

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2016

Public Authority: Conwy County Borough Council
Address: Bodlondeb
Conwy
LL32 8DU

Decision (including any steps ordered)

1. The complainant requested information about the ownership of Colwyn Bay Pier ('the Pier'). Conwy County Borough Council ('the Council') refused the request under sections 14(1) and 14(2) as it considered it to be vexatious and repeated. The Commissioner's decision is that the Council has correctly applied section 14(1) of the FOIA to the request. He does not require any steps to be taken.

Request and response

2. On 19 June 2015 the complainant wrote to the Council and requested information in the following terms:

"You are required to confirm or deny if the Authority is in possession of the following documentation. If so a copy of such documentation is required. If however you confirm that you are in possession of the documentation, but will not release such information, then the reasons for not doing so are required. All as set out in section 1(1) of the Freedom of Information Act 2000.

In your communication of 17 June 2015 you set out in clear and precise terms that the Authority does not possess a certificate from the Land Registry confirming that they own Colwyn Bay Pier nor does have a copy of the register confirming that Conwy CBC owns Colwyn Bay pier.

The Courts have decided in the case of Barclays Bank v Guy CA 9 April 2008, that:

By virtue of section 58 of the 2002 Act (Land Registration Act) and the other provisions of that Act the register is conclusive, subject to only to its rectification pursuant to the provisions of the Act itself.

I would therefore formally request that you confirm or deny that the Authority is in possession of the following documentation, and if it has to supply a copy to me.

- 1 As the answer to item (c) of my request of 30 January 2015 is that the Authority believed that it is the legal and beneficial owner of Colwyn Bay Pier, can all documents which support such an assumption in possession of the Authority be provided, together with any external legal opinion which confirms that Conwy CBC own the legal and beneficial interest in Colwyn Bay Pier.
 - 2 In addition the provision of any other documents which may have led Conwy CBC to believe that they own Colwyn Bay Pier, This includes case references which support the assumption or any text book evidence.
 - 3 In view of the fact that less and until the Courts have determined the application under section 320 of the insolvency Act 1986, that no escheat of Colwyn Bay Pier can take place to the Crown Estates The provision of all documents, including facsimiles, electronic communications and hand written documents, between the Crown Estates and Conwy CBC, in the period from 18 August 2011, to the 18 August 2014.
 - 4 All documents in the possession of Conwy CBC, which confirm that it is possible under the Crown Estates Act 1961, to convey a property not in the ownership of the Crown Estates as at 27 March 2012, as the due process under the statute was not complete as that time nor is complete as at 19 June 2015".
3. The Council responded on 13 July 2015 and referred to previous communications with the complainant. The Council stated that it was refusing the request as it was considered to be both vexatious and repeated and therefore section 14(1) and 14(2) of the FOIA applied.
 4. On 13 July 2015 the complainant requested an internal review of the Council's handling of his request as he disputed that the request was vexatious or repeated.
 5. The Council provided the outcome of its internal review on 6 August 2015 and upheld its position that section 14(1) and 14(2) applied to the request of 19 June 2015.

Scope of the case

6. The complainant contacted the Commissioner on 18 August 2015 to complain about the way his request for information had been handled. The complainant raised a number of concerns that he wished the Commissioner to investigate in relation to the Council's handling of his request.
7. Following correspondence with the complainant, it was agreed that the scope of the Commissioner's investigation into this complaint is to determine whether the Council has correctly identified the request as vexatious under section 14(1) and repeated under section 14(2).

Reasons for decision

Section 14 – Vexatious requests

8. 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.
9. The Commissioner's guidance¹ on the application of section 14(1) FOIA refers to an Upper Tribunal decision² which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
10. The guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

² Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC) (28 January 2013)

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 requests. 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. 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.

The Council's position

13. The Council contend that the request in this case is a continuation of a previous request from the complainant, which resulted in a decision notice being issued by the Commissioner on 15 July 2015³. This earlier request also related to information about ownership of the Pier. In response to the request, the Council confirmed that ownership of the Pier was transferred to the Council by virtue of a Transfer Deed dated 27 March 2012. Following completion of the Transfer Deed, the Council made an application to register title of the Pier in HM Land Registry, in line with normal conveyancing procedures and a new title number - CYM557182 was allocated to the site. However, the former owner of the Pier lodged an objection to HM Land Registry so the application was put on hold pending the conclusion of ongoing litigation relating to the site. The Council is satisfied that the objection does not affect the validity of the Transfer Deed in any way and that it is the owner of the Pier.
14. The Council considers that the request in this case is a denial of the factual background about ownership of the Pier it provided in its response to the previous request. At the time of the request in this case the Council stated the complainant was aware of the impending court proceedings relating to the ownership of the Pier, and he had a role in the proceedings in question as a quasi-advisor and McKenzie friend⁴ to the litigant in person. The High Court proceedings were concluded on 27

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432148/fs_50576092.pdf

⁴ The term 'McKenzie friend' refers to an individual (whether lawyer or not) who assists in presenting the case in a courtroom by taking notes, quietly making suggestions or giving advice. The role differs from that of advocate in that the McKenzie friend does not address the court or examine any witnesses and is generally permitted at trials or full hearings... Source - https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB_LiP+_finalised_.pdf (para 61).

