

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 January 2015

**Public Authority:** Kent County Council  
**Address:** Sessions House  
County Hall  
Maidstone  
Kent  
CT5 3QZ

#### **Decision (including any steps ordered)**

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1. The complainant has requested records held by the council about his father whilst in care in a private nursing home and any details it holds about him. The council applied section 14(1) and 14(2) (vexatious and repeated requests). It said that the complainant had made a number of similar requests and complaints to the council, and a number of complaints about the council's actions to other authorities previously on a matter that had been fully investigated and closed.
2. The Commissioner's decision is that the council has applied section 14(1) of the FOIA correctly. He has not therefore considered the application of 14(2) by the council further,
3. He has decided however that the council breached section 10(1) in that it did not respond to the requests within 20 working days.
4. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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5. On 6 June 2014, the complainant wrote to the council and requested information in the following terms:
  - a. "All documentation regarding Oakhurst Court Nursing Home
  - b. Document - Notes of adult meeting dated 15<sup>th</sup> June 2010

*c. All letters relating to the family"*

*d. Any other information that you have continually denied me"*

6. On 30 July 2014 the complainant also made a request which disputed the council's response to the above, but further requested:
  1. The complainant clarified that as regards part 1 of the above request he wished: *"all care/nursing notes, all emails exchanged between the home, and Kent County Council, all care plans, all memoranda, all information between the home and various other organisations, details of all telephone conversations between the home and Kent County Council, and other organisations"*.
  2. He disputed the council's response that no meeting took place on 15 June 2010.
  3. He requested information relating to the care at home, and Goldsboro care agency, including all care notes, emails etc. He stipulated that he was aware that you hold voluminous amounts of information as regards this part of his request.
  4. Information exchanged between Kent County Council and Surrey County Council, emails, telephone calls, faxes.
  5. He provided a list of dates for the above requests ranging from 2006 to 2010.
  6. He requested any information exchanged between the council and Tonbridge Primary Care Trust between 2007 and 2010.
7. On 31 July 2014 the complainant provided dates for the above and also requested all information between the council and Kent Police.
8. On 4 August 2014 the complainant also made a further request for details of any correspondence between the council and third parties relating to his parents care. Essentially this is a repeat of question c) above for all documents relating to his family.
9. On 19 August 2014 the complainant also made a request for:

*"Please supply me with the dates that I approached you for information. How much the information cost, how long this took and how many letters I sent to you, a figure in hours would help me and my solicitor. I need to present the amount of time I spent doing this to obtain my costs."*

10. On 1 September 2014 the complainant made a further request for review on all requests where he had not received information in response to them. He also made additional requests for information in that letter.

11. In response to the above requests the council said the following:

a. The council said that the request did not include any specifics about what information was wanted on this the request was too broad. It did not apply section 12 specifically however. It clarified however that it had previously informed him that it did not hold any relevant information relating to the care provided to his father at the nursing home. The complainant then clarified his request in his letter dated 30 July 2014 as out lined above.

b: The council said that it does not hold any information about the 15 June 2010 aside from its mention in the minutes of the Adult Protection Case Conference meeting of 25 June 2010. It suspected that there may be a typo as according to its records there were only 3 meetings in June on 8<sup>th</sup>, 11<sup>th</sup> and 25<sup>th</sup>. It said that it had previously informed the complainant about this in letters dated 10<sup>th</sup> September 2013 and 14 October 2014.

In his request for review of 30 July 2014 the complainant reiterated that he believes that notes of the meeting exist and that they should be provided to him.

c. The council said it had already provided him with all the information that it holds in previous requests. In his review request the complainant extended the request to include other information which is outlined further in d) below.

d. The council said that it had informed the complainant on many occasions that the information which was withheld was that held in the Adult Protection Investigation Folder such as Adult Protection meeting minutes and information provided by third parties. This was however provided to the LGO and the ICO in response to his complaints to them. The LGO subsequently disclosed much of the information to the complainant and the council said that on 20 Feb 2014 it therefore disclosed the rest of the information it held. It said that all information had therefore been disclosed to him in response to this part of his request.

In the above letter the council also informed the complainant that if he persisted with these requests it would apply section 14(1) on the grounds that it was vexatious.

12. Following the complainant's request for review the council wrote to the complainant on 20 August 2014. It said that it was applying section 14(1) and 14(2) to the requests on the grounds that they all related to the same issues and were vexatious and repeated.

