

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2013

Public Authority: Cherwell District Council
Address: Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

Decision (including any steps ordered)

1. The complainant requested information connected to a grievance about being issued with a parking ticket by Cherwell District Council ("the council") in 2011. In response to the initial requests, the council said that it considered that the requests had already been addressed in a letter from the Local Government Ombudsman ("the LGO"). In relation to subsequent requests, the council said that the complainant's requests were vexatious and it cited the exclusion under section 14(1) of the Freedom of Information Act 2000 ("the FOIA").
2. The Commissioner's decision is that no more information was held relating to the initial requests and that the council correctly relied on section 14(1) in relation to the subsequent requests.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 17 April 2012, the complainant requested information from the council in the following terms:

"...you have failed to answer why i was sent a failed appeal in response to a letter of complaint I made that makes no mention of appeal.

could you please tell me why you did not follow your own policy and procedures when you state in no uncertain terms on your website that

appeals will only be considered if they are on the official form that you supply, and why this was not carried out in my case when i did send a letter of appeal. in other words why did you not direct me to your policy procedures

why were signs not put in claremont car park on the wall (where other signs are in place stating it is a disabled parking bay.) there is plenty of room for them. they could have replaced the signs that are already there.

why was a sign placed in the one way entrance that could not be seen as it would be directly behind you as you drove in through the one way entrance

why did you not maintain the signs in claremont car park so that users would be aware of the new charges

why was i bullied into paying an unjust fine out of my heating allowance by the content of letters sent to me personally [sic]"

5. The council responded on 16 May 2012 and said that it considered that these issues had already been addressed by the LGO. It supplied a further copy of the relevant letter. The council warned the complainant that it may treat any more requests on the same topic as vexatious.

6. On 18 May 2012, the complainant requested further information from the council. In an email timed 07:10, he requested information in the following terms:

"under the freedom of information act could you please inform me how many people that were ticketed had their tickets raised from £80.00 to £100.00 while they had lodged a complaint with the LGO..

"I still have had no answer as to why it was decided to stop the charges to disabled bluebadge holders (you say charges are still in operation, which I know, but you have changed the conditions to park) i.e. was it because of the vast amount of complaints and the fact that no proper signage made people aware of this, and the car park was hardly used when charging came into force [sic]"

7. Within the same correspondence, the complainant also complained that he did not consider that the council had answered the earlier requests he had made on 17 April 2012 as outlined above. In effect, he was requesting an internal review of the council's response.

8. In a second email timed 07:19, the complainant requested information in the following terms:

"did you supply copies of the temp signs to LGO or only the ones that show good clear signage [sic]".

9. The council responded on 29 May 2012. It said that it considered that the requests were vexatious in accordance with section 14(1) of the FOIA.
10. The complainant expressed dissatisfaction with this response on 15 June 2012.
11. The council completed an internal review on 10 August 2012. It said that while it maintained that the requests were vexatious, it was happy to reiterate that it considered that some points had already been addressed by the LGO. It outlined the relevant points.

Scope of the case

12. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. He asked the Commissioner to consider whether the council had correctly responded to his requests. For clarity, the council confirmed to the Commissioner that it had not in fact sought to rely on section 14(1) in relation to the earlier request made on 17 April 2012. In relation to this part of the complaint, the Commissioner considered whether the council held any more information beyond that already provided to the complainant. The application of section 14(1) was considered only in relation to the subsequent requests made on 18 May 2012.

