

Freedom of Information Act 2000

Decision Notice

Date: 11 May 2011

Public Authority: South Gloucestershire Council
Address: Council Offices
Castle Street, Thornbury
South Gloucestershire
BS35 9BJ

Summary

From 2008, the complainant, acting in concert with other parties, made a number of requests to South Gloucestershire Council regarding costs, staffing levels and service procedures within the Council's taxi licensing department. The Council refused to comply with one of the requests sent by one of his associates, claiming that it was vexatious under section 14(1) of the Act and repeated under section 14(2) of the Act, and it wrote to the relevant parties, including the complainant, explaining that it would not respond to any further related requests for a certain period of time.

The complainant subsequently made a further request for the same information under the Act. The Council did not respond to that request as it had previously issued a refusal notice in respect of the previous request. The Commissioner finds that the Council was correct not to respond to the further request as per the provisions of section 17(6) of the Act and that it correctly applied section 14 to the previous request and requires no steps to be taken. However, the Commissioner also finds that the Council breached section 17(7)(a) of the Act as it failed to provide the complainant with details of its internal review procedure.

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

Background

2. Approximately three years ago an associate of the complainant appealed a taxi licensing decision made by South Gloucestershire Council ("the Council"). That individual won his appeal and the Council was ordered to pay the costs of the appeal. However, the individual did not accept the level of costs awarded and has, together with other parties including the complainant, made a number of requests to the Council since the appeal. These relate to the issue of costs and staffing levels within the taxi licensing department of the Council.
3. The associate mentioned above has referred complaints relating to two of his requests to the Council to the Local Government Ombudsman (LGO). These are still under investigation.

The Request

4. On 25 February 2010, the complainant made a detailed request to the Council relating to costs and staffing levels within the Council's taxi licensing department, and all costs associated with the court case mentioned in paragraph 2 above. The full text of this request is in Annex 1 at the end of this Notice. The Commissioner notes that this is identical in wording to a previous request made by the complainant on 25 February 2009.
5. However, the Council had previously issued a refusal notice to the complainant and other parties whom it believed were acting in concert with the complainant in respect of previous requests (on 19 February 2010). It cited section 14 of the Act as a basis for refusing to comply with the requests, as it considered them both repeated and vexatious. The Council advised that it would not respond to similar requests until a period of nine months had passed. The complainant and the other parties were not advised of any internal review procedure.

The Investigation

Scope of the case

6. 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:
 - The Council's application of section 14 to the requested information.
 - The Council's decision to block any further requests for information for a period of 9 months.
 - The Council not providing a response to his request for information.
7. Given the circumstances of this particular case, the Commissioner used his discretion to accept the complaint without requiring the Council to carry out an internal review of its decision not to disclose the requested information.
8. The Commissioner, in this Notice, will examine whether or not the Council's letter of 19 February 2010 constitutes an adequate refusal notice under section 14 of the Act, to the extent that the Council was not obliged to respond separately to the complainant's request of 25 February 2010.

Chronology

9. On 18 August 2010 the Commissioner wrote to the Council requesting further details regarding its application of section 14(1) to the requests.
10. On 15 September 2010 the Council provided a detailed submission to the Commissioner.

Findings of Fact

11. During the course of the investigation the Commissioner established that in June 2008 the Council conducted a review of the level of fees charged for providing taxi and private hire licences. As a result of that review, all costs information and staffing levels were supplied by letter to every licensed taxi driver in the South Gloucestershire area, of which the complainant was one. That information has also been provided in

newsletters to the South Gloucestershire Taxi Association and is available in an outline form as part of the Council's publication scheme.

12. The Commissioner has been provided with evidence of information requests made by the complainant and other associated parties dating back to February 2008 with at least 16 requests being made in the seventeen months prior to the request which is the subject of this Notice. The Commissioner notes that he has already dealt with complaints relating to three of those requests.

Analysis

Substantive Procedural Matters

Section 14 – vexatious and repeated requests

13. The Council claimed section 14 of the Act as a basis for its refusal to comply with the request which is the subject of this Notice. The Council stated in its previous refusal notice to the complainant and other parties that it believed the requests made by those parties to be both vexatious and repeated. Therefore, the Council had previously relied on section 14 of the Act and has continued to rely on it in relation to the complainant's request. The Commissioner has considered this reliance in relation to the complainant's request.