October 2015 and the judgement dismissed the former owner's application for a vesting order, and thus confirmed that the Council is the owner of the Pier⁵.

Detrimental impact on the Council

15. The Council stated that the volume and complexity of requests received from the complainant has placed a significant burden on its resources, diverting those resources from service delivery. Although the Council does not have any time recording mechanism in relation to the time spent on dealing with individual FOIA requests, the Council considers that it has spent a disproportionate amount of time dealing with requests from the complainant compared with any other single requestor.
16. The Council provided the Commissioner with a schedule of 53 FOIA requests received from the complainant between June 2010 and June 2015. The Council regard 45% of these as similar requests, some of them substantially so in as much as they relate to the Pier. Seven of the requests received during the period question or reference ownership of the Pier, including previous requests for documentation relating to the Council's purchase of the Pier. Many of the requests contain multiple questions and the responses can be voluminous. The number of requests received about the Pier from the complainant led to the Council considering the request of 19 June 2015 as vexatious. The Council accepts that the number of requests relating to the Pier may not seem large in light of the total number of requests it receives each year. However, the Council contends that it is a significant number on the same or substantially similar subject, particularly in light of the fact that most requests contain multiple questions/requests.
17. Over the same period ie June 2010 to June 2015, the Council conducted a search of its email vault which showed 815 emails received from the complainant, and a total of 998 emails sent to him. The Council advised that the complainant sends emails to multiple service areas, on occasions raising multiple issues, which means that more than one person/service area will likely have had to consider and respond to the same email. This explains why the number of emails sent to him is 19% higher than the number of emails received. It has not been possible for the Council to provide the exact detail on the additional email correspondence due to the volume. It is likely, however that the additional emails relate to a number of issues, including the Pier.

⁵ <http://www.dailypost.co.uk/news/north-wales-news/colwyn-bay-pier-high-court-10339224>

18. The Council advised that the complainant, as a local tax payer and registered elector, exercised his right to inspect the annual accounts in accordance with the Public Audit (Wales) Act 2005. With the exception of one telephone enquiry, the complainant is the only person to have exercised this right. The Council provided the Commissioner with details of communications from the complainant detailing specific documentation he had requested to inspect over the last six financial years. Of the 220 separate requests to view documentation, 15% relate to the Pier. In addition, the Council advised that the complainant has repeatedly referred complaints about its accounts to the external auditors KPMG and had brought proceedings against them as they did not find the Council at fault in its accounting regime. As a result of this, the Council incurred costs of over £70,000.
19. The Council stated that the complainant is aware of the Council's position with regards to the Pier as he acts as a quasi-advisor and McKenzie friend to the former owner of the property, who is in legal dispute with the Council over ownership of the Pier.
20. The Council contends that each request which is answered leads to further requests and/or internal reviews and, on occasion, complaints to the Commissioner. This often requires consideration and/or input by senior members of staff and is considered to have had a disproportionate impact on the Council's resources. As an example, the request in this case followed on from an earlier request about ownership of the Pier, which was the subject of an earlier decision notice issued by the Commissioner (as referenced in paragraph 13 of this notice).
21. The volume and complexity of requests received from the complainant led to the Council advising the complainant in January 2014 that it would consider whether any further requests received about the subject matter were vexatious.
22. In addition, the Council referred to language used by the complainant which it considers has had the effect of harassing staff in the service areas handling the request(s). The Council referred to a number of examples of these statements made by the complainant in correspondence such as "In a dim lit room covered in smoke" or "in smoke filled rooms" or "behind closed doors". The Council considers such statements portray a negative and inaccurate situation.

No obvious intent to obtain information

23. The Council advised the Commissioner that in response to an earlier request about the Pier, on 21 January 2014, in addition to providing the information requested, it advised the complainant:

“The submission of FOIA requests on the subject of Victoria Pier or related subjects such as the Council’s involvement with CADW, HLF or communications with legal Counsel will only serve to detract from the necessary work that must be done. It is with this in mind that I would ask for your co-operation in refraining from making enquiries on this subject or any other related and/or unrelated subject so as to not to cause any disproportionate or unjustified level of disruption. The Council, with its limited resources, will need to carefully assess the purpose and value of such future FOIA request/s with a view to considering whether or not S14 of the FOIA is engaged. I hope that this does not prove to be necessary and that you will support the Council, its members and officers to facilitate the democratically taken decision to explore further the possibility of de-listing and demolishing the Victoria Pier”.