Reasons for decision

Section 1(1) – General right of access

13. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For

clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

15. In its initial response to the requests made on 17 April 2012, the council said that it had attached a letter from the LGO which it said had addressed the questions raised. Although it was not clearly indicated in the council's response, the council subsequently explained to the Commissioner that it had not considered these requests under the FOIA because it considered that they had already been dealt with as part of a separate complaint process. As a result, the council did not conduct a formal internal review, however it pointed out that as part of its response to the subsequent request refused under section 14(1), it did attempt to provide some more specific assistance to the complainant to help him to understand how the LGO's letter had already addressed the queries he had raised. These additional comments were provided in the council's response dated 10 August 2012.
16. The council confirmed that it held no other recorded information beyond that contained in the letter or which had already been provided to the complainant. It said that it had searched all the relevant electronic and paper records it held and was satisfied that was the case. The council also confirmed that there was no particular reason why it would expect to have held any more recorded information. The council said that it was not aware that any information had been deleted, destroyed or mislaid.
17. In relation to request 1, the council highlighted that this had already been addressed in the letter from the LGO specifically. Further confirmation had also been provided on 10 August 2012. This part of the LGO's letter confirms that no injustice had been suffered as a result of the council treating the initial letter from the complainant as an appeal since a subsequent appeal was also considered. Of course, this does not directly address the question of why the council treated the initial letter as an appeal when according to the complainant it should not have done so. The reality is that questions about why a particular course of action was taken (especially when it may not have been in accordance with general policy) will not always point towards recorded information. In many cases, a judgement call will have been made by a

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

- particular officer and the reasons for that will not be recorded in any form. Given the circumstances here, the Commissioner accepts that on the balance of probabilities, the council did not record that information.
18. In relation to request 2, the council said that where possible warning signs were placed in the council car parks by blue badge bays as discussed in more detail in the LGO's letter. It said that signage was displayed on the wall by one row of parking bays but the council did not consider that there was any other suitable place to attach signage on the other row. In the Commissioner's view, the council has clearly addressed the question that was asked and there is no reason to suppose that the council held any more information.
 19. In relation to request 3, the Commissioner's understanding is that the council held no recorded information that would specifically address why this particular sign was placed in the position that it was. However, the council has explained that there was other signage and it took various other steps to make users aware of the changes. The council also confirmed that the signage complied with regulations set out under the Road Traffic Act 1984. Having considered the particular request, the Commissioner accepts that the council would be unlikely to hold recorded information specifically explaining why this particular sign had been placed where it was.
 20. In relation to request 4, the council had already explained to the complainant that the signs were inspected daily by wardens on duty and were cleaned and maintained accordingly. As the council does not accept that the signs were not maintained, again, there is no reason to suppose that the council would have held any recorded information showing why they were not maintained.
 21. In relation to request 5, the Commissioner considers that the council would not hold any specific recorded information showing why it "bullied" the complainant into paying an "unjust" fine out of his heating allowance. The language used in making this request is clearly highly subjective and the council has made it plain that it does not accept that the fine was unjust or that it bullied the complainant. It has provided general information about its policies and explained that it enforces parking penalties rigorously except in some specific cases which it has outlined. The council also explained to the complainant that it increased the amount of the fine because of the complainant's failure to pay in line with its procedures. The Commissioner does not consider that there is any particular reason to suppose that any more recorded information would be held.
 22. Based on all of the above, the Commissioner took the view that on the balance of probabilities, there was no further recorded information that

could have been provided in response to these requests. The Commissioner is satisfied that the council has been able to account for the position it has taken and that the nature of the requests themselves do not obviously point towards a likelihood that any further recorded information would be held.

Section 14(1) – vexatious requests

23. Section 1(1) provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:

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

24. Guidance on vexatious requests is available on the Commissioner's website at www.ico.gov.uk and for ease of reference, at the following link:

http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx

25. As explained in the guidance, when considering if a request for information is vexatious, the Commissioner will consider the argument and evidence that the complainant and the public authority are able to provide. The Commissioner's analysis will generally focus on 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 in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

26. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious request will be. The Commissioner is able to take into account the history and context of the request.

Could the request fairly be seen as obsessive?

27. When a request for information is refused as vexatious, it is often the case that an examination of the background will reveal a long and

difficult relationship between the parties that has arisen as a result of an original dispute. This is clearly the case here.