Section 14(1) – vexatious requests

14. Section 14(1) is an exclusion that provides that:

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

15. The Commissioner has issued guidance in relation to the issue of vexatious requests¹. This guidance explains that for a request to be deemed vexatious, the Commissioner will consider the context and history of the request. The Commissioner will also consider the strengths and weaknesses of the arguments presented by the complainant and the public authority against the following five factors:

- whether the request can otherwise fairly be characterised as obsessive;

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

- whether the request has the effect of harassing the public authority or its staff;
 - whether compliance would create a significant burden in terms of expense and distraction;
 - whether the request is designed to cause disruption or annoyance;
 - and whether the request has any serious purpose or value.
16. The Commissioner does not consider it necessary to consider each of the five factors in every case, but has set out below the relevant factors in this case, and the applicable arguments.

Can the request fairly be seen as obsessive?

17. The Commissioner has considered whether or not the complainant's request can be characterised as obsessive or manifestly unreasonable, bearing in mind that at times there is a thin line between obsession and persistence on the part of a complainant.
18. The Commissioner has also had regard to the Tribunal's comments in the case of *Ahilathirunayagam v London Metropolitan University* (EA/2006/0070). The Tribunal found the request in that case 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

(iii) The tendentious language adopted in several of the questions demonstrating that the Appellant's purpose was to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess

(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)

19. This means that even if a request appears reasonable in isolation, it may be vexatious when considered in the context of the correspondence generated by it, which in turn leads to new requests being made regarding the same subject area. The Commissioner has therefore taken into account the previous dealings that the complainant and his associates have had with the Council when

determining whether the requests can be correctly characterised as obsessive.

20. The Council states in its letter to the Commissioner dated 15 September 2010 that the requests made by the individual who was the subject of the court case, together with associated parties including the complainant, are "incessant and repetitive". That letter goes on to state that, "the requests were obsessive, relentless and manifestly unreasonable" and that it believes that the individual's behaviour is "deliberate and repetitive". This gives weight to the Council's arguments as to the requests constituting a significant burden in terms of expense and distraction, as set out below.
21. The Commissioner has considered the evidence put forward by the Council in support of its position. This included details of the correspondence by the above mentioned individual together with other parties, including the complainant, to the Council regarding costs, staffing levels, service standards and court proceedings dating back to February 2008. The Commissioner is satisfied that the complainant's initial requests were fully responded to by the Council. Since 2008, the Council has received a number of similar requests for information and other voluminous correspondence, all of which relate to the original dispute and the subsequent appeal and costs order.
22. Since a full response was provided to all previous requests and the complainant and other parties were consulted as part of a formal consultation process regarding details of costs and staffing levels, the Commissioner considers that the subsequent related correspondence and the tone and language of this, up to and including the request which is the subject of this decision, demonstrates a pattern of obsessive behaviour. The Commissioner notes that the complainant had been kept informed of all matters relating to costs and staffing levels within the Taxi Licensing department. He had received the letters sent out to Taxi Association members as a result of the Fees Review, been included in the formal consultation process and had access to the information placed on the Council's website and contained in the Licensing Division's newsletter.
23. The Commissioner considers that the request which is the subject of this Notice sought information which the complainant already possessed, attempting to re-open issues which had previously been resolved. Since the Council had already either provided the complainant and his associates with the information they requested or applied an appropriate exemption, the Commissioner is satisfied that the complainant's request can be fairly characterised as obsessive.

Does the request have the effect of harassing the public authority or its staff?

