

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

### **Decision Notice**

**Date:** 17 September 2015

**Public Authority:** Slough Borough Council  
**Address:** St Martins Place  
51 Bath Road  
Slough  
Berkshire  
SL1 3UF

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

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1. The complainant submitted a request to the public authority in relation to Britwell Parish Council elections held in May 2014. The public authority considered the tone and language used by the complainant against the background of his dissatisfaction with the conduct of the election and in the context of other similar requests the authority had received from him. The public authority consequently decided on that basis that the request was vexatious within the meaning in section 14(1) FOIA.
2. The Commissioner's decision is that the public authority was entitled to refuse to comply with the complainant's request in reliance on section 14(1) FOIA.
3. No steps are required.

#### **Request and response**

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4. According to the public authority, the complainant has submitted a large number of requests to the authority since the inception of the FOIA. However, the particular request which subsequently became the subject of the Commissioner's investigation in this case arose from the complainant's allegations regarding the conduct of the Britwell Parish Council election held on 22 May 2014.

5. The complainant submitted a *notice before action* to the public authority seeking a Judicial Review into matters relating to the conduct of the election. The Returning Officer subsequently wrote to him on 11 June 2014 and explained that an election petition was the only way of questioning an election and had to be presented within 21 days following the election. The complainant was advised that a petition could be brought by four electors or a person who was a candidate at the relevant election. The Returning Officer suggested that there was just about enough time to submit a petition.
6. According to the public authority, the complainant, who was a candidate at the election, did not submit a petition as advised. The authority also pointed out the complainant had previously been elected as a local councillor for the Britwell ward on 13 February 2003. However, he was later disqualified for a year after the Standards Board for England found that he had breached the Council's Code of Conduct by failing to treat Council officers with respect and consideration, and secondly, conducting himself in such a way as might reasonably bring his office or authority into disrepute.
7. The complainant's request was submitted on 9 February 2015 and worded in the following manner:

*'(16) Please state the precise quantity of voters whom the Returning Officer, personally or by the actions of his chosen staff, unlawfully prevented voting at the May 2014 Britwell Parish Council election.*

*(17) Please state to whom the Returning Officer reported the unlawful refusal to let eligible voters vote at the British Parish Council [sic] election and provide a copy of all correspondence.'*
8. The public authority provided its response on 10 March 2015. It noted that the complainant had previously written to the authority outside of the FOIA regarding the conduct of the Britwell Parish Council election and received a response accordingly. The authority therefore concluded that the request above was unjustified and ultimately designed to cause an unjustified level of irritation and distress and was therefore vexatious within the meaning in section 14(1) FOIA.
9. The complainant requested an internal review on the same day (10 March). He challenged the public authority's decision to deem his request vexatious and stated that he did not recollect ever receiving the requested information. He also asked the authority to provide him with the full identity of the *'person drafting and authorising SUA's [Slough Unitary Council] reply.'*

10. The public authority responded on 14 April 2015 and simply provided the complainant with a copy of the Returning Officer's letter of 11 June 2014. It also advised the complainant that all of its responses are sent by and on behalf of the authority.

## Scope of the case

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11. The complainant contacted the Commissioner on 15 April 2015 to complain about the handling of his request. The Commissioner considers that the substantive issue is whether the Council was entitled to deem the complainant's request above vexatious within the meaning in section 14(1).

## Reasons for decision

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### Section 14(1)

12. Section 14(1) is not elaborative. It simply states that a public authority is not obliged to comply with a request for information if the request is *vexatious*. Some of the important points to note in relation to the application of section 14(1) are summarised below.
13. The Commissioner considers that the term *vexatious* could be defined as the '*..manifestly unjustified, inappropriate or improper use of a formal procedure.*'<sup>1</sup>
14. Section 14(1) may be used in a variety of circumstances where a request, or its impact on a public authority, cannot be justified. The key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the public authority and weighing this against any evidence about the purpose and value of the request. The authority may also take into account the context and history of the request.
15. Furthermore, it is the request which can be deemed vexatious, not the applicant. There is no requirement to conduct a public interest test once a request is deemed vexatious.