28. The background to this particular matter is that the complainant lives outside the area but visits Bicester two or three times a year and has always parked free of charge in the car parks operated by the council. The council explained to the Commissioner that the complainant visited Bicester in Oxfordshire on 10 September 2011. He parked his vehicle in a blue badge holder's bay in the council's Claremont Car Park. The council says that the complainant left his vehicle without making payment. As a result, he received an Excess Charge Notice (ECN) of £80 for failing to pay. The council explained that there had been changes to the car park regulations, including the introduction of charging for blue badge holders. These changes had been in place for five months by the time of the complainant's visit. The council explained that large yellow "A" frame signs had been positioned at the entrance to all council car parks, including Claremont Car Park, informing users that blue badge holder charges apply and that they should see information boards for details.
29. The complainant was unhappy with the decision to issue an ECN in this case because he considered that it was unfair. The complainant said that he had never been expected to pay before at any car park and had found the matter very surprising and distressing. He argued that the council had failed to publicise fairly the changes to its enforcement policy that required blue badge holders to pay to park in disabled bays within its car parks. He argued that although there were signs in place at the car park advising of the charges, they were dirty and unclear. He said that there were no clear signs in the designated disabled bays advising that blue badge holders had to pay to use the car park, and information boards positioned at the entrance to the car park were high up and difficult to see. The complainant also alleged that the yellow temporary sign at the entrance advising of the charging policy is of the type used by workmen and he did realise its significance.
30. The complainant subsequently wrote to the council to complain about receiving an ECN. The complainant appealed the ECN, alleging that the council was discriminating against disabled people. The complaint and appeal were rejected by the council. The council stressed that it was the responsibility of the individual motorist to ascertain the regulations before leaving his car in any car park. It explained that it is important to do this rather than to make assumptions about the position because the regulations for off-street parking are not standard throughout the country and are regularly updated. It included details of the changes, including the reasons for them, and the steps that had been taken to publicise the changes on this occasion. The council made the following points:

- From 28 February , advanced notification of the changes were displayed on all vehicle park information boards
 - The council's car parks are governed by the Road Traffic Regulation Act 1984 which requires that changes to the off street parking orders are published by formal notice in the local press and by consultation with statutory agencies. These legal requirements were complied with.
 - There was a consultation exercise. Blue badge holders gained, as a result, one additional hour free parking after the paid for period, free evening parking, discounted season ticket and access to the pay by phone service without the service charge
 - In recognition that blue badge holders were less likely to have reason to visit the information board, additional efforts were taken to advise users in advance by posting on car windscreens and then, over the first week of the new changes, blue badge holders were not issued with ECNs. The council also operated a sensitive level of enforcement over the first 8 weeks of the new arrangements.
 - All vehicle park information boards, together with every pay point, display details of charging arrangements and that excess charge notices apply. As with all car parks, there is an expectation that users will read the board before leaving their car, as the rules do change from time to time as in this case.
 - The council erected temporary, additional signs at car park entrances and as close to disabled spaces as possible to try to ensure the message was clear.
 - The council wrote to 7000 blue badge holder registered in the local area
31. On the issue of the pursuit for payment, the council said that its enforcement policy states that it will rigorously enforce its regulations through the issue of ECNs and will only cancel these where there are clear and exceptional extenuating circumstances as follows:
- Where an ECN is issued for no valid payment/not displaying a valid ticket – on the production of a ticket or confirmation of phone payment valid for the time of the contravention
 - In the case of personal illness that results in an overstay – on the production of a doctor's certificate
 - In the case of a vehicle breakdown – on production of a certificate or invoice from a vehicle recovery or repair company
32. The complainant subsequently complained to the LGO about the above matter, and in addition that he felt he was being bullied and harassed by the council because of the continued pursuit of the payment. That complaint was unsuccessful. The Ombudsman provided a "statement of reasons" for the decision on 9 November 2011, a copy of which has been provided to the Commissioner. The Ombudsman explained in his

correspondence that in his view, there had been no maladministration on the part of the council in this case. He explained that local authorities are free to determine whether or not they wish to charge blue badge holders for parking in their car parks. The council had introduced a valid parking order requiring blue badge holders to pay and it explained the action it had taken to update its information boards and publicise the changes. The Ombudsman highlighted that the council had also erected additional temporary signage at the entrance to the car park. He also took into account how long the charges had been in place. Overall, the Ombudsman considered that the council's actions had been reasonable.

