

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 June 2011

Public Authority: London Borough of Newham Council
Address: Newham Dockside
1000 Dockside Road
London
E16 2QU

Summary

The complainant submitted several requests for information about a Controlled Parking Zone. The Council initially provided some of the requested information, withheld other information, and stated some information was not held. Upon internal review, the Council applied the exclusions at sections 14(1) and 14(2). The Commissioner has investigated and concluded that the Council correctly applied section 14(1). However, the Council breached section 17(5) by failing to provide the complainant with a notice setting out its reliance on section 14 within the statutory time for compliance of 20 working days. The Commissioner does not require the Council to take any further action.

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. In 2000, the Council proposed to include Crofton Road in a Controlled Parking Zone (CPZ), known as the Prince Regents CPZ. That scheme was suspended after opposition from local residents. In 2007, the suspension was lifted and a CPZ is now in place on Crofton Road and surrounding streets. In 2009, the Council began consultation on extending the CPZ, and this was done in 2010.

The Request

3. On 7 April 2010, the complainant submitted a request to the Council for the following information:
- 1) "Why has the Council failed to undertake a review of the existing CPZ before extending it?"
 - 2) Specifically why has no review been undertaken into the illegally implemented Crofton Rd CPZ which is still shown on the new documentation as not being in the CPZ, despite the Council stating that review would be undertaken with 3-6 months of implementation?
 - 3) Please provide a full breakdown of the consultation results detailing all the votes for and against the proposed extension of the CPZ to include names and addresses in accordance with Cabinet Office guidance regarding the publishing of Public Consultations which states that all public consultations should clearly inform those undertaking to take part that the information submitted in response cannot be confidential and can be disclosed under the Data Protection Act.
 - 4) Please provide copies of the Council's policies and procedures regarding Traffic Orders, specifically those stating the requirements that must be met before a traffic order can be requested or implemented. Also provide all the documentation regarding this process in respect to the proposed experimental traffic orders for the Prince Regents Lane CPZ.
 - 5) Please provide the legal justification for the requirement to allow access to the residence of the applicant both before and after a permit is issued, as the Council have stated that this was introduced to protect the public purse but there is no threat to the public purse as the first permit is free of charge.
 - 6) Please provide any information or documentation regarding the statute or rule of law which requires residents with the CPZ to have the vehicle they are legally allowed to drive under the laws of the UK, owned and registered by themselves at an address within the CPZ before the Council will issue a permit to the resident for that vehicle.

- 7) Please explain why, despite the road marking and signage being incorrect and unenforceable the Council is still issuing and enforcing PCNs within the CPZ.
 - 8) Please provide any information or documentation which can explain why the illegal implementation of the existing CPZ, the complete disregard of the majority vote against the implementation of the CPZ, the fraudulent misreporting of polling results, and the deliberate refusal to release those results to the residents in breach of the DPA does not constitute fraud and obtaining money by deception by the Council?
 - 9) Please provide any documentation or information regarding why the staff undertaking the Public Consultation in this matter have failed to respond or provide the information promised during the consultation."
4. On 10 May 2010 the Council responded. The Council's responses to each request were as follows:
- 1) The Council stated that a review would "involve a need from the local community" and that the Council had already dealt with the matter.
 - 2) The Council informed the complainant that 1900 questionnaires about the CPZ were delivered. It received 392 replies, of which 212 were in favour of a parking scheme, 169 were against and 11 had no preference. A spreadsheet containing the roads consulted and their responses was attached, along with the questionnaire. The Council also stated that the CPZ was legal and valid.
 - 3) The Council withheld the names and addresses of respondents under the exemption at section 40(2) of the Act. It stated that no anonymised information was held.
 - 4) The Council stated that the legal framework around this area was complex and that the information would take around a week to collate, and invited the complainant to clarify his request. It also applied the exemption at section 21 to the request for the 'legal framework' as this information was available on the Department for Transport website and journals.
 - 5) The Council explained that there was a legal need to identify criteria relating to the users of a CPZ