## **Scope of the case**

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13. The complainant contacted the Commissioner 12 June 2014 to complain about the way his request for information had been handled. Initially this was because of the lack of response from the council within 20 working days of receiving his request.
14. The Commissioner considers that following the internal review the complaint is that the council has refused the request on the grounds that the request was vexatious and repeated under sections 14(1) and 14(2).
15. The complainant also telephoned the Commissioner and made clear his view that further information is held by the council. He said that he was aware that the council held a file of documents "at least 14 inches thick" and the information which had been disclosed to him through this requests did not correlate with this. He therefore considers that there is further information held which the council is not admitting to.

## **Reasons for decision**

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### Section 14(1) – Vexatious requests

16. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
17. The term vexatious is not defined in the legislation. In *The Information Commissioner vs Devon County Council & Dransfield UKUT 440 (AAC), (28 January 2013)* the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure.' The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

18. The council said that it considers that the complainant does not distinguish between his requests for information and his underlying complaint, which relates to the "fairness" of the Adult Protection investigation four years ago into his treatment of his late father. The complainant was arrested following allegations made about him (although he was subsequently released without charge). The council considers that the record of his arrest may have affected the complainant's ability to seek employment in the care industry and this is why he is making further requests for information. It did not however provide any evidence to the Commissioner that the complainant was seeking work in the care sector and so the Commissioner places little weight on this argument.
19. The council has applied section 14(1) mainly on the basis that the complainant has been told previously either that no information is held falling within the scope of the complainant, or that the information which has been requested previously and already disclosed to him. The complainant for his part disagrees that all information has been provided to him.
20. The complainant has had a number of previous complaints considered by the Commissioner under Data Protection Act 1998 and the FOI Act. The council indicated that the complainant had made numerous complaints to other bodies, such as social services, the LGO, and his local MP as well the FOI and DPA complaints considered by the Commissioner.
21. The council also considers that the independent oversight which has taken place on its actions should provide reassurance to the complainant that his complaints have been fully dealt with and the matter should therefore now be closed.
22. The council therefore considers that the requests are evidence of an unreasonable persistence as the issue has been comprehensively addressed by the council and has been subject to independent scrutiny from the above bodies previously. The council sees the current requests as an attempt to reopen the wider issues, which it considers are closed.
23. The council said that it had considered the ICO's guidance on vexatious and repeated requests, and also previous decisions by both the ICO and the First-tier Tribunal. It decided that circumstances here were similar to *Ahilathirunayagam vs. ICO Appeal Number: EA/2006/0070* <http://www.informationtribunal.gov.uk/DBFiles/Decision/i22/Ahil.pdf> given that on several occasions the complainant has asked it for information already in his possession, has repeatedly asked it for information that it has told him numerous times that it does not hold.

24. The council highlighted that in a previous complaint to the Commissioner he had made a complaint that information had not been disclosed to him. When the information was subsequently disclosed he then made a further complaint to the Commissioner that it included information which should not have been disclosed to him. The complainant answered this argument by stating that his purpose in making that complaint was to ascertain what information should and should not be disclosed in future requests. He went on to say "*...what information you supply me with from now on will be gratefully accepted and complained about, just eagerly awaited*". The council however sees this as evidence of the complainant's unreasonable persistence over this matter.
25. In a letter to the complainant dated 23 September 2014 in response to his request of 19 August 2014 the council highlighted the number of letters and telephone calls it had received from the complainant (both under section 7 of the DPA (subject access) and FOI requests). It further provided evidence of the requests it has received from the complainant previously. In said that whilst it was not possible to estimate the time it has spent responding to his frequent correspondence it must have spent in excess of 150 hours dealing with this and the subsequent complaints which he had made. It refused to provide any estimate on the time which the complainant had spent.
26. The Commissioner is satisfied that, in this context, the continued persistence of the complainant in requesting information he has either already been provided with, or told is not held is likely to have caused disruption to council staff. It was also likely to cause irritation in that its employees were dealing with the same issues again and again. The council also argues that it would be an unreasonable use of council resources to allow the complainant to continue requesting information where there is no likelihood of achieving the outcome which it understands that he wants, and where there the requests have already been considered and responded to previously.
27. The council considers that the complainant's reason for making his requests is that he is seeking to have the social services record of the arrest removed. It said however that the council has a statutory obligation to investigate allegations of the nature made and the fact that it did, its rationale for doing so and the outcome of its investigation must remain on his father's file until it is destroyed in accordance with its records retention schedule. This provides a period of 10 years from the date of last contact before the information should be destroyed.
28. The Commissioner has no powers to consider the wider aspects of this case. He must purely consider whether the evidence before him provides the council with the grounds to apply section 14(1) or (2). Whilst the council may surmise the reasons why the complainant is being

