

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 22 August 2011

**Public Authority:** New Milton Town Council  
**Address:** The Town Hall  
2 Ashley Road  
New Milton  
Hants, BH25 6AS

### Summary

---

The complainant requested information from the public authority relating to complaints and correspondence about websites he was involved with. The public authority refused to deal with the request on the grounds that it was vexatious, citing section 14(1) of the Freedom of Information Act 2000 (the "Act"). The Commissioner finds that the public authority failed to provide adequate reasons that the complaint was vexatious and accordingly directs that the public authority either disclose the information or issue a refusal notice in compliance with section 17(1) of the Act.

### 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.

### The Request

---

2. On 4 October 2010 the complainant made the following request for information to New Milton Town Council (the Council):

*'Please provide me with a copy of all complaints and correspondence the town council has sent out to Internet Service providers and other parties relating to my [specified websites]'.*

3. On 25 October 2010 the Council wrote to the complainant to refuse his request. It told him that it was the Council's view that:
  - *'You already possess the information requested from the ISP's involved.*
  - *Your request is considered vexatious as your websites were clearly in violation of their terms and conditions, in particular hosting of defamatory content.*
  - *We have not contacted any ISP's you have not used to host such websites'.*

## The Investigation

---

### Scope of the case

4. On 5 April 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He told the Commissioner that he had sent his request to the Council on 4 October 2010 and that the Council had not responded to that request in any way whatsoever.
5. The Commissioner, having been informed by the complainant that he had not received a refusal notice, requested and received a copy of an email from the Council to the complainant dated 25 October 2010 which it said was its refusal notice.
6. The Commissioner asked the complainant to confirm whether he had received the refusal email, and provided him with a copy. The complainant confirmed he had not received the email.
7. The Commissioner has noted the difference of opinion over whether the email was sent or received. In the absence of evidence to confirm one way or the other and as the Council has confirmed that the content of its email of 25 October 2010 was its refusal notice for the purposes of the Act, the Commissioner has proceeded on the basis that the email is the refusal notice for the purposes of this Notice.
8. During initial enquiries with the Council the Commissioner clarified that the Council were relying on section 14(1) of the Act, albeit that it had not made specific reference to section 14 in its refusal notice.
9. The scope of the Commissioner's investigation therefore is whether the Council were correct to classify the complainant's request as vexatious in accordance with section 14 of the Act.

## Chronology

10. The Commissioner wrote to both the complainant and the Council during the course of his investigation to seek further information about the handling of the request.

## Analysis

---

### Section 14 - Vexatious or Repeated Requests

11. 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'.*

12. The Commissioner's published guidance on the subject of vexatious requests is readily available via his website [www.ico.gov.uk](http://www.ico.gov.uk).

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

13. Section 14(1) provides that a public authority does not have to comply with a request for information if the request is vexatious. The Commissioner's published guidance explains that the term "vexatious" is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants). Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. In line with the Commissioner's guidance, when assessing whether a request is vexatious, the Commissioner considers the following questions.

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

14. It is not necessary for all of the above criteria to be met but, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. It is also the case that some arguments will naturally fall under more than one heading.

*The Council's arguments*

15. In its correspondence dated 2 August 2011 the Council told the Commissioner that it believed that the request had no serious purpose or value as the complainant already possessed the information requested and it was the complainant who kept changing internet service providers. No further explanation was provided to the Commissioner on how it connected this point to whether the request had serious purpose or value.
16. It told the Commissioner that over a period of two years the Council had received 67 emails from the complainant and it had also corresponded with the Commissioner on various complaints. The Council told the Commissioner the numerous requests can fairly be seen as obsessive. The Council did not provide any other information or evidence to support this view.
17. The Council told the Commissioner that it believed the complainant was vexatious and that he was harassing the Council with the aim of causing disruption and annoyance. It told the Commissioner that the Council offices only employed three staff and that dealing with requests creates a significant burden in terms of expense or distraction. It told the Commissioner that this view was shared by a neighbouring district council. The Council did provide the Commissioner with copies of some emails and correspondence between the Council and the complainant as well as some emails between the Council and the Commissioner. However they appear to be general in nature and not specific to the Council's assertion that the request has the effect of causing disruption or annoyance. No other evidence of how the disruption or annoyance was caused to staff was presented to the Commissioner.

*Is the request vexatious?*

18. The Commissioner has carefully considered the limited information put forward by the Council in support of its reliance on section 14(1), which he notes is the entirety of the Council's arguments as is reflected later in this Notice.
19. The Commissioner also notes that he had asked the Council to consider his guidance on vexatious complaints in justifying its view that the request could be considered vexatious. Despite the Commissioner asking the Council to consider it, the Council does not appear to have followed the Commissioner's comprehensive guidance on vexatious complaints and instead appears to have considered that the *complainant* is vexatious rather than the *request*.
20. Although the Council referred to 67 emails over a two-year period, it did not define the nature or context of the emails as either requests or

general correspondence. Therefore, with only limited information provided and in the absence of any other evidence to the contrary the Commissioner is unable to determine that the request was obsessive.

21. The Commissioner notes that the Council states that it only employs three staff who deal with requests as well as other Council work but the Council have not provided any evidence of the effect of the disruption, annoyance or significant burden that has been placed on the Council staff in terms of expense and distraction in dealing with this request. The Council also implies that another neighbouring district council agrees with them and that that Council is larger with more staff, but the Commissioner is unable to understand what the link is between this statement and any effect of disruption or annoyance on the Council staff.
22. The Commissioner also notes that the Council have made arguments relating to the complainant allegedly already having the requested information in his possession and that the complainant keeps changing his internet service providers. The Commissioner does not understand how this is an applicable argument for section 14(1) and refers back to the request:

*'Please provide me with a copy of all complaints and correspondence the town council has sent out to Internet Service Providers and other parties relating to my [specified websites]'.*

23. However, the Commissioner is satisfied that the arguments put forward are not relevant or in line with his guidance, which identifies the following as the relevant issues.
  - Could the request fairly be seen as obsessive?
  - Is the request harassing the authority or causing distress to staff?
  - Would complying with the request impose a significant burden?
  - Is the request designed to cause annoyance and disruption?
  - Does the request lack any serious purpose or value?
24. Accordingly, the Commissioner finds that the request cannot be characterised as vexatious and that the Council were not justified in relying on section 14(1).

## **The Decision**

---

25. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

## **Steps Required**

---

26. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- the council must disclose the requested information or issue a refusal notice in accordance with section 17(1) of the Act.

27. The public authority must take the steps required by this Notice within 35 calendar days of the date of this notice.

## **Failure to comply**

---

28. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

---

29. 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: 0300 1234504

Fax: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. 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.
31. 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 22<sup>nd</sup> day of August 2011**

**Signed .....**

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

## Legal Annex

---

### 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 2(3) provides that –**

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (iii) section 41, and
  - (iv) section 44"



## **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.”