24. The Council re-iterated that the complainant in this case acts as a quasi-advisor and McKenzie friend to an individual (a litigant in person) who is in legal dispute with the Council over the ownership of the Pier. The Council considers that the complainant is abusing the FOIA process and the role of the ICO in order to obtain information to support the litigant in their claim for ownership of the Pier. The Council contends that such information could and should be sought through the proper court disclosure rules/procedures. As an example of this, the Council referred to a previous decision notice issued by the Commissioner regarding an earlier request made by the complainant (as referenced in paragraph 13 above) – case reference number FS50576092. Following the Commissioner’s involvement in this case, the Council withdrew reliance on section 21 and issued an amended response to the complainant stating it did not hold the information requested. The Council contend that there was, therefore, no need for a decision notice to be issued. However, the complainant asked the Commissioner to issue a decision notice to record the procedural breaches in the Council’s handling of the request.
25. The Council is of the view that the complainant requested that the Commissioner issue a decision notice in case FS50576092 for the sole purpose of providing the litigant for whom he acts with material to influence the judge involved in the court case which was ongoing at the time of the request, with a view to removing the Council as a party to the proceedings. The Council provided the Commissioner with a letter from the litigant to the judge dated 15 September 2015, in which he had enclosed a copy of the decision notice in question. The Council pointed out that the copy of the decision notice attached to the letter to the judge contained the complainant’s name and address. As such the Council contends that the individual in question could only have obtained the document from the complainant (as opposed to the ‘anonymised’ copy of the notice, as published on the ICO website).

Requestor's aims and legitimate motivation

26. The Council is of the view that the complainant's aims and motivation is not geared towards understanding or gaining access to information that is not already known or available. As quasi-legal adviser to the former owner of the Pier, who is in legal dispute with the Council, the Council advised that the complainant is well aware that issues relating to ownership of the Pier will ultimately be decided by the courts. The Council contends that the complainant's continuous enquiries on the subject matter are for nuisance value. The Council referred to references within the judgement issued by High Court on 27 October 2015 about the nuisance value of making a vesting order on the former owner of the Pier.

Serious purpose

27. The Council confirmed that there have been numerous Council meetings where the issue of the Pier has been discussed, the minutes of which are publicly available on its website. The Council accepts that issues regarding the future development, or otherwise, of the Pier is one that concerns the public at large, particularly local residents. It acknowledged this in its internal review response. However, it maintains that its position regarding ownership of the Pier was fully explained to the complainant in its response to the earlier request of 30 January 2015. The Council is satisfied that the Pier transferred to its ownership by virtue of the Transfer Deed dated 27 March 2012. The request which is the subject of this notice, which seeks other information the Council may hold about ownership of the Pier, over and above that which is in the public domain and/or already been explained to the complainant, will not affect anything. Consequently, the Council contends that the request serves no purpose that justifies it being considered further, particularly in light of the litigation regarding the Pier, which was ongoing at the time of the request.

Wider public interest and objective value

28. The Council advised that it has found no evidence to suggest that any information it has previously provided to the complainant in response to information requests has been put to any constructive use.

The complainant's position

29. The complainant believes that the Council has a secretive approach to decision making, which leads to individuals resorting to making freedom of information requests. The complainant believes that if the Council is confident that it is the legal owner of the Pier, then it should simply disclose the information he has requested.

30. The complainant disputes that his request of 19 June 2015 is identical or substantially similar to previous requests. He maintains that his earlier request of 30 January 2015 about land registry documentation concerning ownership of the Pier was made in order to seek evidential documentation in support of the Council's claims that it owns the Pier. He contends that his request of 19 June 2015 was a follow-up request arising from the Council admitting that it did not possess a copy of the land registry entry or land registry certificate showing its ownership of the Pier. He advised that the request was made in order to ascertain exactly what documentation the Council held which confirmed it to be the owner of the Pier. He believes, rightly or wrongly, that the Council does not possess the information he requested on 19 June 2015 to prove ownership of the Pier and the Council is making "unsubstantiated claims, to which no evidential documentation exists of such claims".
31. The complainant disputes that he has made 53 requests to the Council as it has not produced any documentation to support this statement. He confirmed that he has used the FOIA on a number of occasions on different matters. He explained that this was primarily due to the amount of business that the Council conducts in closed sessions. The complainant advised that the Shadow Minister for Local Government in the National Assembly for Wales had found that of the 22 local authorities in Wales, the Council conducted more business in closed session than any other local authority. He also stated that the Council's appointed auditor had previously set out that it should have a mechanism for releasing information about decisions made in closed sessions, which has been ignored by the Council.
32. In relation to the Council's statement that information which has been obtained through the FOIA has not been put to constructive use, the complainant pointed out that this was not a requirement of the FOIA. He maintains that the motive behind the request is not to create a nuisance or inconvenience, but simply to gain access to documentation held by the Council that support its position that it is the owner of the Pier.
33. The complainant is of the view that two FOIA requests relating to documentation about ownership of the Pier "has little or no chance of success in demonstrating burden". He maintains that, if the Council disclosed the information requested, the problem of burden would not exist.
34. The complainant acknowledged receiving a letter from the Council in January 2014 advising that it would be better to refrain from making FOIA requests and let the courts decide matters relating to the Pier. He does not consider the Council is able to carry out such threats without evidence to support such statements. The complainant sets out that if the request of 19 June 2015 is vexatious, so was his request of 19

