

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2015

Public Authority: Northamptonshire County Council

Address: County Hall
Northampton
NN1 1ED

Decision (including any steps ordered)

1. The complainant has requested information relating to Corby Parkland's Gateway Car Park and the 'Operational Guidance to local authorities: parking policy and enforcement'. The Commissioner's decision is that Northamptonshire County Council has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Request and response

2. On 24 February 2015, the complainant wrote to Northamptonshire County Council and requested information regarding Corby Parkland's Gateway Car Park and the 'Operational Guidance to local authorities: parking policy and enforcement'. Due to the length of the request it is not replicated here but is detailed in the annex to this decision notice.
3. Having received no response, the complaint requested an internal review on 9 April 2015.

Scope of the case

4. The complainant contacted the Commissioner on 9 April 2015 and 18 May 2015 to complain that he had not had a response to his request for information or his request for an internal review.
5. During the course of the investigation, the council informed the Commissioner that it applied the exemption at section 14(1) in relation

to the topic of parking and associated matters in Corby cube/gateway. It confirmed that it was applying section 14(1) in this particular case.

6. The Commissioner has therefore considered whether the council correctly applied section 14(1) of the FOIA to the request for information.

Reasons for decision

7. 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.
8. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹, 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" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
9. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"
(paragraph 45).

¹ UKUT 440 (AAC) (28 January 2013)

10. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
11. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
12. As way of background to the issue, the council provided the following information:

"Under the Legal Agreement in place with Northamptonshire County Council and Corby Borough Council, Northamptonshire County Councils Parking Contractors, NSL issued the Requester a Penalty Charge Notice in the Parkland Gateway Car park, which is a Corby Borough Council car park, and the ticket was appealed and the appeal up held due to the original ticket being issued on the basis that it was believed that the Requesters vehicle was parked outside the prescribed bays. It certainly was in terms of the actual bay marking on the ground. However on checking the actual traffic order for this particular car park, it became apparent that the order was written in such a way that in essence no offence had taken place and as such the original PCN was re-voked. (In favour of the appellant).

The wording on the order is quite unique, and certainly not consistent with normal orders of this type that are in place and it would be unreasonable for the Civil Enforcement Officer to have known this at the time they issued the ticket. I can advise that the owners of the Car park, Corby Borough Council, have now requested that the order be altered to better reflect standard practice."

13. In order to provide context and history, the council said that this request is part of a long series of overlapping requests/complaints/reviews and other correspondence and forms part of a wider pattern of behaviour in relation to a dispute and/or grievance he has had that makes the theme vexatious. It said that it has at all times complied with the requests

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

received where held and recorded information and systems have allowed it to do so on time and in line with its statutory obligations under the FOIA 2000. It also said that it has followed good practice whilst dealing with the requests for information but contacting the requester and asking for clarification has not resulted in a path of resolution.

14. As stated in paragraph 10, the Commissioner needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
15. In relation to the disruption and distress caused by the request, the council said that the amount of time officers of the FOI/DP team and wider business area of the council are spending dealing with the complainant's requests is unreasonable and takes up significant resources of council officers that could be utilised in serving the public. It provided a log showing that it had dealt with 8 requests from the complainant on the issue of parking in general and parking enforcement since between May 2014 and January 2015 and that it received 36 'business as usual' emails between June 2014 and January 2015. It said that the 'business as usual' emails overlap the information requests and muddle the parameters of the disciplines of business as usual/complaints/PCN appeals/appeal process/FOIA and that they also encompasses the wider business alongside the District and Borough Councils. It also said that any response is met with a further volume of requests and complaints before the service area has had an opportunity to even begin to review the requested information. In addition, it said that the correspondence is often directed to officers, councillors, the District and Borough Council offices, news offices, the Local Government Ombudsman and the ICO which makes it difficult to identify what it needs to be aware of or what it has simply been copied into which puts it at risk of being in breach of its processes.
16. The council said that the complainant's correspondence is conflicting, confusing and the tone at times vitriolic. It informed the Commissioner that the content of emails from council officers is extracted randomly and used out of context of its original disclosure which makes it very difficult to manage the reasonable expectations of both the complainant and the council officers alike. It explained that its ability to clarify what it is the complainant is seeking has been brought into dispute as where it has asked for a telephone conversation to clarify matters it is met with the standard response that in his opinion it is clear and that he does not want to speak but prefers an email for audit purposes. It said that the complainant directs his frustrations at individual officers stating, for example, that they are lacking in awareness and understanding and are incompetent, which is not behaviour any member of the council should have to endure.