persistent in his pursuance of the information it holds nevertheless the complainant has a right to request and receive information if it is held unless an exemption applies.

29. The council has provided evidence that it has responded to the complainant's' requests previously. There is little point in requesting information which has already been clearly and categorically answered previously. The council has provided its answer to the requests, and it is for the complainant to then take his complaint to the Commissioner over the issue for him to investigate this further. The complainant has done so, and the Commissioner has looked at various subject access requests which the complainant has made to the council previously. The complainant has however not always accepted the outcome of independent investigations into the issues raised. He has simply made further requests for the same, or further information.
30. The council provided the following response as regards each of the parts of the request outlined above. It provides evidence of the number of times it has informed the complainant that no information is held:
  - a. The council said that it had told the complainant on at least 3 separate occasions that it does not hold any records relating to the care home – it provided the dates where it had informed the complainant of this as 1 May 2012, 8 August 2013 and 7 August 2014.
  - b. The council said that it had told the complainant on at least three separate occasions that it does not hold any further records of a meeting on 15 June 2010 other than in the minutes which had already been provided to him. It said that it had informed the complainant of this on 10 September 2013, 8 August 2013 and 28 July 2014.
  - c. The council said that this information had been provided previously in response to FOI and DPA requests. It outlined that the council had initially withheld some information but subsequently disclosed it as a result of information being disclosed by the LGO.
  - d. The council said that all of his requests relate to the same underlying issues, and that it has told him at least twice that all previously withheld information has now been disclosed to him. It provided the dates of these responses as 20 February 2014 and 28 July 2014.
  - e. It said that any communications between the council and other agencies regarding the care provided to his father and mother

would be contained within profile notes and contact records, and that the complainant has already been provided with these.

31. Whilst persistence is not a reason for declaring a request vexatious the complainant's actions have led to the point where the council has been able to provide evidence demonstrating that the requests have led to an unreasonable distraction and burden upon it; that the complainant's requests have the character of obsessive behaviour and that this is affecting its ability to carry out its functions efficiently.
32. The Commissioner has outlined above how several requests were made to the council over a short period, often overlapping with other requests which had been made. The overlapping and the extension of previous requests in this way is likely to create confusion within the authority as to what exactly is being requested, what has been responded to previously and overall, would create a further burden on the authority. The Commissioner has also considers that overlapping and/or repeated requests is often evidence characterising vexatious or obsessive behaviour.
33. The council has categorically denied holding further information, and independent scrutiny of its actions in the wider case has already taken place. Personal data belonging to the complainant has been provided to him under the DPA (and is in any event exempt under the FOI Act under section 40(1)), and the complainant is able to take his data protection issues to court should he still consider that personal information belonging to him has been withheld from him in this respect.
34. The Commissioner therefore considers that the council has been able to demonstrate significant evidence that the application of section 14(1) is correct. He has not been able to establish significant counter arguments to dispute its decision in this respect. The Commissioner's decision is therefore that the council was correct to apply section 14(1) to these requests.

#### Section 14(2)

35. Given that the Commissioner has found that the request is vexatious there is no requirement for him to consider the application of Section 14(2).

#### Section 10

36. The complainant made his request for information on 6 June 2014. The council had previously informed the complainant in January 2014 that it



would no longer deal with his DPA requests over the same issues. The council did not therefore initially respond to the complainant's request. The complainant made a complaint to the Commissioner, who wrote to the council informing it that as the request was an FOI request the council was still under a duty to respond under the FOI Act.

37. The council then responded to the complainant on 28 July 2014. This falls outside of the 20 working days required by section 10(1) of the Act. The Commissioner's decision is therefore that the council did not comply with the requirements of section 10(1) in respect of this request.

## Right of appeal

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38. 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: 0870 739 5836

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**