January 2015. However, he maintains the view that neither request is vexatious, and believes the Council should comply with such reasonable requests.

35. The complainant also contends that the Council is seeking to mislead the Commissioner that the hearing in the High Court relates to ownership of the Pier. He maintains this is not the case and that the issues before the Court related only to:
 - (a) Section 283 A of the Insolvency Act 1986
 - (b) The vesting of the Pier under section 320 of the Insolvency Act 1986.

The Commissioner's position

36. As stated above, the Commissioner's approach is to assess whether the level of disruption, irritation or distress caused to the authority by the request is disproportionate or unjustified, when weighed against its purpose and value. When making the assessment, he has also taken into account the context and history of the request, ie the wider circumstances surrounding it.
37. The Commissioner notes the Council's representations in relation to its previous dealings with the complainant. He also notes that the complainant has disputed that he has made 53 requests for information to the Council. However, as stated earlier in this notice the Council provided the Commissioner with evidence of the requests for information it had received from the complainant during the period from June 2010 to June 2015, as well as evidence of other contacts from the complainant about issues relating to the Pier and other matters.
38. In this case, the Council has been able to demonstrate that it has engaged to a significant extent with the complainant's correspondence on various matters, including the Pier, over a number of years, and it has taken his correspondence seriously. The Commissioner is prepared to accept that, cumulatively, the Council has spent a significant amount of time and resources in dealing with the complainant's information requests, in addition to other correspondence and contacts from the complainant.
39. The Commissioner acknowledges that there is clearly an ongoing dispute between the Council and the former owner of the Pier. The Council maintains that ownership transferred to it following the transfer deed dated 27 March 2012, whereas the complainant is of the view that the Council is not able to claim ownership as it does not hold a copy of the land registry certificate showing it owns the Pier. The Commissioner notes that the complainant in this case is known to the former owner of

the Pier and that issues relating to the Pier have been the subject of extensive litigation which has been ongoing since 2011.

40. The complainant maintains that the High Court case was not about ownership of the Pier, however the Commissioner notes that paragraph 37 of the judgement issued on 26 October 2015 states that:

“As explained earlier, the Crown has created a new freehold title which was transferred to Conwy. I understand that Conwy has applied to be registered in relation to that new freehold title but the Land Registry has not yet completed that registration in view of an objection from [name redacted]. Accordingly, the question as to the ownership of the pier will be answered by the determination of the various disputes between [name redacted] and Conwy. The answer all depends on the outcome of this litigation”.

41. Based on the evidence available to him, the Commissioner accepts that the Council has demonstrated that not only does the request in this case relate to the Pier, it can also be linked to the ongoing litigation between the Council and the former owner of the Pier, for whom the complainant acts as a quasi-advisor and McKenzie friend. The Commissioner accepts that there is a general public interest in matters relating to the Pier and the redevelopment or otherwise of the site. However, he also acknowledges that to a degree the issue at hand is one that personally affects the complainant in terms of his role in the ongoing litigation. The Commissioner agrees with the Council that the information sought by the complainant is of limited value, particularly in light of the fact that issues relating to ownership of the Pier, or any part of it were the subject of ongoing litigation at the time of the request.
42. The Commissioner also considers that, based on the evidence provided in terms of the length of time that the complainant has been making requests to the Council about the subject matter, and the number of requests made, it is reasonable to conclude that the complainant will continue to submit requests, and/or maintain contact about the subject matter regardless of any response provided to the request in question. The Commissioner is therefore satisfied that, in the context of the Council's previous and ongoing dealings with the complainant compliance with the request would result in a disproportionate burden on its resources. 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 this instance.

43. As the Commissioner has found that section 14(1) applies to the request of 19 June 2015, he has not gone on to consider the Council's application of section 14(2) to the request.

Right of appeal

44. 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

45. 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.
46. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF