unfairly targeted by being issued with a FPN. He therefore considered the basis of his request to be invested with some importance.
13. In view of the comments put forward by the complainant, the Commissioner wrote to the Council again on 4 March 2010 to question how it considered it had addressed the complaint involving the behaviour of the enforcing officer.
14. The Council responded to the Commissioner on 17 March 2010. It enclosed a copy of the Council's complaints policy as well as copies of a selection of letters relating to the way in which the Council had fielded some of the complaints of the complainant. On 19 April 2010, the Council supplied copies of additional correspondence relating to this same matter.

## Analysis

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### Substantive Procedural Matters

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

15. Section 14(1) (the full wording of which is included in the attached legal annex, as are all other sections referred to in this notice) provides that a public authority does not have a duty to comply with a request if the request is vexatious.
16. As a general principle, the Commissioner considers that the exclusion provided by section 14(1) is meant to serve as protection to public authorities against those who may abuse the right to seek information.
17. In seeking to define what vexatiousness is, the Information Tribunal (the "Tribunal") stated in its decision in *Ahilathirunayagum v the Information Commissioner's Office (EA/2006/0070)* that it must be ascribed its ordinary meaning so as to be likely to cause distress or irritation. While drawing on this definition, the Commissioner has acknowledged that deciding whether a request is vexatious is essentially a balancing exercise. He has therefore drawn up a more detailed approach in weighing up this issue, which requires the consideration of the following factors, each of which are addressed in this notice:

- Could the request fairly be seen as obsessive?
  - Is the request harassing the authority or distressing 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?
18. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, 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. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exclusion to be engaged.
19. When approaching a public authority's application of section 14(1), the Commissioner is also mindful of the Tribunal's decision in *Mr MJ Hossack v the Information Commissioner (EA/2007/0024)*. In that case, the Tribunal spoke of the consequences of finding a request vexatious. It accepted that these are not as serious as those of determining vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.

### **Could the request fairly be seen as obsessive?**

20. An obsessive request is often a strong indication of vexatiousness. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been considered.
21. The Commissioner understands from the Council that the complainant has been in frequent contact with the authority. This has resulted in the submission of 13 requests and 4 complaints between 9 January 2009 and 9 September 2009, the date of the request being considered here. Although not all of the requests and complaints would seem to bear direct relation to the issuing of the FPN, the Council has argued that they all broadly relate to one particular beach area on the Isle of Wight. The Council has therefore claimed that the request forms part of a pattern of behaviour that could be deemed obsessive.
22. The Commissioner is prepared to accept that the requests presented by the complainant share, or have developed from, a common subject, namely the issue of dog control orders. The complainant has argued that the request in question was submitted in a personal capacity and not in his role as webmaster. He has therefore contended that the

Council was not justified in treating the request as a continuation of previous requests but should be considered separately.

23. The Commissioner, however, does not accept this analysis. This is because he considers that the effect of the request, in whatever guise it was presented, will be the same; ultimately, the authority will be fielding a further request concerning dog control orders from the same applicant.
24. Nevertheless, while the Commissioner recognises that the number of requests is not insignificant, he does not consider it to be of such volume that the request could necessarily be found to be obsessive on this basis alone. The Commissioner has therefore gone on to consider the Council's claim that the intention behind the request is primarily to dwell on an issue that has already been dealt with, or that could be pursued through alternative channels.
25. This argument refers to the complainant's criticism of an enforcing officer, detailed in paragraphs 2 and 3 above. The Council has stated that it considers the complaint as closed, having exhausted its two-stage complaints process in reviewing the matter. At the end of the two-stage process, the complainant was informed of his right for recourse through the Local Government Ombudsman if he was dissatisfied with the Council's response.
26. In contrast, the complainant has argued that, while he has asked the Council to consider other issues relating to dog control orders, he has yet to formally present his complaint against the enforcing officer in question at the second-stage. This is because, the complainant asserts, he requires the requested information to support his complaint.
27. The Commissioner understands that following the issuing of the FPN on 17 June 2009, the complainant appealed the notice the following day. On 20 June 2009, the complainant went on to make a formal complaint about the enforcing officer who issued the FPN.
28. The Council responded to both terms of the complaint on 26 June 2009; a response the Commissioner understands would constitute the first-stage of the authority's complaints procedure. In both cases, the Council did not uphold the complaint.
29. The complainant subsequently contacted the Council on 23 July 2009 to ask for further information in relation to an on-going dispute the complainant had with the Council about dog ban signs on a specific beach. This clarification, the complainant explained, would help him