33. The council said the complainant remains very unhappy with the council's decision to enforce the penalty and he has submitted a number of information requests to the council that are clearly connected to this issue, falling within the following broad categories:
 - Signage relating to blue badge holder's charges in Claremont Car Park
 - Details of ECNs statistics of appeals and complaints made
 - Council decisions and consultations relating to blue badge charging
34. The council said that with the exception of the requests that were refused as vexatious, it had responded to the complainant's requests positively and had, where possible, provided the information requested in accordance with the provisions of the FOIA.
35. The complainant also alleged that the council had not taken into account his particular circumstances in mitigation of the way in which requests were presented, a point also made directly to the council by the complainant during previous correspondence. The council said that it had taken this into account when responding to previous requests however it considered that the requests that it had refused as vexatious had tipped the balance and that it was fair in view of all the circumstances to treat the requests made at that stage as obsessive. The council placed particular emphasis on the outcome of the LGO's investigation, which effectively ended this complaint. The council said that it had advised the complainant that if he did not accept the outcome, he should seek independent legal advice.
36. Having considered the above and the bundle of evidence provided by the council, the Commissioner accepts that the requests can be fairly characterised as obsessive. As noted in the Commissioner's published guidance, public authorities may take into account the wider context and history of the request. While the requests may not seem very onerous in isolation, it is clear that they form part of a wider pattern of obsessive behaviour. It is apparent that the complainant has been pursuing a personal grievance against the authority relating to the issuing of the ticket and all of the requests and complaints are connected to this

original dispute. It is clear that the requests are made to prolong criticism of, and dialogue with, the authority about the background grievance. The Commissioner notes that the requests made on this subject have been multi-faceted and on occasion, more than one item of correspondence has been received on the same day. The requests have been wide-ranging and are often expressed in a subjective way as to imply criticism of the authority's actions.

37. It is apparent on the face of the evidence that there is very little or no prospect that responding to any of the requests would resolve the issues concerned. On the contrary, responding seems to generate more criticism and further requests for information. The Commissioner notes that the council has engaged with the complainant to a significant extent to respond to previous requests and try to explain its procedures but this had not satisfied the complainant, and was unlikely to since he has made it clear that he will continue with his campaign until the council refunds the money for the ticket. This is apparent when the complainant makes the following comments in an email to the council dated 17 August 2012 and another on 18 May 2012:

"you can try all you like to silence me by fabricating that i am vexatious but the truth will come out as i will not leave this alone untill my money has been returned [sic]"

"i have a right to get all the evidence i require to take my case further...you can hide under any stone you wish but I will not let this matter go. if I have to I will go to the media newspapers etc [sic]"

38. The Commissioner formed the view that the complainant had become obsessed with trying to get the council to reverse the decision it has made when the council has made it clear that that is not going to happen, following an appeal process and independent consideration by the LGO. The complainant clearly does not accept the authority's position and he rejects the outcome of the LGO complaint. The complainant consistently suggests that he has been disadvantaged in some way because his initial letter of complaint to the council was treated as an appeal. This was the case but as has been explained to the complainant, a further appeal was subsequently carried out and there is no evidence to support his view that he was disadvantaged in the process. Furthermore, there was further independent consideration by the LGO but the complainant also rejects those conclusions, questioning the effectiveness of the LGO as an organisation.
39. The Commissioner notes that the complainant has demonstrated an unwillingness to accept points of view that differ from his own in this matter, which is often a characteristic seen in obsessive requests. Of course, sometimes it is valid and appropriate for requesters to be

persistent but there is nothing about the circumstances of this case that would suggest that the complainant is behaving in a proportionate way and that the continued pursuit of these issues through the use of the FOIA was justified by the time of the particular requests that were refused using section 14(1). A clear outcome has been communicated to the complainant and the council has explained its actions to a reasonable extent. It is simply the case that the complainant cannot accept the outcome communicated to him.

Did the requests have the effect of harassing the council?