17. It was explained by the council that the complainant believes it is incapable of receiving and disclosing information in line with its statutory obligations which it said is unfounded and disrespectful. It explained that it prides itself on providing a good service and that it has a robust process in place and is fully committed to its delivery, audit trail and full paper and electronic records forming part of this process and that the FOI/DP team and the wider council have at all times treated the requester as befits officers of a transparent and open organisation. Nevertheless, the complainant is still of the opinion that he has been treated unfairly and openly questions the professionalism of the team which he describes as being potentially " concocted maliciously, or by someone who in his opinion needs to be put through a capability review". The council said the continued contact and line of questioning on matters that have already been answered is causing distress to officers especially those whose professionalism and conduct has been called into dispute. Due to the disruption and distress that the complainant's correspondence has caused, the council provided a single point of contact, it's monitoring officer, for him to use explaining to him why it would be beneficial to aide him and not prevent him liaising with the council. Despite this, the council informed the Commissioner that the complainant continued to ask questions of the wider council officers relating to the parking theme sometimes copying in the single point of contact but more often not doing so.
18. Turning now to the serious purpose and value of the request, the council said that the complainant has a clear intent to reopen issues that have already been answered and considered. In its opinion, the request is designed to cause disruption as the complainants parking ticket was successfully appealed and it believes that the ensuing 8 requests are of no real value to the requester.
19. The council also said that the amount of time being focussed on a particular topic is not a healthy attitude and it would be failing in its duty of care to the requester not to ask him to stop and consider his behaviour in relation to the distress and disruption this is causing the council and its officers.
20. When considered in isolation, the request in this case could appear to have serious purpose and value, that being to establish if the council have acted appropriately in respect of parking enforcement. However, when considered in the context and history of the case, including the existence of vexatious 'indicators' as detailed in the aforementioned guidance on vexatious requests, and the fact that the complainant appears to be pursuing a private matter which, in relation to him, has been resolved, the Commissioner does not consider that the purpose of the requests justifies the disproportionate effect on the authority. The request in this case is of considerable length, is made up of numerous

individual requests, refers to responses on previous requests and asks why certain things were not apparent to the council which appear to require explanations rather than the provision of recorded information. The Commissioner can understand how responding to this request, when coupled with previous dealings on the same matter, would cause a disproportionate burden on the council.

21. Furthermore, and again taking into account the background of the case, the Commissioner considers that further requests related to the issue could cause harassment and distress to staff. The Commissioner also considers that the request in this case appears to be a means of furthering his grievance with the council which can be considered as inappropriate use of information rights under the FOIA. Taking into consideration the findings of the Upper Tribunal in Dransfield, that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the council was correct to find the request vexatious. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in these instances.

Right of appeal

22. 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

23. 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.
24. 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

Annex

“Please consider this to be a Freedom of Information Request.

Information required.

Northamptonshire County Council maintains that it has the legal authority to issue penalty charge notices in Corby Parklands Gateway Car Park as per its response to FOI FR5403 (enclosed).

However on 9th September 2014 Northampton County Council confirmed that in relation to a penalty charge notice received by myself in Parklands Gateway Car Park on checking the actual traffic order for this particular car park, it became apparent that the order was written in such a way that in essence no offence had taken place and as such the original PCN was revoked (see enclosed communication from [named individual] Director - Northamptonshire Highways).

Bearing in mind that the Operational Guidance to local authorities: parking policy and enforcement – issued by the Department for Transport in relation to the Traffic Management Act 2004 states at Chapter 4 - Appraising, ensuring the effectiveness of and reporting on civil parking enforcement states the following:

- 4.4 The justification for, and accuracy of, existing traffic orders;
 - 4.5 The appraisal should ensure that parking policies still apply at the right place and time....
 - 4.6 As part of this appraisal, authorities should make sure that detailed operational policies remain appropriate. They should also tell the public about any changes to them.
1. Please provide information as to why it was not apparent since 2010 to anyone at Northamptonshire County Council until 2014 that the actual traffic order for Corby Parklands Gateway Car Park order was written in such a way that in essence no offence had taken place in relation to where my vehicle was parked; and why it was not known to Northamptonshire County Council for four years bearing in mind its obligations to ensure accuracy of, existing traffic orders as per section 4.4, 4.5 and 4.6 of the Operational Guidance to local authorities: parking policy and enforcement – issued by the Department for Transport in relation to the Traffic Management Act 2004.
 2. Please provide information as to what appraisals were undertaken in relation to parking enforcement at Corby Parklands Gateway Car Park from 2010 to 2014 in relation to 4.4, 4.5 and 4.6 of the Operational Guidance to local authorities: parking policy and enforcement – issued by

the Department for Transport in relation to the Traffic Management Act 2004.

3. Please provide information as to what appraisals were undertaken in relation to parking enforcement at Corby Parklands Gateway Car Park from post [named individual's] email in relation to 4.4, 4.5 and 4.6 of the Operational Guidance to local authorities: parking policy and enforcement – issued by the Department for Transport in relation to the Traffic Management Act 2004.
4. Please provide information as to **what the public was told** in relation to any appraisal in relation Corby Parklands Gateway Carr Park in relation to 4.6 of the Operational Guidance to local authorities: parking policy and enforcement – issued by the Department for Transport in relation to the Traffic Management Act 2004. **In particular the findings of [named individual] as per his findings as stated on 9th September 2014.**
5. Please provide information as to **what the public was told** in relation to the disclosure by [named individual] that there was an issue with the Traffic Order in relation to Corby Parklands Gateway Car Park in relation to 4.6 of the Operational Guidance to local authorities: parking policy and enforcement – issued by the Department for Transport in relation to the Traffic Management Act 2004. **In particular the findings of [named individual] as per his findings as stated on 9th September 2014**