- 6) The Council applied section 21 as it said that the relevant statutes could be accessed via the OPSI website.
 - 7) The Council stated that it would not issue PCNs if signage and markings were not correct and invited the complainant to provide information if he believed this was not the case.
 - 8) The Council asked the complainant to clarify his request.
 - 9) The Council stated that it did not hold the information.
5. On 27 May 2010 the complainant requested an internal review. As well as various other points, the complainant stated that the Council had failed to answer the questions posed in relation to requests 1, 2, 4, 5 and 6. He also said that he did not believe that no anonymised data was held in relation to request 3. In relation to request 7, the complainant stated that the road markings did not comply with the Traffic Signs Regulations and General Directions. The complainant clarified request 8 as follows:

“Please provide any legal statute or Act with allows the acts undertaken by the Council, which are clearly described as fraud under the law of the UK, to be undertaken without constituting fraud. Should this still not be clear enough kindly get the council’s legal department to contact me directly and I will attempt to clarify it further with them”

In relation to request 9, the complainant stated that he had been informed on three occasions by a Council employee that the requested information was held, and that he had retained recordings of all these conversations. The complainant then emailed the Council on 24 and 28 June to ask that it responded to his request for an internal review.

6. Following the intervention of the Commissioner, the Council provided its internal review outcome to the complainant on 14 July 2010. The Council applied both section 14(1) and 14(2) to the complainant’s requests, on the grounds that it believed they were vexatious and repeated. The Council said that this was because of the history of correspondence and FOI requests from the complainant about the CPZ. It also informed the complainant that future “identical or substantially similar” requests about the CPZ would not be responded to under section 17(6) of the Act.

The Investigation

Scope of the case

7. On 29 June 2010 the complainant contacted the Commissioner to complain about the Council's failure to respond to his request for an internal review. On 10 August, after receiving the internal review, the complainant contacted the Commissioner to submit a complaint about the way the Council had dealt with his request.

Chronology

8. On 13 December 2010, the Commissioner wrote to the Council with some queries about the application of section 14 to the requested information. The Council responded on 12 January 2011. The Commissioner and the Council exchanged further correspondence regarding the complaint during January, February and March 2011.

Analysis

Substantive Procedural Matters

Section 14

Section 14(1)

9. Section 14(1) of the Act provides that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."
10. The Commissioner's approach to what constitutes a vexatious request is outlined in his guidance '[Vexatious or repeated requests](#)'. The guidance sets out a number of points that the Commissioner considers relevant in determining whether a request is vexatious, specifically:
 - o Could the request fairly be seen as obsessive?
 - o Is the request harassing the authority or causing distress to staff?
 - o Would complying with the request impose a significant burden in terms of expense and distraction?
 - o Is the request designed to cause disruption or annoyance?
 - o Does the request lack any serious purpose or value?

11. It is not necessary for all of the above criteria to apply. However, it is the Commissioner's view that at least one of the above must apply and that, generally, the more that do apply, the stronger the case will be. In this case, the Commissioner accepts that the arguments submitted by the public authority to support its use of this exclusion can apply to more than one of the above criteria.
12. 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 Information Tribunal upheld this approach in [*Rigby v ICO and Blackpool, Fylde and Wyre Hospitals NHS Trust*](#) (EA/2009/0103), commenting that:

"...it is entirely appropriate and indeed necessary when considering whether a request is vexatious, to view that request in context" (para 40)

The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exclusion to be engaged.

13. In determining whether section 14 was applied correctly, the Commissioner has considered the evidence provided by the Council and the complainant under each of the above headings, and the context and history of correspondence and contact up until the date of the request.

Could the requests fairly be seen as obsessive?