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<sup>1</sup> Adopting the definition in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) at page 27

*Public authority's submissions*

16. The public authority's arguments are summarised below.
17. The public authority submitted that the number of requests it had received from the complainant on the same or similar topic had caused an unwarranted distraction for its officers from other work.
18. The public authority also submitted that the language and tone of the complainant's request was unacceptable and would appear designed to cause maximum annoyance and distress to officers dealing with his correspondence. This request, and others previously submitted by the complainant also have the effect of harassing officers especially the public authority's Returning Officer who the complainant has accused of acting unlawfully and upon whom he seems to have an unreasonable fixation.
19. Furthermore, there is a clear intention by the complainant to use this request and previous others on the same or similar subject matter to re-open issues which have been addressed. This behaviour, the authority argued, could fairly be characterised as obsessive. It did not consider that the request had any serious purpose or value.
20. The public authority therefore concluded, against the background above, that the request constitutes an improper use of the FOIA.

*Commissioner's findings*

21. Although the public authority informed the Commissioner that the complainant had submitted 779 FOIA requests since the introduction of the FOIA in 2005, it rightly focussed in this case on seven requests (including the request of 9 February - the subject of this complaint) submitted by the complainant to the authority between 2014 and 2015.
22. The Commissioner notes that the requests mostly relate to the Britwell Parish Council election in 2014 and focus extensively on the Returning Officer. It is however pertinent to mention that, of the seven sets of requests, only two were submitted prior to the request of 9 February.
23. The Commissioner accepts that the tone and language used in the request of 9 February is quite accusatory. There is also some rather excessive language in another request submitted on 3 March 2015 at 02:19am in which the complainant states: '*Did [named Returning Officer], at the material time, possess anything resembling "Significant Elections experience" and if he did, at what local authorities did [named Returning Officer] gain that "Significant Elections experience" '.*

24. The Commissioner will generally only consider circumstances which existed prior to the submission of a request in determining whether the request is vexatious. Nevertheless, events post-dating the request, including subsequent requests, which are generally also indicative of an applicant's approach and the likely nature and extent of their possible future contact with a public authority on the same or similar subject matter cannot be completely ignored.
25. In any event, the Commissioner considers that the tone and language used by the complainant in his request of 9 February indicates that he is unlikely to ever be satisfied with the answers provided by the public authority in relation to requests regarding the conduct of the Britwell Parish Council election of 2014. He is clearly aggrieved about the outcome of the election and has made up his mind that the public authority (specifically, the Returning Officer) is somehow culpable. However, despite the fact that he was advised of the more appropriate route to channel his grievance, the complainant has resorted to routinely submitting information requests to the public authority, some of which, may not actually constitute valid requests under the FOIA in view of how they are phrased. For example, the request of 9 February is phrased in a way which suggests that an unlawful act(s) has taken place when clearly that has never actually been determined by a competent authority.
26. The Commissioner considers that the subject matter to which the request of 9 February relates – ie – the conduct of the Britwell Parish Council election of 2014, has a serious purpose and value. Nevertheless, the question to ask is whether there is any serious purpose or value to a request phrased in the manner in which it has by the complainant, and more importantly, in light of the fact that the FOIA is highly unlikely to provide him with the redress he seeks? In that context, the Commissioner finds that the request lacks any serious purpose or value.
27. Taking all of the above into account, the Commissioner considers that the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. He has also concluded that it is a manifestly unjustified and improper use of the FOIA to primarily further the complainant's grievance against the public authority regarding the outcome of the Parish Council election.
28. The Commissioner consequently finds that the public authority was entitled to refuse to comply with the request of 9 February in reliance on section 14(1).

## Right of appeal

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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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 123 4504

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)

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.

**Signed .....**

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