

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 14 December 2010**

**Public Authority:** Commission for Local Administration in England  
**Address:** 10<sup>th</sup> Floor  
Millbank Tower  
Millbank  
London  
SW1P 4QP

### Summary

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The complainant requested a list of employees at the York office of the Local Government Ombudsman. This was refused under section 14(1) of the Act, on the grounds that the request was vexatious. The Commissioner has assessed the public authority's arguments for considering the request to be vexatious and his decision is that the public authority correctly refused the request under section 14(1) of the Act.

### 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. The complainant has submitted a complaint about City of York Council (CYC) to the Local Government Ombudsman (LGO). That complaint was originally processed by the LGO's Coventry office, which established a possible conflict of interest in that a former employee of CYC was now employed at the LGO's York office. In order to resolve that conflict, the LGO sought the complainant's permission to transfer his complaint to the Public Services Ombudsman for Wales (PSOW).
3. The complainant has expressed some scepticism about the public authority's explanation of its reasons for transferring the complaint to the PSOW and has explained that his request sought to establish whether he had been misled by the LGO. He also explains that the information may be necessary in the event that he has to apply for a judicial review of the LGO's handling of his case.

## The Request

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4. The complainant emailed the public authority on 14 November 2009, requesting a list of LGO employees at its York office. This was acknowledged by the public authority on 26 November 2009.
5. On 18 January 2010 the public authority responded to the complainant, refusing his request on the grounds that it was vexatious, under section 14(1) of the Act.
6. The complainant requested an internal review of this response on 19 January 2010. On 11 February 2010 the public authority responded with the outcome of its internal review. It upheld the earlier decision, explaining that it considered the request to have no serious purpose or value because the complainant had linked his request for the information to a conflict of interest identified by the LGO in a case he had submitted to it. As the LGO had taken steps to resolve any conflict of interest, there was no serious purpose to the complainant's request for information.

## The Investigation

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### Scope of the case

7. On 18 February 2010 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 the following points:
  - He required the information for a possible judicial review;
  - He has not been given a plausible reason for the refusal of his request;
  - It appears he may have been misled by the LGO and its refusal indicates an unwillingness to admit this.
8. 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

9. On 22 and 23 April 2010 the Commissioner contacted the public authority to ask for its reasons for refusing the complainant's request as vexatious. The public authority responded on 23 April and 10 May 2010 with further information.
10. On 29 April 2010 the Commissioner wrote to the complainant to request clarification of his position and received a response from the complainant on 30 April 2010. The complainant stated that it appears that he has been misled by the LGO and, as he is considering the possibility that he may have to apply for a judicial review of the LGO's handling of his complaint about CYC, he would need to show the court that his suspicions are founded and requires the list of York employees for that purpose. He therefore argues that his requirement for the information has a serious purpose.
11. The Commissioner wrote again to the complainant on 26 May 2010. The complainant replied on the same day, arguing that the PSOW has no authority outside Wales and therefore he queries the decision to transfer the complaint to the PSOW and believes he has been misled by the LGO.
12. The Commissioner wrote again to the complainant on 27 May 2010, to ask him whether he had raised these misgivings with the LGO. The complainant replied on the same day indicating that, for various

reasons, he had not raised this with the LGO, preferring to establish first whether the conflict of interest claimed by the LGO was true.

13. The Commissioner also raised the matter with the LGO, which explained, firstly that the delegation of the matter to the PSOW was in accordance with Schedule 4 paragraph 13(1) of the Local Government Act 1974 and, secondly, that the transfer related only to the investigation phase of the complaint, and that the final decision of the Ombudsman would be made in the Coventry office of the LGO, using the outcome of the PSOW investigation.
14. The Commissioner wrote again to the complainant on 1 June 2010. He put this response to the complainant, and asked him to clarify the 'various reasons' suggested in the complainant's earlier response of 27 May. The complainant responded on 1 June and 2 June 2010. He explained that as he considered he had been misled by the LGO, he would not regard any answer it gave him as reliable and therefore had not raised his concerns with it. Also, if he was able to show that he had been misled by the LGO, he would be able to take the matter further. He also argued that, as the matter would ultimately be transferred back to the LGO by the PSOW, this raises questions over the plausibility of the LGO's claim that a conflict of interest existed and reinforces his view that he is being misled.