14. It is the Commissioner's view that obsessive requests are usually a strong indication of vexatiousness. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered. The guidance to vexatious requests explains that the wider context and history of a request is important to this question.
15. The Commissioner's published guidance states:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious"

16. The Council explains that it has been engaged in dialogue over the Prince Regent CPZ for a number of years. Since the suspension of the CPZ in Crofton Road was lifted in 2007, the Council states that the complainant has been in dispute with it over “parking policy, process and enforcement”. The Council estimates that it has received over 200 communications from the complainant, the majority of which relate to the CPZ. It has provided the Commissioner with a sample of these. The Council has received extensive written and verbal complaints about the matter. The complainant has attended various meetings with Councillors and Council staff, and telephoned on many occasions to discuss the legality of the scheme. These telephone conversations and their length are referred to in several letters from the Council to the complainant. The complainant believes that the Council are acting in contravention of both the law and various policies by introducing the CPZ. The complainant also disagrees with the way that the Council has conducted the consultation about the CPZ. He has written several letters to local residents to try to elicit support for his campaign. He has conducted his own polls of views about the CPZ, and used these to challenge the findings of the Council's own polls and consultations. The complainant has also complained to the LGO about the matter.
17. In the context of the above dispute about the CPZ, the complainant has submitted at least six requests for information on this subject, containing over 40 questions. The Council has responded to all of these requests and has subsequently received further communications from the complainant making additional complaints and seeking further information. The Commissioner does note, however, that the Council has exceeded the statutory time limit for responding to a request on several occasions throughout its correspondence with the complainant.
18. The Council's correspondence with the complainant on this issue has led to further requests, which although not about the CPZ are prompted by the ongoing dispute over the subject. For example, in October 2009 the Council wrote to the complainant to ask that he moderated his behaviour in interactions with the Council as it had received complaints from junior members of staff. This led to a request for the identity of the individuals that had complained, which was then pursued through the Council's review and complaints process when the Council refused to disclose the information.
19. The Commissioner's guidance states that an obsessive request can most easily be identified when an individual continues with a lengthy series of linked requests even though they have received independent evidence on the issue. This is supported by the findings of the Information Tribunal in the case of [Welsh v Information Commissioner](#) (EA/2007/0088). In that case, the Information Tribunal found that it

was the “persistence of the complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious.”

20. The complainant has pursued his complaint about the CPZ through each stage of the Council’s three tier complaints procedure. The Council has addressed the complaint comprehensively and has explained to the complainant the basis for many decisions about the operation of the CPZ. The complainant has also submitted two complaints to the LGO about the CPZ. The first of these was not upheld, and the second complaint to the LGO is still under investigation. The complainant has complained about the actions of Councillors in relation to the matter to the Standards Committee. The Commissioner’s opinion is that this demonstrates that the complainant seeks to use the Act to reopen issues that have already been substantively investigated both internally and externally.
21. In the Information Tribunal hearing of [Ahilathirunayagam v Information Commissioner](#) (EA/2007/0024) the Tribunal stated that where a request appeared to be “intended simply to reopen issues which had been disputed several times before” it could rightly be judged as vexatious. The Commissioner considers that the request is clearly intended to progress an argument about the CPZ which has been ongoing between the complainant and the Council for a number of years. It is undoubtedly a further attempt to pursue issues which have already been addressed and as such, in line with the Commissioner’s guidance, can be defined as obsessive.
22. The Tribunal in [Figg v Information Commissioner](#) (EA/2010/0171) commented on a request that the Commissioner had concluded was vexatious. The Tribunal stated that:

“the tone of the request itself... is unfortunate in that it implies guilt in the phrasing of the questions...[the request] adopts a somewhat forensic style which assumes that the Appellant is entitled to use FOIA to ‘trap’ the Council into making admissions that might assist him in his complaint. The Tribunal agrees with the Respondent that these factors are evidence of obsessive behaviour by the Appellant and that this is indicative of vexatiousness”

The Commissioner considers that some of the complainant’s requests are phrased to imply that the Council is guilty of wrongdoing or maladministration. For example, request 7 of the complainant’s letter of 7 April 2010 reads:

"Please explain why, despite the road markings and signage being incorrect and unenforceable, the Council is still issuing and enforcing PCN's within the CPZ?"