prepare for the submission of his stage 2 complaint regarding the issuing of the FPN.

30. The complainant, however, remained dissatisfied following the receipt of the Council's response and asked, on 9 August 2009, that the Council escalate his complaint to stage 2 of his complaints procedure. Included as part of his appeal was a detailed submission setting out the reasons why the complainant considered that the dog ban signs in question were not in order and were improperly placed. The complainant also commented that:

*"As [a specified employee of the Council] is aware I am in the process of preparing a complaint to the council regarding, the issuing to myself of a Fixed Penalty Notice by one of the councils dog wardens...along with the conduct of the enforcing officer on the day in question."*

31. On 24 August 2009 the Council provided the complainant with its findings of its stage 2 review in respect of issues relating to dog bans at a specific beach on the Isle of Wight. Despite being informed that the complainant would be pursuing his complaint about the issuing of the FPN separately, the Council nevertheless considered this issue.
32. The Council found that the FPN was *"appropriate, necessary and proportionate"* and therefore stated that no further action would be taken. There was no clear evidence that the Council had considered the behaviour of the enforcing officer when making this decision. As part of its review, the Council also determined that its handling of the separate complaint regarding dog ban signage had been flawed. The Council therefore offered £250 to the complainant – the maximum available under the guidelines of the Local Government Ombudsman – as recompense for the time and trouble he had incurred as a result of making the complaint.
33. The Commissioner accepts that the complainant had notified the Council of his intention to escalate his complaint about the actions of the enforcing officer separately. However, the Commissioner is conscious that the function of a complaints procedure is to ensure that any element of contention is addressed in a structured and timely manner. In essence, the purpose of submitting a complaint is to allow an authority to have the opportunity to consider and potentially redress any alleged failures in the way it operates.
34. The Commissioner further considers that the burden of determining whether a complaint should be upheld is on the authority and not the complainant. He therefore considers that the referral of the complaint to the Council would, in itself, have been sufficient to trigger a further

investigation into the specific circumstances of the alleged impropriety of the enforcing officer. In this regard, the Commissioner is not aware of any material reason why the Council should have been expected to wait, for an undetermined period of time, for further submissions from the complainant based on information that the authority would already have held.

35. In addition, the Commissioner has taken into account the complainant's awareness that, should he be dissatisfied with the Council's response to his complaint, there was the possibility of escalating his grievance to the Local Government Ombudsman, an independent regulatory body. The Commissioner would also consider that, bearing in mind the nature of the complaint against the enforcing officer, the matter may have potentially been passed to the police.
36. The Commissioner is therefore of the view that the request did not serve any practical purpose other than to draw out the focus on the actions of the enforcing officer in question. For this reason, the Commissioner considers that the request can be deemed obsessive.

### **Is the request harassing to the authority or distressing to staff?**

37. In his guidance on vexatious requests<sup>1</sup>, the Commissioner set out what may be considered when establishing whether a request can be viewed as harassing or distressing:

*"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. Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints."*

38. The Commissioner acknowledges that there will often be an element of overlap between the various vexatious criteria. For example, where a request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. While the complainant may not intend to cause distress, the Commissioner must consider whether this was the effect.
39. The Council has contended that the high volume of requests and the frequency of correspondence have had the effect of harassing the

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<sup>1</sup> This guidance can be accessed at:

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/vexatious\\_and\\_repeated\\_requests.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf)



authority. The Council has also flagged up the behaviour of the complainant towards a Councillor as a reflection of the difficulties it has faced.