## Analysis

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### Substantive Procedural Requirements

#### Section 14

15. The Commissioner has considered whether the request may be refused as vexatious by considering the context and history of the request, and by assessing the applicability of the following five factors to the request:
  - Can 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?

16. According to the complainant, his complaint to the LGO makes serious allegations about two individuals, who were dismissed from CYC as a result of their conduct in the matter he complained about. He expresses serious doubts that they would find employment in the area of local government and he took steps, by telephoning the LGO office in York, to establish that neither individual worked there. He states that it appears that he has been misled by the LGO and, as he is considering the possibility that he may have to apply for a judicial review of the LGO's handling of his complaint about CYC, he would need to show the High Court that his suspicions are founded and requires the list of York employees for that purpose.
17. The LGO has brought evidence of previous conduct of the complainant towards CYC staff to the Commissioner's attention, having considered this evidence carefully the Commissioner agrees with the public authority's argument that the complainant has previously exhibited a pattern of behaviour which may reasonably be characterised as vexatious.

**Can the request fairly be seen as obsessive?**

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

18. The public authority argues that, as the reason for the transfer of the investigation of the complaint to the PSOW was to resolve a conflict of interest it had identified, that conflict of interest no longer existed. The complainant's wish to know which employee was the subject of that conflict was indicative, in the context of his previous behaviour, of a wider pattern of conduct which could be termed as obsessive. Furthermore, as the LGO's York office had played no part in the handling of his complaint, he had no reason to learn the names of the staff at that office, which is suggestive of an unreasonable fixation with the individuals named in his complaint.
19. The complainant, for his part, has expressed surprise that a person he describes as having been 'dismissed for their role' in the matters complained about to the LGO might subsequently find employment within the arena of local government. He explains that he took steps, by telephoning the LGO's York office, to find out whether either of the two named individuals worked at that office and established from its response that they do not.
20. The complainant also explained to the Commissioner that, as the PSOW has no authority outside Wales, he has concerns that it has no jurisdiction over CYC and he doubted the reason given by the LGO for the transfer. The complainant has confirmed to the Commissioner that he did not raise his concerns with the LGO, but instead made his

21. The Commissioner considers that a more appropriate first response would have been to engage with the LGO about its actions, querying its rationale and expressing his reasonable concerns over the validity of the LGO's actions and the jurisdiction of the PSOW. That might have given the LGO an opportunity either to allay his reasonable concerns, or to consider what other steps it could take in order to do so. That the complainant contacted the LGO's York offices by telephone, on the same day that he was informed (by the LGO's Coventry office) of the conflict of interest, might suggest that his first impulse was not to resolve his concern, but to attempt to verify the whereabouts of an individual named in his complaint.
22. The Commissioner is not persuaded by the complainant's argument, that he has chosen not to discuss his concerns about the jurisdiction of the PSOW with the LGO because he doubted the credibility of any response, and first wanted to establish whether the claimed conflict of interest was true. The Commissioner is not aware of any reason why the complainant should need to know which particular employee at the York office might be the subject of any conflict of interest, other than for the purposes of pursuing that individual. While the complainant has expressed scepticism to the Commissioner about the conflict of interest itself, he has not challenged the LGO directly on the matter. This does not lend credence to his argument.
23. Because of the complainant's previous history, the Commissioner agrees that the complainant's behaviour might fairly be seen as obsessive. Similarly, his behaviour and the request had the effect of harassing the public authority and distressing staff. This is also, in part, because the complainant's actions appear designed to aggressively challenge the LGO's legitimate procedures, rather than to challenge the outcome of its investigation (which is not yet concluded).