24. In determining whether a request has the effect of harassing an authority or causing distress to staff, the Commissioner's guidance states that the focus should be on the likely effect of the request seen in context, and not on the intention of the requester. The Commissioner is of the view that the relevant question is whether having to deal with the request would be distressing or harassing, regardless of the subject of the request.
25. The Commissioner considers that relevant factors 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 or complaints.
26. The Commissioner has seen evidence to support the Council's assertion that there is a high volume and frequency of correspondence in relation to these requests. The Council has described the approach taken by the complainant and his associates as "acrimonious and personal" and has stated that this approach has left "the team and specific individuals within it feeling specifically targeted, bullied and harassed". The Council has further stated to the Commissioner that some of the requests have contained accusations against individual members of the team, which has caused a high level of distress among staff within the taxi licensing department.
27. The Commissioner has examined a considerable amount of information relating to the complainant and his associates and has considered the background and history to the complaint. He considers that the language and tone of the correspondence by the complainant and his associates is often abusive, at times attacking the personal integrity of certain staff members. In light of this the Commissioner accepts the Council's assertion that team members within the taxi licensing department feel harassed by the approach taken by the complainant and his associates and the tone of their requests. Therefore the Commissioner is satisfied that the requests have the effect of harassing the Council and causing distress to its staff.

Does the request constitute a significant burden in terms of expense and distraction?

28. When determining whether a request imposes a significant burden, the Commissioner believes that a public authority should:

*"... consider whether complying with the request would cause it to divert a disproportionate amount of resources from its core business. However, where the **only** concern ... is the burden on resources ... it should consider whether it would be more appropriate to apply section 12..."*

29. The Commissioner is also assisted by the Information Tribunal's comments in the case of *Gowers v the Information & London Borough of Camden* (EA/2007/0114). The Tribunal emphasised that previous requests received may be considered in the context of the request in question:

"...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor" (para 70).

30. It is therefore appropriate for the Commissioner to take into account the complainant's previous interaction with the public authority when making a determination of whether the requests represent a significant burden to a public authority. This means that even if the requests do not impose a significant burden when considered in isolation, they may do so when considered in context. Therefore in this case the Commissioner has considered not only the requests themselves but also the background and history to these requests, which have generated a sizeable amount of correspondence between the complainant and the Council.

31. The Council has provided the Commissioner with evidence that the requests made by the complainant and his associates have already necessitated a considerable amount of work within both the taxi licensing department and the legal services division of the Council, and have to date incurred a significant level of costs.

32. In addition, the Commissioner notes that the Council stated to the complainant and his associates in its refusal notice dated 19 February 2010 that:

"In the course of these requests you have (individually and collectively) repeatedly targeted staff, accusing the Council and its officers of persistent wrongdoing and have consistently refused to accept any of the answers provided".

33. Having considered the evidence provided by the Council, the Commissioner has identified a pattern of the Council's responses to the complainant and his associates, triggering further correspondence and

requests. In light of this the Commissioner accepts that answering this request would be extremely likely to lead to further correspondence, further requests and possibly further complaints against individual Council officers. These would impose even more of a burden on the Council in terms of time, costs and diversion of resources to deal with the requests. Evidence of the correspondence generated by the complainant's requests prior to the requests dealt with in this Notice can be found in Annex 2 at the end of this Notice.

34. The Commissioner considers it appropriate for the Council to consider the cumulative effect of dealing with the correspondence associated with the complainant's request. The Council has provided the Commissioner with details of the series of information requests the complainant and his associates have made on the same issues, i.e. costs, standards and service levels within the Council's taxi licensing department, starting in February 2008. The Council provided the requested information, applied an appropriate exemption or stated that no information was held in relation to all of the complainant's and his associates' previous requests prior to issuing the refusal notice on 19 February 2010. In conclusion the Commissioner accepts that, taking together the action already taken by the Council and the potential for further correspondence and follow-on requests from the complainant, the effect of complying with the requests would have placed a significant burden on the Council.

Conclusion

35. The Commissioner notes the complainant's assertion that his request is separate from the requests which the Council has previously declared to be vexatious. The complainant states that he is making this request in his own right and should not be assumed to be acting in concert with the other parties to whom the Council's section 14 refusal notice was issued. However, the complainant's request is absolutely identical in wording to a request made by him on 25 February 2009 (see Annex 2 to this Notice) which was fully responded to by the Council at that time. It is also identical in wording to a previous request made by the complainant's associate dated 29 January 2010. The Council declared this to be vexatious and the Commissioner upheld its view.² In the Commissioner's view, this is very strong evidence that the complainant's request is part of a wider pattern of correspondence which has the effect of harassing the Council staff dealing with it. The Commissioner is therefore of the view that compliance with the complainant's request would be likely to lead to further correspondence and requests, which would place an intolerable burden on the Council.

