

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2012

Public Authority: Aylesbury Vale District Council
Address: The Gateway
Gatehouse Road
Aylesbury
Buckinghamshire
HP19 8FF

Decision (including any steps ordered)

1. The complainant requested details of further payments to a named person who was an ex-employee of Mentmore Parish Council and payments made to anyone associated with Mentmore Parish Council. At the time of the request and in the absence of a functioning parish council, responsibility was assumed by Aylesbury Vale District Council (the council). The council refused the request under section 14(1) of the FOIA as "vexatious".
2. The Commissioner's decision is that the council has applied section 14(1) correctly.
3. The Commissioner requires no steps to be taken by the council.

Background

4. Prior to the request for information in paragraph 5 below, the complainant and the council had been engaged in legal proceedings regarding payments made by the council to a named ex-employee of Mentmore Parish Council. According to the council, the circumstances surrounding these payments and the reasons justifying them are central to the request that followed.

Request and response

5. On 5 April 2011, the complainant wrote to the council and requested information in the following terms:

"I also hereby make a formal request for an update on your progress in trying to get the costs of the various "bungs" to [named person] off your books by dumping them on to Mentmore Parish Council... This update must include specific and full information regarding all attempts to pass off any costs to the Parish Council and the parish Council's response..."

I also make a formal FOI request for an update regarding any further payments made by AVDC to [named person] or anyone else either now or formerly associated with Mentmore Parish Council, as it cannot reasonably be assumed that you have made no payments since those of which you have previously apprised me..."

I also make a formal FOI request to know what investigations and/or misconduct of all AVDC staff in connection with all the affairs relating to Mentmore Parish Council within the last 5 years..."

6. On 11 May 2011, the council responded by refusing to provide the information, citing section 14 of the FOIA (vexatious or repeated requests)
7. On 15 June 2011, the complainant wrote to the council to request a review of this decision. The council provided its internal review response on 24 June 2011 which upheld the application of section 14.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. On 7 December 2011 the council wrote to the Commissioner with its arguments as to why it had refused the requested information as vexatious.
10. The Commissioner has considered whether the council was correct to apply section 14(1) to the requested information.

Reasons for decision

11. 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.*" When considering whether a request is vexatious or not the Commissioner will look at the circumstances of the case but will bear in mind guidelines under certain broad headings to enable him to reach his decision. These are the following:
 - a) Whether compliance would create a significant burden in terms of expense and distraction.
 - b) Whether the request is designed to cause disruption or annoyance.
 - c) Whether the request has the effect of harassing the public authority or its staff.
 - d) Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
 - e) Whether the request has any serious purpose or value.
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 Commissioner recognises, however, that it is the request and not the requester that must be vexatious for section 14 to be engaged.
13. Not all of these factors need to be present in order for the Commissioner to find that the request is vexatious. The Commissioner has considered these in the order set out above.

Whether compliance would create a significant burden in terms of expense and distraction

14. When considering whether this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
15. The council has stressed that the stated purpose of the request is to uncover and hold the council to account for payments which the complainant alleges are fraudulent or corrupt in some way. The complainant has used his right to challenge the council's accounts which are considered by the council to be lawful and reasonable. According to the council the complaint has been provisionally rejected by the District Auditor. The council points out that there are strong

parallels between the complainant's objections to the District Auditor about the accounts of Mentmore Parish Council and the council and similar grounds of objection were made as were contained in the complainant's freedom of information requests. This objection cost Mentmore Parish Council half of its precept which is the local tax levied by parish/town councils and collected on their behalf by the rating authority for that year. The council points out that the complainant's challenge to its accounts will be another financial liability (so far unknown) and is the result of an inability to accept information that has already been provided.

16. Given these factors, the Commissioner accepts that compliance with this request forms part of what has already been a significant burden upon the council. The pattern of the complainant's previous behaviour indicates that it is likely that he would continue to make the same or similar requests, despite having been provided with the information previously. This criterion for finding the request vexatious is therefore met.

Whether the request is designed to cause disruption or annoyance

17. The Commissioner will consider when assessing this factor whether a requestor intended to cause disruption or whether the requests were designed to do so.
18. Having considered the correspondence, the Commissioner agrees with the council that this request formed part of a campaign made with the intention to cause disruption or annoyance to the council. The evidence for this is contained in paragraphs 19 to 21 and 22 to 27.

Whether the request has the effect of harassing the public authority or its staff

19. 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.
20. The council has argued that the "*number, length and frequency of the accusations*" the complainant has made, the language used and the personal attacks on the council and the named person make this request vexatious.
21. The council has itemised the occasions upon which the complainant has conducted a campaign to harass a particular member of staff:

- On 16 December 2010, the complainant sent a letter to the council claiming travel expenses for a car journey he had made in which he referred explicitly to the named person's claim for expenses.
- A second claim for expenses was made on 6 January 2011 for a "*virtually identical journey*" made by him that he believed to be similar to a journey made by the named person that was claimed as an expense. The complainant believed this claim not to have been a legitimate expense.
- A letter written on 11 January 2011 is cited as evidence that the complainant's language was intemperate and harassing. In this email the council is accused of "*bullying, abuse and downright lies...*", an "*abysmal performance*", "*your enmired boss*", "*panic-stricken attempts...by members of Mentmore Parish Council to foist your corrupt payments to friends...*"
- The claim for expenses was repeated on 28 January 2011.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

22. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive or manifestly unreasonable? In answering this question, the Commissioner's view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.
23. The council maintains that the request for information is a repeat request and highlighted letters sent on 18 August 2010 and 28 February 2011 plus emails on 3 December 2010, 22 December 2010, 19 January 2011 and 18 March 2011.
24. The Commissioner considers that the listed correspondence and specifically the email, dated 18 March 2011, stated clearly that no further payments has been made to the named member of staff or anyone else from Mentmore Parish Council and that no investigations and/or disciplinary measures had been taken as they were felt to be unwarranted. The Commissioner considers therefore that the request for information has already been responded to.
25. The council has also underlined its assertion that the complainant has already been provided with a response on more than one occasion by stating that, following its obligations under the Audit Commission Act 1998, the council again confirmed the response on 28 July 2011 under that regime.

26. For this reason the Commissioner accepts that the request on 5 April 2011 could fairly be characterised as obsessive or manifestly unreasonable because it is merely repeating requests for information when a response has already been provided.

Whether the request has any serious purpose or value

27. The Commissioner does not find that there is any serious purpose or value attached to this particular request because it is a repetition of previous information that has been provided. Adding weight to this view is the claims that the complainant made for expenses in the lead up to this request for information. These appear to be entirely frivolous.

Was the request vexatious?

28. Section 14 of the FOIA is intended to protect public authorities from those who might abuse the right to request information. The Commissioner recognises that having to deal with clearly unreasonable requests can strain an organisation's resources, damage the credibility of the FOIA and divert staff from answering other requests.
29. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that the questions, to a greater or lesser extent, overlap and that the weight accorded to each will depend on the circumstances. He also reiterates that, in his view, it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1).
30. In this case the Commissioner considers that there are sufficient grounds to uphold the application of section 14(1). He considers that the obsessive nature of the request, when taken in the context of the previous correspondence and its impact on the council and its staff, is sufficient for the request to be deemed as vexatious.

Right of appeal

31. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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