The Commissioner considers that the complainant is attempting here to use the Act to make complaints about perceived failures in the set up and administration of the CPZ. Given that these complaints have already been investigated extensively, the Commissioner believes a request that uses the Act to attempt to pursue the matter further is obsessive. The Commissioner accepts that the complainant has concerns about the introduction of the CPZ and does not accept the explanations and responses given to him. However, it is not within his remit to investigate the validity of these criticisms. The Commissioner's view is that the Act is not an appropriate vehicle for the complainant to use to pursue his campaign.

23. The complainant argues that the request in question cannot be considered vexatious as the information in question relates to the extension of the CPZ, whereas previous correspondence has related to the existing CPZ. The Commissioner however attaches little weight to this argument as the request relates to the complainant's ongoing objections to the existence and administration of the CPZ.
24. Taken in conjunction with the protracted correspondence concerning the dispute over the CPZ, which runs alongside the complainant's information requests, it is the Commissioner's view that the Council has received a high volume of correspondence disputing the same issue on a consistent, often frequent basis. The complainant seems unwilling to accept the findings of the Council or the LGO and wishes to continue pursuing the matter further with the Council. For these reasons, the Commissioner is satisfied that the request can fairly be seen to be obsessive.

Did the requests have the effect of harassing the Council or causing distress to staff?

25. This factor takes into account the effect a request has had on a public authority, regardless of the requestor's intention. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing. In many cases, there will be an element of overlap between the different criteria outlined in paragraph 10. For example, a request which is considered to be obsessive will often be said to have the effect of harassing the public authority. Other relevant factors are the use of hostile or abusive language, unreasonable fixations on particular members of staff and correspondence which demonstrates the applicant has mingled

complaints and accusations against the Council and its staff with information requests.

26. The Council states that the complainant's frequent correspondence has, in itself, the effect of harassing its officers. It argues that:

"...it is possible to harass and intimidate staff by the sheer volume and tone of communication. On some days [the complainant] may call many officers in the Council... This will then be followed by emails of such extraordinary length and often in a tone that can be designed to do nothing other than to annoy at best and bully at worst. He calls for staff to be disciplined and makes derisory comments about their abilities; he also constantly repeats allegations and complaints requiring very senior officers to waste time on issues that have already been dealt with at length".

27. The Council has explained to the Commissioner that it has received three internal complaints from junior members of staff, in separate Council offices, who felt intimidated and harassed by the tone and content of the complainant's communications. The Council has also provided the Commissioner with a statement from a member of staff who met with the complainant at drop-in sessions during the CPZ consultation in 2009. The member of staff stated that the complainant attended two sessions and had lengthy conversations with members of staff, and then telephoned the officer several times to continue his criticisms of the CPZ. The officer stated that the complainant "...was twisting my words and was not accepting anything I said, he showed little respect, was rude, and at times slanderous...I felt that I was bullied".

28. In October 2009, the complainant was placed on the Council's "Cautionary Contacts" register. The Chief Executive and the Divisional Director, Legal and Democratic Services of the Council wrote to the complainant to warn him that the tone of some his correspondence was "inappropriate" and that complaints had been received from members of staff. The Council wrote that :

"...Council officers have at all times sought to maintain an appropriate professional response, and I would ask that you also try to do so especially when telephoning Council Officers as at times the Officers you have spoken to have been fairly junior and have been upset by your behaviour towards them".

29. However, the Council has informed the Commissioner that the complainant's behaviour did not improve. The decision to place the

complainant on this register in fact led to further requests for the names of members of staff who had submitted complaints about the complainant. The Commissioner notes that the complainant continued to accuse the Council of incompetence and criminal activities. For example, in his internal review request of 27 May 2010, the complainant objected to the Council's response to his fourth request, stating

"...if I had wanted the legal framework I would go to someone who actually knows what it is rather than the Council who obviously make it up as they go along".