² FS50301278

Therefore the Commissioner is satisfied that the complainant's request is vexatious, and that the Council correctly applied section 14(1) to refuse to comply with it.

Section 14(2) – repeated requests

36. Section 14(2) of the Act states that, where a public authority has previously complied with a request for information from 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 the previous and current requests.
37. Section 14(1) of the Act refers to vexatious requests and section 14(2) refers to repeated requests. The Council has stated that it believes the complainant's request to be both vexatious and repeated. Section 14(2) applies where requests are for identical or substantially similar information, not merely on a similar theme. As the complainant's request is worded identically to the request made 29 January 2010 mentioned in paragraph 35 above, the Commissioner considers the request to be repeated. Therefore the Commissioner finds that the Council correctly applied section 14(2) to the complainant's request.

Section 17(5) – section 12 or 14 refusal notice

38. 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) – section 14 refusal notice served previously

39. Where a public authority deems a request vexatious and hence relies on s14, under s17(5) it must still issue a refusal notice stating that fact within the s1(1) timescale for compliance.
40. However where there are any further vexatious requests, s17(6) states that there is no need to issue a refusal notice under s17(5) in the following specified circumstances:
 - (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.*

41. Therefore in order for an authority to rely on s17(6) and avoid the need to issue a further refusal notice in response to any further vexatious requests from the same applicant, all the above criteria (a),(b) and (c) must apply.

The Commissioner has considered whether these apply and has concluded as follows: -

- (a) The Council is clearly relying on a claim that section 14 applies to the request.
- (b) The Council has previously issued a refusal notice in relation to previous requests for information in which it considered the complainant to be involved. That notice was issued to several parties, including the complainant.
- (c) The Commissioner considers that, in all the circumstances, it would be unreasonable to expect the Council to serve a further refusal notice upon the complainant in relation to the current request. This is due to the nature of the request and the fact that any communication from the Council in relation to the previous request for the same information only served to generate further correspondence from all parties involved, which would have the effect of further burdening the Council.

42. **Section 17(7)(a) – details of complaints procedure**

Section 17(7) of the Act states that: -

"A [refusal] notice under subsection (1) (3) or (5) [of section 17 of the Act] 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."

43. The Council in its refusal notice to the complainant dated 19 February 2010 did not provide the complainant with details of its internal review procedure. The Commissioner considers this omission to be a breach of section 17(7)(a) of the Act with respect to this request.

The Decision

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

- It correctly applied the exemption under sections 14(1) and (2) of the Act to the requested information.

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

- The Council breached section 17(7)(a) by not providing the complainant with details of its internal review procedure.

Steps Required

46. The Commissioner requires no steps to be taken.

Right of Appeal

47. 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.
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 sent.

Dated the 11th day of May 2011

Signed

**Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex 1 - the complainant's request

The complainant made the following request to the Council:

Please provide the following itemised information up to and including the date of this request: -

"All costs associated with the events and legal proceedings regarding the plating of [name's] Renault Trafic.

With reference to the word "Staff" throughout this request it refers to any council staff, for this or any other authority, engaged in this matter.

Staff costs to be broken down by grade/hour. In the event of any overtime payment at what rate was it paid?

Measurements

All staff costs regarding measurements of [name's] Renault Trafic and Hanham Taxis Renault Trafic. To include travelling costs, stationery costs, and meal allowances. At the following venues: Two visits at Broad Lane, two visits at Thornbury, two visits at 11 School Walk, Yate, one visit at VOSA, Avonmouth and one visit at Hanham Taxis, Oakfield Road.

Meetings

All staff costs with regards to inter-departmental meetings, meetings with barristers or their representatives, debriefing after court attendances. Meetings at the draughtsman's office. Meetings with Hanham Taxis' representatives and [name] to include travelling costs, meal allowances, stationery costs, printing costs.

Telephone calls

Itemised costs of all calls related to this matter, to include staff wages costs.

Letters

All staff costs and number of letters written to include emails, all stationery, printing and postage costs to other authorities, inter-departmental, legal, Hanham Taxis and [name].

Statements

All costs in preparing written witness statements, all pre-trial papers, to include staff wages, printing, stationery and postage.