Bearing in mind that the Operational Guidance to local authorities: parking policy and enforcement – issued by the Department for Transport in relation to the Traffic Management Act 2004 states at Chapter 6 Training and professionalism in civil parking enforcement states the following:

6.19 Enforcement authorities should ensure that Civil Enforcement Officers (CEO) is properly trained to enforce parking controls fairly, accurately and consistently. As well as formal training, it is recommended that authorities include some supervised on-street training to familiarise CEOs with the area and any special parking provisions. Enforcement authorities should make sure that CEOs understand all relevant exemptions, such as those applying to diplomatic vehicles and the Blue Badges issued to disabled people. CEOs should be aware of their powers to inspect Blue Badges and the sensitivity required should they need to exercise them. It is recommended that all CEOs achieve minimum standards through recognised training courses

6. Please provide information as to why it was not apparent since 2010 to any CEO and until at least 2014 that the actual traffic order for Corby Parklands Gateway order was written in such a way that in essence no offence had taken place where my vehicle was parked. With specific reference to Northamptonshire County Councils obligation to ensure CEO's

are properly trained as per section 6.19 of the Operational Guidance to local authorities: parking policy and enforcement – issued by the Department for Transport in relation to the Traffic Management Act 2004.

7. Please provide information of the training given to CEO's who operate in Corby Parklands Gateway Car Park post Northamptonshire County Council's admission that the actual traffic order for Corby Parklands Gateway Car Park was written in such a way that in essence no offence had taken place where my vehicle was parked. With specific reference to Northamptonshire County Councils obligation to ensure CEO's are properly trained as per section 6.19 of the Operational Guidance to local authorities: parking policy and enforcement – issued by the Department for Transport in relation to the Traffic Management Act 2004.

Bearing in mind that the Operational Guidance to local authorities: parking policy and enforcement – issued by the Department for Transport in relation to the Traffic Management Act 2004 states at Chapter 8 Enforcement states the following:

8.9 The Secretary of State recommends that CEOs use a hand-held computer (HHC) to issue PCNs. However, to ensure business continuity, they should still be able to write them by hand if necessary. The advantages of HHCs over handwritten PCNs are:

- They can transfer information quickly and cheaply to other computers for further processing or storage;
- information about the number and location of different parking contraventions and the performance of different CEOs can be collected quickly and cheaply. Analysis of this information should help make on-street enforcement more efficient;

And that as per Freedom of Information Request FR5382 (enclosed) Northamptonshire County Council disclosed that it uses hand held devices linked to a system – therefore the process cannot possibly be a manual one.

8. Please provide information in relation to how many penalty parking tickets were issued as per the agreement Northamptonshire County Council has with Corby Borough Council where my car was parked prior to Northamptonshire County Council admitting that the actual traffic order for Corby Parklands Gateway order was written in such a way that in essence no offence had taken place.
9. Please provide information in relation to how many penalty parking tickets were issued as per the agreement Northamptonshire County Council has with Corby Borough Council where my car was parked after Northamptonshire County Council admitting that the actual traffic order

for Corby Parklands Gateway order was written in such a way that in essence no offence had taken place.

Bearing in mind that as per Freedom of Information Request (enclosed) Northamptonshire County Council alleged that it had given out 33,600 penalty Charge Notices in Corby Parklands Gateway Car Park but it stated it would be a manual process to see where the penalty charge notices had been issued – despite the fact that as per Freedom of Information Request FR5382 (enclosed) Northamptonshire County Council disclosed that it uses hand held devices linked to a system – therefore the process cannot possible be a manual one.

- 10. Please provide information as to how or who and where the public have not been informed of the issues Northamptonshire County Council are aware of in relation to the relevant Traffic Order for Corby Parklands Gateway as per those disclosed by [named individual]. So that they may be able to assist in stating where they were parked and if appropriate i.e. they were parked where I was parked as per the Traffic Management Act 2004 have their penalty charge notice revoked.**
- 11. If the public have not been informed of the issues Northamptonshire County Council are aware of in relation to the relevant Traffic Order for Corby Parklands Gateway as per those disclosed by [named individual]. Please provide information as to why this issue at least has not been re-laid to the public who may of course come forward and tell Northamptonshire County Council where they were parked.**
- 12. Please provide information in relation to what directions the senior management and the Cabinet and in particular the lead for parking have given in relation to the fact that penalty charge notices had been issued in Corby Parklands Gateway Car Park in relation to a parking order that was written in such a way that in essence at least some motorists had committed no offence but a penalty charge notice was still issued.**

This Freedom of Information request is clearly not vexatious as it is clearly has is a "legitimate public interest" and in blocking this Freedom of Information request Northamptonshire Count Council would clearly be doing so in order to prevent a "genuine" attempts to hold it to account.."