On 16 June 2010, the complainant wrote to the Council to request a third stage review of one of his requests for information as he believed that

"...the response will prove that Newham Council are guilty of abuse of process, abuse of authority, criminal acts under section 77 of the FOIA and the Fraud act 2006"

30. In September 2010, the Council reviewed its decision to place the complainant on the "Cautionary Contacts" register, and concluded that this was inappropriate, because the register is primarily designed to identify potentially violent individuals. However, the Council decided that the complainant would be dealt with under its "Unreasonable, Persistent and Vexatious Complaints" procedure. The Head of Complaints and Member Enquiries at the Council wrote to the complainant to ask him to communicate with the Council only in writing, and to a dedicated address. The Council summarised that the complainant's contact with the Council was "repetitious, lengthy, complicated and stressful for staff", and placed "unreasonable demands" upon its services.

31. The Commissioner understands that the complainant has at various times accused the Council and its officers of incompetence, and of carrying out criminal activities such as fraud. For example, in 2006 the complainant accused the Council of conducting a poll about the CPZ incorrectly:

"The councils actions in this matter are unethical ... your attempts to force this matter through by lying about the results are simply an attempt to obtain money by deception"

32. The Commissioner also notes that some of the complainant's requests are in themselves worded to level criticisms or make complaints about the Council's actions. For example, request 8 seeks information that would explain:

"... why the illegal implementation of the existing CPZ, the complete disregard of the majority vote against the implementation of the CPZ, the fraudulent misreporting of polling results and the deliberate refusal to release those results to the residents in breach of the DPA does not constitute fraud and obtaining money by deception by the Council?"

33. The Commissioner notes that the Council has previously made errors in the way it has handled the complainant's extensive requests and correspondence. This, understandably, has caused some frustration to the complainant. However, the Commissioner's view is that even in the light of these errors, the complainant's response has been disproportionately critical. For example, in an email of 14 July 2010, the head of customer complaints apparently made an administrative error by citing an incorrect reference in a covering email to the complainant for an internal review outcome. The complainant responded to the Council commenting

"...the two requests are completely different but have apparently been totally mixed in your response which is a level of competence I have come to expect from [name], however as you are also displaying this I must assume it is a requirement of the position of head of information governance. ... it has apparently taken you 19 working days ... simply to state ... you consider this a vexatious and repeated request. If you had considered it vexatious and repeated then you would have been able to specify that fact immediately upon receipt of the request...I must therefore conclude that your deliberate refusal to release this information only occurred after you had assembled it and discovered that it would negatively impact upon the council especially in relation to acts of Fraud"

The Commissioner notes that comments of this nature are typical of the complainant's correspondence and indicative of his attitude towards the Council and its employees. The Commissioner has seen multiple incidences of the complainant accusing the Council of fraud throughout his correspondence.

34. The Commissioner's view is that public authorities should expect to be accountable for their actions as they are funded by public resources. He endorses the comments of the Tribunal in [Jacobs v Information Commissioner](#) (EA/2010/0041), which found that:

“Public authorities and the individuals representing them must expect to be exposed to an element of robust and persistent questioning, sometimes articulated in fairly critical tones”

35. However, the Commissioner’s view is that in this case, the culmination of criticisms and complaints levied at the Council in relation to the CPZ would have the effect of harassing the public authority. This is particularly the case where the complainant makes serious allegations of criminal activities against the Council and its officers.

Would complying with the requests create a significant burden in terms of expense and distraction?

