

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

### **Decision notice**

**Date:** 25 November 2015

**Public Authority:** Ashford Borough Council  
**Address:** Civic Centre  
Tannery Lane  
Ashford  
Kent  
TH23 1PL

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

---

1. The complainant has made two separate information requests with regards to wheeled bins. Ashford Borough Council (the council) refused both requests relying on section 14(1) of the FOIA as it considered them to be vexatious.
2. The Commissioner's decision is that the council is able to rely on section 14(1) of the FOIA to refuse the two requests.
3. The Commissioner does not require the council to take any steps.

### **Request and response**

---

4. On 2 May 2015, the complainant wrote to the council and requested information in the following terms:

*"Borough wide, can you tell me the total cost to Ashford Borough Council for supplying domestic wheeled bins, not including brown bins, to residential properties."*

5. And on the 4 May 2015, he also requested:

*"Regarding the properties listed in the attachment to FOI request 3689, can you tell me how much the council received, collectively, for the provision of extra sets of wheeled bins."*

6. The council responded to both requests on 27 May 2015. It refused them under section 14(1) of the FOIA, as it considered both of the requests to be vexatious. The council also advised the complainant that it does not conduct internal reviews for requests deemed vexatious.

## Scope of the case

---

7. The complainant contacted the Commissioner 24 July 2015 to consider whether the council was able to refuse his requests as vexatious.
8. The Commissioner considers the scope of the case is to determine whether the council was correct to rely on section 14(1) of the FOIA to refuse both requests which were made on 2 May 2015 and 4 May 2015.

## Reasons for decision

---

### Section 14(1) of the FOIA – vexatious requests

9. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
10. The term “vexatious” is not identified in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
11. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in his

---

<sup>1</sup> GIA/3037/2011

published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

13. The council has provided the Commissioner with its reasons as to why it has relied on section 14(1) of the FOIA to refuse the 2 requests.
14. In determining that these two requests are vexatious, the council has considered the history and background prior to these requests being made. This included the complainant's previous requests and correspondence with the council.
15. It has explained to the Commissioner that the root of the complainant's request is to close down the HMOs (Houses in Multiple Occupation) in the vicinity of his property and he has been in contact with the council about this subject for the past 2 years. The council has now concluded that the effort involved in responding to his many requests for information is disproportionate and is having a detrimental impact on the ability of several departments within the council to carry out its other day to day business duties. The council considers that the complainant is attempting to achieve his objective by submitting these requests for information.
16. The council also considers that the complainant's requests have become obsessive, in that, providing information to the complainant will invariably lead to further requests for more information and that some requests are submitted within days of each other. It is therefore of the opinion that it is highly likely that the complainant will continue to make requests on this subject matter no matter the response provided.
17. With this, the council has told the Commissioner that the number of requests made by the complainant is disproportionate to the issue it is regards. This being the provision of refuse to a few properties within his area.
18. The council has provided the Commissioner with a printout of a summary of requests that have been made by the complainant. This summary dates from 29 December 2010 to 27 August 2015. The Commissioner notes from this summary that for the approximately two

---

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

years, which is how long the council said this issue has been ongoing, from May 2013 to the 2 and 4 May 2015 – these being the dates of the two requests deemed vexatious – the council has recorded 32 information requests over the two year period. Approximately 1.3 requests a month.

19. The Commissioner notes though, that there were no requests recorded by the council between April 2013 and September 2014 – approximately 17 months.
20. From October 2014 to the two May 2015 requests, there were 27 recorded requests, which is an average of 4.5 requests a month over the last 6 months leading up to and including the requests deemed vexatious.
21. In addition to the summary of information requests, the council also provided a list of recorded complaints received from the complainant. Sixteen complaints had been recorded over the last two years up to the May 2015 requests. It has also held two face to face meetings with the complainant on this issue in order to try and address his concerns.
22. The council has told the Commissioner that responding to the complainant on this issue has taken up a significant amount of time and lead to the involvement of several different employees, which includes senior managers, as well as local councillors. The council has determined that it has now come to the point where it needs to be aware of the resources it is devoting to respond to the complainant and considers it is not in the public interest to continue to devote more time to the complainant's requests on this matter. It also considers that no matter what response is provided; further requests will be made on the subject.
23. The Commissioner agrees that this is a substantial amount of correspondence and contact from the complainant spanning the last few years and especially when looked at over the past 6 months up to the dates of the two refused requests and accepts that it would be placing a burden on the council's resources to respond to him. However, the Commissioner considers that the purpose and value of the contact also needs to be considered with regards to this case in order to make an appropriate determination.
24. The council is of the view that the lack of serious purpose to the requests can be demonstrated by alternative avenues the complainant has failed to pursue, namely not complaining to the Local Government Ombudsman (the LGO), which he is entitled to do should he consider that the council has engaged in maladministration or caused him any injustice.

25. The Commissioner has noted, from correspondence provided by the council that it has advised the complainant of his right to complain to the LGO if he is not satisfied with the council's actions.
26. From reading through the correspondence provided by the council, the Commissioner notes that the complainant has concerns over issues such as discarded rubbish in his area, anti-social behaviour and fly tipping of furniture which he alludes to being created by the residents in the HMO's. He has also been requesting information about the numbers of bins allocated to these HMO's and why they have more than permitted.
27. The Commissioner sees that these issues would have a direct impact on the day to day life of the complainant, and more than likely other residents in his area, and there would be some public interest in knowing that the council is looking into addressing such concerns. However, it appears that the council has been responding and investigating the complainant's concerns over the issue.
28. If the complainant is not content with the way that the council is handling the issue, then the LGO, as explained by the council, is an avenue that could be taken by him to determine if the council is addressing the issues appropriately. Continually making requests over a sustained period of time is going to place a burden on the council's resources. Whilst the Commissioner sees that the issue would have a direct impact on the complainant, he does not consider responding to these two requests will finally resolve the issue and it is more than likely further requests will be generated on the subject. This would in turn place a further burden on the council resources diverting it away from its other day to day duties.
29. As no complaint has been taken to the LGO, there is nothing in the Commissioner's view, to be able to demonstrate that the council is or has handled the overall issue incorrectly, which may add weight to any value and purpose of the requests.
30. The Commissioner is of the view that when seen in isolation, these requests would not be burdensome. But after considering the above, the Commissioner is satisfied that the requests, when placed in context with all the other contact there has been with the council, are now at a stage where a disproportionate burden would be placed on the council resources, if it were to respond to these requests.
31. Therefore, the Commissioner's decision is that the council was correct to refuse these two requests as vexatious.

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

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

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