40. As a representative of the Ryde locality, the complainant had contacted the Councillor in late 2007 about proposed dog control orders. Owing to the amount and nature of the correspondence, which the Council considered was clearly intended to harass the Councillor, the Council had similarly come to label a previous request as vexatious.
41. However, the Commissioner recognises that each request must be judged on its own merits; it would not necessarily follow that, because one request is vexatious, a subsequent request submitted by the same party should be deemed the same.
42. The Commissioner is also mindful of the complainant's involvement with a website which, the Commissioner is led to believe, has 103 confirmed members.
43. Given the extent of the complainant's interest in matters relating to dog control orders, the Commissioner considers that there would be a greater expectation that a number of requests will be directed from the complainant to the Council about a specific issue, namely the rights and freedoms of dog owners. Consequently, while the creation of a website should not permit an applicant to harass an authority, the Act should also not be used to block an individual's attempt to legitimately place useful information in the public domain.
44. Nevertheless, as the complainant has openly stated, the request in question was submitted in a personal capacity and was therefore not meant to serve what may be considered the greater public interest, or at least the 103 members of the aforementioned website. Instead, by submitting the request, the Commissioner considers that one effect would be to prolong the consideration of a grievance that the complainant has against the Council.
45. The Commissioner has also considered the Council's argument that specific attention should be given to the request itself:

*"...due to the nature of the request, and the inference that enforcing officers had acted improperly, I would suggest that the request may have been considered vexatious, irrespective of previous contact. The tone and allegations are, in the councils view, very material to the decision as to whether the request is vexatious."*

46. On the one hand, the Commissioner has not been presented with any other evidence that would suggest the complainant had previously been offensive or anything but cordial. The Commissioner would therefore be reluctant to conclude that staff would have cause to be distressed on the basis of this one request.
47. The Commissioner is also mindful of the decision of the Information Tribunal in *Michael Jacobs v the Information Commissioner (EA/2010/0041)*. In that case, the Tribunal stated that a public authority should not be over-protected and should expect to be exposed to *"an element of robust and persistent questioning, sometimes articulated in fairly critical tones."*
48. On the other hand, however, the Commissioner would accept that the phrasing of the request does imply a presumption of guilt on the part of the enforcing officers at the Council, or particularly one, which clearly relates to the complainant's own experiences and his ensuing complaint. To this extent, the Commissioner considers that the tone of the request may cause some distress to staff at the Council because of the allegations being made.
49. Similarly, to return to the Tribunal's decision in *Jacobs*, the Commissioner considers the following point made by the Tribunal to be applicable to the circumstances of the case presented here:  
  
*"The terms in which the information is expressed may be a particularly relevant factor to take into account. For example the language used may reinforce the suspicion that, by reason of its similarity with earlier requests or debates...it is intended to simply reopen or continue an earlier dispute. We found that in this case the language used in the Request betrayed the Appellant's intention, which was not really to obtain information but to trap the public authority into making an admission that the Appellant felt would be to his advantage in some other context..."*
50. The Commissioner considers there is insufficient evidence to suggest that the complainant is not serious in seeking information. However, the Commissioner is also of the view that, by making the request, the complainant has demonstrated his want to *"trap the public authority into making an admission that felt would be to [his] advantage in some other context"*, namely in relation to his grievance against an enforcement officer at the Council.
51. Having weighed up the relative arguments, the Commissioner has concluded that the request can reasonably be perceived as harassing the public authority.