36. The Commissioner notes that the Tribunal in [Welsh v Information Commissioner](#) commented that the matter of whether a request would represent a significant burden is “...not just a question of financial resources but also includes issues of diversion and distraction from other work.” In assessing this factor, the Commissioner has taken into account the history of the dispute in relation to the CPZ, and the complainant’s requests made in relation to it.
37. The Commissioner notes that in this case, the majority of the complainant’s correspondence does not make requests for information, and the requests that have been submitted, when taken in isolation, would not necessarily constitute a burden. It is only when considered alongside the wider scope of the complainant’s dealings with the public authority, that the requests for information can be considered as contributing to the burden in terms of cost and distraction from other duties.
38. The Commissioner is mindful that section 14(1) deems a request vexatious, rather than a requestor themselves. However, the Commissioner considers that it is appropriate in this case to consider the cumulative effect of the volume of the requests and complaints about the CPZ when assessing whether a significant burden has been placed upon the Council. This is because the complainant’s correspondence has focused almost exclusively on parking policy and the CPZ. His requests for information can reasonably be viewed as part of an ongoing campaign against the Council’s decision to implement this CPZ. It would therefore be artificial to create a distinction between the complainant’s complaints and enquiries about the CPZ, and his FOI requests on the same subject. Consequently the Commissioner considers that it is fair to consider the burden in terms not only of compliance with the specific request, but also in the context of the wider use of council resources in dealing with the complainant.

39. The Commissioner also notes the Tribunal decision in [Betts v Information Commissioner](#) (EA/2007/0109) applies. The Tribunal found that it would be reasonable to conclude that a significant burden had been imposed on a public authority, if answering the request it was, *"...extremely likely to lead to further correspondence, further requests and in all likelihood, complaints against individual officers"*.
40. Having reviewed the nature of the previous correspondence, the Commissioner notes that the Council's responses have not satisfied the complainant and have in fact elicited further complaints and requests, and it is his view that this behaviour will more than likely continue. The Council has responded to the complainant's queries and concerns about the CPZ on previous occasions.
41. For example, in December 2009 the Council wrote to the complainant as part of a second stage review of a request for information. The Council addressed the complainant's objection that "the road markings and signage as yet still do not comply with the legal requirements under the law and yet you are now enforcing them illegally". The Council responded and stated that it believed the lines and signage in the CPZ area were compliant with the Traffic Signs Regulations and General Directions 2002. Despite this, the complainant made the following request in May 2010:

"Please explain why, despite the road markings and signage being incorrect and unenforceable the council is still issuing and enforcing PCNs within the CPZ?"

The Council's response reiterated its position that the signage was correct and invited the complainant to explain why he did not accept this. The complainant refused to provide further details about why he believed that the signs were illegal, stating in his request for an internal review that the Council should "...either employ competent staff or retain me as a consultant whereupon I will be happy to disclose the illegality to you".

42. The Commissioner's view is requests of this nature place an unreasonable burden upon the public authority. It is clear that the complainant does not accept that the road markings and signage in the CPZ are correct. Nevertheless, the Council has informed the complainant that it believes it has complied with the relevant legislation and has addressed the complaint. The Commissioner's view is that repeated requests about the matter serve no purpose, and place an unreasonable burden upon the public authority.

43. The Commissioner has also viewed extensive internal correspondence sent within the public authority which discusses the various issues and requests raised by the complainant. For example, an email of September 2009 between six members of Council staff attempts to establish exactly what the complainant's current complaints and requests regarding the CPZ were, and how the staff would manage responding to these issues. From this correspondence the Commissioner is satisfied that dealing with the complaints about this issue has created significant work for the Council.
44. In the context of this case the Commissioner consequently considers that a response from the Council to the complainant's requests is unlikely to satisfy the complainant's continued requests and pursuance of the Council's complaints process. For these reasons, the Commissioner is satisfied that compliance with the request would create a significant burden in terms of expense and distraction.

Was the request designed to cause disruption or annoyance?

45. The Council states in its internal review decision that it perceives complainant's requests about the Prince Regent CPZ as "part of an ongoing campaign designed to cause annoyance, disruption and distress to staff working for the Council".
46. The Commissioner has seen no evidence to suggest that the complainant's primary intention was to cause disruption or annoyance. However, as in decision notice [FS50321319](#), the Commissioner makes a distinction between cases where disruption or annoyance is the intended cause of a campaign, and cases where these are a potentially anticipated side effect. The Commissioner doubts that the complainant would be unaware that his requests would cause annoyance to Council staff, given the provocative and accusatory tone employed throughout the request. Consequently he has given a small amount of weight to this factor.