Court attendances

All staff wages costs, to include travel costs and meal allowances. All staff costs present although not involved in actual proceedings, to include travel costs and meal allowances. All costs incurred from other authorities' witnesses, to South Gloucestershire Council, to include travel and meal allowances. All barrister's costs.

Adjudication cost

Cost of cost draughtsman, including travelling, printing stationery costs, excluding meetings held (mentioned elsewhere).

Support staff

All staff costs for staff deputised to act while other staff were engaged in this matter.

Plates

Costs of issuing and manufacturing vehicle licensing plates for Hanham Taxis and [the complainant].

Councillors

Any councillors' cost with regard to pre-trial meetings, correspondence or court attendance.

FOI

Any costs incurred in fulfilling this FOI request. Any other costs implied but not specified.

Annex 2- the correspondence of the complainant and his associates with the Council prior to his request of 25 February 2010.

19 December 2007 – Fax from the complainant's associate regarding Renault Traffic Vehicle.

4 February 2008 – E-mail from the complainant containing FOI request re costs

6 March 2008 – E-mail from the complainant's associate requesting contact from Taxi Licensing department.

10 March 2008 – follow-up e-mail from the complainant chasing up his request

12 March 2008 – Further follow-up e-mail from the complainant regarding Council's response

17 March 2008 – Further follow-up e-mail from the complainant regarding Council's response

1 May 2008 – E-mail from the complainant requesting information regarding costs and staffing levels in the Taxi Licensing department

8 September 2008 – 7 linked FOI requests from the complainant's associate

29 September 2008 – 2 faxes from the complainant's solicitor, one following up on FOI requests, one requesting further information regarding the complainant's Renault Traffic vehicle.

23 October 2008 – Complaint to Local Government Ombudsman.

25 February 2009 – FOI request from the complainant, identically worded to that as set out in Annex A to this notice

17 March 2009 – 4 FOI requests from the complainant's associate

23 March 2009 – E-mail from complainant's associate checking FOI requests are being dealt with (Council responded 24 March 2009 to confirm they were being dealt with).

24 March 2009 – E-mail from complainant's associate to thank Council for reply.

26 March 2009 – E-mail from complainant chasing up his request of 25 February 2009

29 March 2009 - E-mail from complainant's associate requesting written confirmation that FOI requests have been received (personal attack on honesty of a member of Council staff (Council responded 31 March 2009 stating that written confirmation would be provided and refuting allegations of dishonesty)).

6 April 2009 – FOI request from complainant's associate regarding staff salaries (that information had already been provided to the complainant and his associate on several occasions).

6 April 2009 – FOI request from complainant's associate for copy of Taxi Licensing department's telephone bill.

6 April 2009 – FOI request from complainant's associate regarding all costs of his court case.

20 July 2009 – FOI request from complainant's associate regarding transcript of Council staff member's interview with police re complainant's court case.

25 July 2009 – E-mail from complainant's associate checking that FOI request received (Council confirmed this on 27 July 2009).

3 August 2009 – E-mail from complainant's associate stating that he was going to make a complaint to the Information Commissioner (Council responded 4 August 2009).

6 August 2009 – Letter from complainant's associate copied to three Licensing Member spokespersons requesting that the Council respond to previous e-mail (Council replied and confirmed it had responded on 4 August 2009).

25 August 2009 – Complaint letter from complainant's associate stating Council had not responded to his request (necessitated Council writing another letter and checking e-mail and complaints records).

7 September 2009 – Letter from Council to complainant's associate asking which requests had not been responded to (no response from complainant's associate– generated investigation by Council, which ascertained all requests had been responded to).

13 October 2009 -E-mail to complainant's associate from Council checking which requests complainant believed were outstanding – complainant's

associate replied 13 October 2009 asking for his outstanding requests to be dealt with.

14 October 2009 – E-mail from complainant's associate to Council questioning the Council's competence and stating that his requests had not been answered.

Legal Annex

Freedom of Information Act 2000

Section 1 – General right of access to information held by public authorities

- 1(1) 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 14 – Vexatious or repeated requests

- 14(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- 14(2) 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 the previous request and the making of the current request.

Section 17 – Refusal of request

- 5) 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.
- (6) 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.
- (7) 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.