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

52. When considering whether this factor applies, the Commissioner would expect a public authority to be able to show that complying with a request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
53. The Commissioner has not been presented with any evidence that providing the requested information would be, in any way, problematic or time-consuming. Nevertheless, it may be necessary to consider whether even if a request does not impose a significant burden when considered in isolation, it may do so given the context in which it was made. For example, a public authority may highlight the burden attached to a request where compliance would be very likely to lead to a significant number of further requests and complaints.
54. The Commissioner is aware that the complainant has been in frequent contact with the Council. By its very nature, the Commissioner appreciates that dealing with these communications may potentially be resource-intensive. The Commissioner would also consider that the pattern of requests instils little confidence that compliance would not simply trigger further requests relating to this particular issue.
55. Yet, in the absence of any direct arguments to this effect, the Commissioner does not believe that this factor can be viewed as supporting the application of section 14(1) of the Act.

**Is the request designed to cause disruption or annoyance?**

56. In the Commissioner's published guidance on section 14 (Awareness guidance No. 22 'Vexatious or repeated requests') it states:  
  
*"As this factor relates to the requester's intention, it can be difficult to prove. Cases where this is a strong argument are therefore likely to be rare. However, if a requester explicitly states that they want to cause maximum inconvenience, the request will almost certainly be vexatious."*
57. The Commissioner observes that the actual effect of much of the complainant's contact with the Council, particularly the revisiting of issues relating to the issuing of an FPN, would cause disruption and annoyance.
58. In addition, the Commissioner would agree with the Council that, by submitting the request, the complainant has fostered the perception

that an enforcing officer had acted improperly, implicit in the leading tone of the request itself.

59. Yet, the Commissioner has not been provided with any evidence that indicates that any disruption or annoyance caused to the Council was intended. For this reason, the Commissioner is not persuaded that this factor would weigh in favour of the application of section 14(1).

**Does the request lack any serious purpose or value?**

60. By itself, whether a request does or does not have value is not of significance given that the freedom of information legislation is not concerned with the motives of an applicant, but in promoting transparency for its own sake. However, the Commissioner acknowledges that should an authority be able to show that a request has no value or purpose, this may help support the application of section 14(1) when taken together with other factors.
61. The complainant has argued that his request has value and a serious purpose since a full answer will provide additional evidence to enable him to present his complaint against the enforcing officer effectively.
62. Conversely, the Council considers that the complaint has already been addressed. Therefore, the information requested by the complainant would have no value.
63. In weighing up the arguments, the Commissioner has considered the fact that the complainant had informed the Council of his intention to garner further information relating to his complaint. Furthermore, as referred to at paragraph 32, the Commissioner is not convinced from the evidence provided that the complaint about the enforcing officer has ever been specifically addressed at the second-stage of the Council's complaints process.
64. Yet, by submitting a request over two months after the incident took place, which already followed on from other requests relating to the incident, the Commissioner believes that the serious purpose behind the request could be argued to have diminished. The Commissioner is also not persuaded by the complainant's argument that the requested information would significantly support a complaint about a specific incident.
65. As stated previously, the purpose of submitting a complaint is to allow an authority to make an objective and considered assessment of the matters at hand; it is not the duty of a complainant to carry out this function for the authority.

66. Accordingly, the Commissioner believes it can be legitimately argued that the request lacks value. He therefore finds in favour of the public authority on this factor.

### **Conclusion**

67. The Commissioner recognises that there is a fine balancing act between protecting a public authority from frivolous applications and the promotion of transparency in the workings of an authority.
68. In this instance, the Commissioner does not consider that the issue of vexatiousness is clear-cut. However, based on the evidence that has been provided to him and taking all the contributory factors into account, the Commissioner has found that the arguments in favour of applying section 14(1) are of sufficient weight to deem the request as vexatious.

### **The Decision**

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69. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that section 14(1) was applied correctly.

### **Steps Required**

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70. The Commissioner requires no steps to be taken.

## Right of Appeal

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71. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 sent.

**Dated the 16<sup>th</sup> day of September 2010**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution**

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

## Legal Annex

### S.1 General Right of Access

**Section 1(1)** provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

### S.14 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"

**Section 14(2)** provides that –

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request."