40. The Commissioner would like to highlight that this element of the criteria is concerned with the effect of the request on any reasonable public authority, rather than what the complainant's intention was. It is not uncommon in relation to vexatious requests for the requester to have a genuine conviction that the request was a reasonable one.
41. There is overlap between the Commissioner's vexatious criteria and the points already made above in relation to obsessiveness are also relevant to the question of whether the requests had the effect of harassing the council's members of staff. The Commissioner considers that it would be reasonable for the council's staff to regard further requests and correspondence on the same topic from the complainant as harassing when there was every indication that responding would only lead to further requests, enquiries and complaints given the nature of previous engagement.
42. The Commissioner also considered that the complainant's general tone and manner had contributed to the harassing effect of the correspondence in this case. In addition, when the Commissioner inspected the correspondence provided in evidence by the council, it was apparent that the complainant had questioned the honesty and integrity of various individuals, on occasion in particularly provocative and blunt terms. The Commissioner notes the following examples:

Letter of 10 September 2011

"Whoever dreamed up this policy to target vulnerable and less fortunate people, are a disgrace. To have thought of penalising people that through no fault of their own are less fortunate than themselves, shows just what cowardly characters they have, and perhaps when they become disabled they will deservedly get the same treatment [sic]"

"As far as I'm concerned, It's a deliberate cold calculating plan to fleece vulnerable people of money that they do not have. I would love to be able-bodied and pay for parking [sic]"

"I sincerely hope that those responsible for adding to the problems that disabled people face are hanging their heads in shame, and if they want to swap places with me I am more than happy to do so"

"..such a wicked case of entrapment".

Undated letter date stamped 22 September 2011

"God knows we have enough to put up with without people like you deterring us from going out. Perhaps you would be happier if we were all put in homes.

I see from your letter that even the signature of the person writing it is obscure, so they can't be identified. How cowardly is that [sic]"

Email of 15 June 2012

"...i feel I am now being further persecuted because of my disabilities [sic]"

"why was I bullied into paying an unjust fine out of my heating allowance by the content of spiteful letters sent to me personally...[sic]"

Email of 18 May 2012

"infact in my opinion you deliberately did nothing for the sole purpose of greed, which of course backfired on you as Bicester had become a ghost town, and i or any of my friends would never visit there again [sic]".

Email dated 17 August 2012 responding to internal review by the council's chief executive

"[name] is a liar as are the others that have tried to cover up the facts surrounding the issue of an ecn on my vehicle [sic]".

43. The Commissioner can appreciate that the complainant found being issued with the ticket very distressing and may not have intended to harass the council. The Commissioner can also appreciate that the council's limited grounds for withdrawing the ticket as outlined in its policy are also likely to have contributed to the complainant's sense of frustration and feeling of being treated unfairly. The Commissioner nonetheless considers that the requests had the effect of harassing the council.
44. The Commissioner has taken into account the efforts made by the council to explain its position and respond to the requests. He did not find the complainant's allegation that the council had disregarded his particular circumstances when dealing with his correspondence persuasive. The Commissioner was left with the impression that the

council had tried to assist the complainant to a significant extent in this matter and had only refused the requests using section 14(1) when it became apparent that its attempts to assist were highly unlikely to be successful. The Commissioner considers that it is significant in this respect that the council warned the complainant that it may consider further requests vexatious however this had no discernible impact on the complainant's behaviour.

45. The Commissioner considered that the nature of the comments made by the complainant (quoted above) were sufficiently provocative and emotive to cause harassment over a period of time. This level of sustained criticism would be likely to be seen as particularly harassing since the complainant had made it clear that he would continue in his behaviour until he got the outcome that he wanted, despite the fact that the council had made it clear that its decision was final.

Would the request impose a significant burden and does it lack serious purpose or value?

46. The Commissioner considers that compliance with the request would impose a significant burden when its complete context is taken into account, that being the campaign that the complainant has been pursuing since 2011 as described above. The council has explained that given it has made its position clear, requiring it to engage with the complainant and the continued pursuit of his grievance would be an unwarranted and significant distraction. The Commissioner agrees with that conclusion. There was also no evidence available to the Commissioner to suggest that any serious purpose or value the requests had by the time section 14(1) was relied upon was sufficient to overcome the vexatious quality of the correspondence that had been on-going since 2011.

Were the requests vexatious overall?

47. Taking into account all the circumstances of the case, the Commissioner considers that a strong case and body of evidence had been presented to demonstrate that the requests were vexatious. While the Commissioner considers that the complainant may have begun seeking information for a serious purpose, there comes a point when the action being taken and the associated burden being imposed on the authority is disproportionate to whatever objective the complainant is attempting to achieve. That point has been reached in this case.

Right of appeal

48. 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

49. 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.
50. 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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