Did the requests lack any serious purpose or value?

47. As the Commissioner's Awareness Guidance explains, this is a difficult factor to demonstrate, as it relates to the requester's intention. Unless the requester has explicitly stated that their intention is to cause disruption and annoyance or there is independent evidence to support this, it will be difficult for any public authority to argue that this factor applies in a particular case.
48. In a telephone conversation with the Commissioner, the complainant has detailed at length his concerns about the implementation of the

CPZ and its extension and the way the Council has managed this process. The administration of the CPZ falls outside of the Commissioner's remit. However, the Commissioner accepts that the complainant has genuine concerns over the Council's actions relating to parking policy, and the legality of the CPZ. He is therefore reluctant to conclude that there was no purpose or value in any of the complainant's requests.

Conclusion

49. The Commissioner recognises that the complainant has genuine concerns about the Council's administration of the CPZ. However, he believes that the Council has demonstrated that the current requests are unreasonable. This is because the requests seek to levy criticisms at the Council's actions, and reopen the ongoing complaints about the CPZ. The complainant's ongoing requests and communications also make consistent criticisms of members of staff and accuse both them and the Council of immoral and illegal activity. The Commissioner does not accept that this is an appropriate use of the Act, especially as the complainant's objections have been addressed by the Council and other bodies. Having considered all of the above, the Commissioner believes that section 14(1) of the Act was correctly applied in this case.

Section 14(2)

50. Section 14(2) provides an exclusion from the duty to comply where a public authority has previously complied with an identical or substantially similar request.
51. Although the Council applied the section 14(2) to the complainant's requests in its internal review outcome, it has provided no evidence to the Commissioner to demonstrate that this was appropriate. As the Commissioner has determined that section 14(1) was applied correctly, he has not gone on to consider the application of section 14(2).

Procedural requirements

Section 17

52. 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"

53. The complainant has explained to the Commissioner that he believes that the Council has not applied section 14 to his original request for information, but rather has deemed his request for an internal review vexatious in itself. He consequently believes that the Commissioner should not investigate whether his request for information was vexatious, because the Council has not applied section 14 to this request.
54. The complainant points to the wording of the Council's internal review response, which states "...We believe that responding to this internal review will lead to further correspondence, additional requests for information and complaints given the wider context and history of all the requests. Therefore under section 14(1) and 14(2) of the Act the Council has a right to refuse to deal with additional requests for information related to Prince Regent CPZ". The complainant therefore believes that the Council has not actually reviewed its response to his original request.
55. The Commissioner acknowledges that the internal review was somewhat poorly phrased in that it could imply that the Council would deem any *future* requests vexatious, rather than the complainant's existing requests. However, the Commissioner believes that it is clear that the internal review response applies section 14 to the complainant's existing request. The Council has also confirmed to the Commissioner during the course of the investigation that it decided upon review that the complainant's requests of 7 April 2010 were vexatious, and that section 14(1) applies.
56. The Council applied the exclusion at section 14 to the complainant's requests upon internal review. Information was not withheld under section 14 in the original response. The complainant's request was submitted on 7 April 2010. The Council did not apply section 14 until 14 July 2010, when the internal review was provided to the complainant. Consequently, the Council has breached section 17(5).

The Decision

57. The Commissioner's decision is that Council was justified in applying the exclusion under section 14(1) to the request in this case. However, he has found that the Council has breached section 17(5) by failing to provide the complainant with a notice stating that it relied on section 14 within 20 working days.

Steps Required

58. The Commissioner does not require the Council to take any further action.

Right of Appeal

59. 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 30th day of June 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
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Legal Annex

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.”

Refusal of Request

Section 17(5) provides that –

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