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

24. The complainant's argument is that he requires the names of the individuals in order to establish whether he has been misled by the LGO, and that he may need this information for a judicial review of the LGO's handling of his case. The Commissioner has considered whether this might amount to a serious purpose for the request.
25. The Commissioner also raised the matter with the LGO, which explained, firstly that the delegation of the matter to the PSOW was in

accordance with Schedule 4 paragraph 13(1) of the Local Government Act 1974, which states:

*13 (1) Any function of a Commissioner may be discharged on the Commissioner's behalf—*

- (a) by any person authorised by the Commissioner to do so, and*
- (b) to the extent so authorised.*

and, secondly, that the transfer related only to the investigation phase of the complaint, and that the final decision of the Ombudsman would be made in the Coventry office of the LGO, using the outcome of the PSOW investigation.

26. The LGO has argued that the complainant has linked his request to the conflict of interest which the public authority identified and therefore, in taking steps to avert that conflict of interest, it has removed any possible serious purpose relating to a request for information, predicated on that conflict of interest. The Commissioner notes, nonetheless, that the LGO had not explained to the complainant that it is only the investigation phase of the complaint-handling process which has been passed to the PSOW, and that the LGO intends to make the final adjudication itself, based on the results of that investigation. He is not persuaded, therefore, that the complainant's wish to know more about the conflict of interest was unfounded.
27. The lack of explanation from the public authority could lead the complainant to a not unreasonable conclusion that his concerns about the way his complaint was being handled by the LGO were legitimate and that any outcome involving the PSOW might not be binding on CYC. On the other hand, had the complainant voiced these concerns to the LGO at the time, it would have afforded the LGO an opportunity to reassure him as to the validity of its proposed actions.
28. The Commissioner notes that if the complainant intends to seek a judicial review of the investigation of his complaint, then that review would be likely to be about the conduct of the PSOW; if he wishes to seek a judicial review of the outcome, this may involve either the PSOW or the LGO. In either case, the identity of any LGO staff will not be germane.
29. If, on the other hand, his grounds for a judicial review were solely relating to the LGO's transference of his case to the PSOW, the Commissioner understands that, in general, he would be required to show that the LGO was refusing to hear his complaint when it was lawfully required to do so, or that the transfer to the PSOW was



beyond the powers of the LGO or otherwise unreasonable or irrational. The Commissioner understands that the PSOW has no jurisdiction over councils outside Wales and that, therefore, the decision of the LGO might well appear unreasonable or irrational to the complainant. That position lacks substance, however, given the provisions of Schedule 4 paragraph 13(1) of the Local Government Act 1974, and that the LGO intends to make its final adjudication itself, based on the impartial investigation performed by an external agency.

30. The Commissioner is not persuaded that the complainant's explanation of his need to know the identity of the individual is sufficient in the circumstances, as he has not demonstrated satisfactory justification for the grounds he proposes, namely his requirement for permission to seek a judicial review. The Commissioner considers that a reasonable course of action would, in the first instance, have been to take all steps open to him to avert the need for a judicial review by confirming the LGO was adhering to proper processes. The LGO has explained that its actions are within its statutory remit. It is not a matter for the Commissioner to consider the legal position of the LGO as a formal issue in this decision, but it is clearly a reasonable position.
31. By electing not to engage with the public authority in this regard, the complainant neglected an obvious opportunity to reassure himself that the LGO was acting properly. He is attempting to use the Freedom of Information Act to challenge the LGO's procedures when he does not appear to have used the proper avenues available to him at the time. The Commissioner therefore gives only a limited weight to his argument that his request has the serious purpose he describes.
32. In consideration of the factors analysed above, the only factor which mitigates in the complainant's favour is the last: *Does the request have any serious purpose or value?* The Commissioner has considered the arguments put forward by the complainant and has accorded them some weight, but for the reasons outlined above, he does not consider this weight to be sufficient to outweigh the public authority's countervailing arguments on the same subject, nor yet the combined weight of those arguments, and the LGO's other arguments which relate to the harassment and obsessive behaviour. Consequently, the Commissioner considers that the request can reasonably be assessed as vexatious.



