

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2015

Public Authority: Ealing Council
Address: Perceval House
14/16 Uxbridge Road
Ealing
W5 2HL

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Ealing ("the Council").
2. The Commissioner's decision is that the Council correctly applied section 14(1) of the FOIA to the request.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 27 February 2015 the complainant wrote to the Council and requested information in the following terms:
"As the office chose not to answer my formal request under the appeal/complaint process, should he have referred it to the FOI team?"
5. The Council responded on 27 March 2015 and provided information relating to parking services.
6. Following an internal review the Council wrote to the complainant on 1 April 2015. It applied section 14(1) and 14(2) of the FOIA to the request.

Scope of the case

7. The complainant contacted the Commissioner on 1 April 2015 to complain about the way his request for information had been handled.
8. Specifically he disputed the Council's application of section 14 to his request.
9. The Commissioner has had to consider whether the Council was correct to apply section 14 to the request.
10. The Commissioner will first consider whether the Council was correct to apply section 14(1) to the request. If he determines that this exemption does not apply, he will go on to consider section 14(2).

Reasons for decision

11. Section 14(1) of the FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
12. Guidance on vexatious requests provided by the Upper Tribunal in *Information Commissioner and Devon County Council v Mr Alan Dransfield* (GIA/3037/2011)¹ places emphasis on the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.
13. The Upper Tribunal's judgment proposed four broad issues that public authorities should bear in mind when considering whether FOI requests are vexatious: (i) the burden of meeting the request; (ii) the motive of the requester; (iii) the value or serious purpose of requests; and (iv) any harassment or distress caused. The judgment concurred with an earlier First-tier Tribunal decision in *Lee v Information Commissioner and King's College Cambridge* (EA/2012/0015, 0049 and 0085) that vexation implies an unjustified, inappropriate or improper use of a formal procedure.
14. The judgment noted that the four broad issues are "*not intended to be exhaustive, nor are they meant to create an alternative formulaic checklist*". It stated the importance of remembering that Parliament has expressly declined to define the term 'vexatious'. Consequently, the four

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

broad issues, "should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms."

15. The Commissioner's guidance² on the application of section 14(1) indicates that the key question for a public authority is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The public authority should take into account the background and history of the request where this is relevant.

The Council's position

16. The Council provided the Commissioner with some background to the case. It explained that the complainant was issued three Penalty Charge Notices (PCN) on three consecutive days for being parked in a residents parking place within Controlled Parking Zone with an expired residents permit on display. The complainant appealed against each of the PCNs and each of the appeals to the Council were refused.
17. The complainant subsequently approached the Parking and Traffic Appeals Service (PATAS) who overturned the PCN at appeal due to exceptional circumstances.
18. The Council explained that the complainant made his first request on 2 July 2013. His request contained 15 questions regarding Parking Services, the handling of PCN and complaints the complainant had made. After responding to the request, the complainant submitted a further request that raised issues that had been dealt with under the complaint process. The Council responded to this and advised the complainant that he could contact the Local Government Ombudsman if he remained dissatisfied. The Council explained that following this, the complainant asked for an internal review to be carried out. The Council advised the Commissioner that it provided a full response to the internal review request in an attempt to conclude the matter.
19. However, the Council explained that its response did not conclude the matter and the complainant continued to contact the Council about the same issue.

²<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

20. The Council argued that the complainant has submitted the same requests for information repeatedly which are frequent and overlapping.
21. The Council further argued that dealing with the complainant's requests has involved a disproportionate effort especially as the PCN which triggered the initial contact and complaint have been cancelled by PATAS two years ago.
22. The Council also explained that other issues that the complainant has raised have been dealt with at all three stages of the complaints process. The Council was of the view that officers in the Parking Services, Democratic Services, the Freedom of Information team and the Chief Executive have all taken the time to investigate and respond to the complainant.
23. The Council argued that it appeared that there was no obvious intent to obtain information given the answer had been provided numerous times. The Council stated that the requester may well be:

"abusing their rights of access to information by using legislation as a means to vent their anger at a particular decision, or to harass and annoy the public authority, for example, by requesting information which the authority know them to possess already".
24. To support its position that the request was vexatious, the Council explained that it considered the request to be futile given the fact that the PCN affects the complainant and this has already been conclusively resolved.
25. It was also of the view that the complainant was adopting a scattergun approach and has exhausted the parking appeals process, the Council's complaints process and the FOI process and continues to contact various officers. These include very senior officers such as the Chief Executive and the Leader in relation to matters which are overseen by the PATAS, the ICO and the Local Government Ombudsman. The Council further added that where there is a statutory process to be followed, the complainant has refused to accept the conclusion of the issues raised.
26. The Council believes that the complainant

"is intent on action being taken against the Council, despite our clear attempts to assist him and following the resolution of his PCNs and all other issues raised".

The Commissioner's view

27. After reviewing the Council's submissions, the Commissioner is aware that the Council has fully investigated the complainant's concerns relating to the issuing of the PCNs. It did this by considering the complainant's concerns in a three stage complaint process. Once this was concluded, the Council provided him with details of the Local Government Ombudsman if he remained dissatisfied with the way in which the Council handled his complaint.
28. The Commissioner appreciates that the complainant does have an interest in the information he seeks. However, the Commissioner is aware that the final stage of the complaint procedure within the Council was concluded in April 2013. Therefore it appears that the complainant's continuous correspondence with the Council on this matter is an attempt to reopen issues that have been investigated and concluded.
29. There also appears to be little purpose behind the request and the information sought would have little value to the wider public.
30. In light of this and on the basis of the Council's arguments, the Commissioner has concluded that it was correct to apply section 14(1) of the FOIA to the request.
31. As he has determined that the Council was correct to apply section 14(1) of the FOIA to the request, he has not gone on to consider the Council's application of section 14(2).

Right of appeal

32. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Rachael Cragg
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Wilmslow
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