## Procedural Requirements

### Section 10

33. The complainant submitted his request, via an online contact facility on the LGO website, on 14 November 2009. The public authority provided its response on 18 January 2010, a period of 42 working days. This exceeds the 20 working days required by section 10(1) of the Act and the public authority therefore breached section 10(1) in providing its response outside the statutory timescale.

### Section 17

34. The delay in the provision of a notice refusing the request under section 14(1) of the Act, noted in paragraph 33, above, is consequently also a breach of section 17(5) of the Act.

## The Decision

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35. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The public authority correctly applied section 14(1) to the complainant's request.

36. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- By failing to provide a response to the complainant within 20 working days, the public authority breached section 10(1) and section 17(5) of the Act.

## Steps Required

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37. The Commissioner requires no steps to be taken.

## Right of Appeal

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38. 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 14<sup>th</sup> day of December 2010**

**Signed .....**

**Steve Wood  
Head of Policy Delivery  
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.'*

**Section 1(2)** provides that -

*'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'*

**Section 1(3)** provides that –

*'Where a public authority –*

- (a) reasonably requires further information in order to identify and locate the information requested, and*
- (b) has informed the applicant of that requirement,*

*the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.'*

**Section 1(4)** provides that –

*'The information –*

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or*
- (b) which is to be communicated under subsection (1)(b),*

*is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated*

*under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.'*

**Section 1(5)** provides that –

*'A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).'*

**Section 1(6)** provides that –

*'In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as 'the duty to confirm or deny'.'*

### **S.10 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.'*

**Section 10(2)** provides that –

*'Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.'*

**Section 10(3)** provides that –

*'If, and to the extent that –*

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or*
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,*

*the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.'*

**Section 10(4)** provides that –

*'The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.'*

**Section 10(5)** provides that –

*'Regulations under subsection (4) may –*

- (a) prescribe different days in relation to different cases, and*
- (b) confer a discretion on the Commissioner.'*

**Section 10(6)** provides that –

*'In this section –*

*"the date of receipt" means –*

- (a) the day on which the public authority receives the request for information, or*
- (b) if later, the day on which it receives the information referred to in section 1(3);*

*"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.'*

## **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.'*

### **S.17 Refusal of Request**

**Section 17(1)** provides that -

*'A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -*

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.'*

**Section 17(2)** states –

*'Where–*

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-*
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or*
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and*
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

*the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'*

**Section 17(3)** provides that -

*'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -*

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or*
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'*

**Section 17(4)** provides that -

*'A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.'*

**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(6)** provides that –

*'Subsection (5) does not apply where—*

- (a) the public authority is relying on a claim that section 14 applies,*
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.'*



**Section 17(7)** provides that –

*'A notice under subsection (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.'*

## **Local Government Act 1974**

Schedule 4 of the Local Government Act 1974 does not contain the section referred to by the public authority as paragraph 13. This is inserted to the enactment as a later addition, created by section 181 in Part 9 of the Local Government and Public Involvement in Health Act 2007, which refers to the Commission for Local Administration in England (CLAE):

## **Local Government and Public Involvement in Health Act 2007**

### **181 Delegation**

In Schedule 4 to the Local Government Act 1974 (c. 7) (the Commission) at the end insert—

*"Delegation*

13 (1) Any function of a Commissioner may be discharged on the Commissioner's behalf—

- (a) by any person authorised by the Commissioner to do so, and
- (b) to the extent so authorised.

(2) Sub-paragraph (1) does not affect the responsibility of the Commissioner for the discharge of the function."