

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2016

Public Authority: Liverpool City Council
Address: Municipal Buildings
Dale Street
Liverpool
L2 2DH

Decision (including any steps ordered)

1. The complainant has requested copies of emails and correspondence regarding an earlier request for information which she had made which the council was still considering. The council refused the request on the basis that section 14 of the Act applies.
2. The Commissioner's decision is that the council was not correct to apply section 14 in this instance. He has also decided that the council breached section 10(1) of the Act in that it did not respond to the request within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - to consider the request as required by section 1 of the Act without applying section 14.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 October 2015 the complainant wrote to the council and requested information in the following terms:

"Please provide copies of all e-mails and other correspondence regarding my request under the Freedom of Information Act for a copy of the full KPMG report, your reference 398714, submitted on 10 August 2015 and acknowledged by you the next day."

6. The council responded on 20 November 2015. It stated that the request was vexatious under section 14(1) of FOIA.
7. Following an internal review the council wrote to the complainant on 6 January 2015. It upheld its initial decision to apply section 14 to the request.

Scope of the case

8. The complainant contacted the Commissioner 30 November 2015 to complain about the way his request for information had been handled.
9. Initially her complaint was that the council had failed to carry out a review of her request, however after she received the response in January 2016 the issue became a complaint about the council's application of section 14 to her request.
10. The Commissioner considers that the complaint relates to the application of section 14 to the request, together with concerns relating to the time it took the council to respond to carry out a review of its decision.

Reasons for decision

Reasons for decision

Section 14

11. Section 14(1) of the Act states:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

12. The term "vexatious" is not defined in the Act. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious

requests in the case of the *Information Commissioner v Devon CC & Dransfield UKUT 440 (AAC)*, (28 January 2013) 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.

13. 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 authority and its staff);
- (2) the motive of the requester;
- (3) the value or serious purpose of the request and
- (4) harassment or distress of and to staff.

14. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"[I]mportance 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).

15. 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.

The council's arguments

16. The council outlined its arguments for applying section 14 to the request. The council referred to the fact that the request is a 'meta request', effectively a request asking for information about a request. The request in question was made by the complainant and has also resulted in a complaint to the Commissioner. The complaint was ongoing, with delays in the council's responses, when the complainant made her meta request for all correspondence relating to the request.
17. The council argues that this particular type of request is submitted with the purpose of creating additional work, and there is no wider public interest in the requested information. It said that the impact of complying with the request would place an undue and necessary

disproportionate burden on the local authority and would impact on the workload of City Council officers.

18. It said that the request which the meta request referred to had been dealt with by the council, had gone to internal review. It considered that:

"To then extend the process further by the production of such information in some ways negates the legislative purpose of Section 14 itself as it demands additional work to be done."

19. The council further argued that the main question to ask is whether the request has any purpose or value of the information would justify the impact on the public authority of responding to the request. It argues in this case that it would not. It said that it could see *"little value in the disclosure of emails between officers in regards to formulating a response to a request for information"*.

20. It argues that it could see little value in the disclosure of emails between officers in this regard, and the amount of work which this would entail totally outweighs the value of the information if it were disclosed. It therefore considers the request is specifically designed to cause disruption and additional work to the relevant officers. It further argues that:

"The City Council questions the value of responding to requests of this nature. We would respectfully suggest that the detrimental impact upon the already stretched time and resources of the Local Authority (diverting officers away from front-line services and bona fide FOI requests with a resulting detrimental impact upon FOI performance) cannot be justified by the value of requests of this nature."

21. Finally the council outlined its view that the request was intended to monitor the performance of its employees when responding to request for information. It considers that the employees are accountable to it, rather than to the public generally for the work which they carry out, and that the council itself is the body which is accountable to the public for the work, and the efficiency of the work which is carried out. The Commissioner infers from this an argument that it considers that such requests are a harassment to its employees.

The Commissioner's view

22. The Commissioner notes that the main point of the council's arguments is that meta-requests are essentially vexatious in themselves. The Commissioner has issued guidance on Meta-requests which is available at <https://ico.org.uk/media/for-organisations/documents/1620/requests-about-previous-requests-for->

[information-meta-requests.pdf](#) and does not agree that a meta request is vexatious purely because of the nature of the request. There are many circumstances in which a complainant may wish to question the response it has received to a previous request from an authority, and although there are times where such requests might be considered to be vexatious, this would not be purely on the basis of the nature of the request itself. Other factors would need to be present which would demonstrate that the intention behind the request was purely vexatious.

23. In paragraph 34 - 36 of the above guidance the Commissioner states:

"We have dealt with several cases where the authorities have supported their decision to apply Section 14 to a meta request with general arguments around the theme that such requests are, by nature, obsessive or lacking in any serious purpose of value.

In our view, there is nothing intrinsically vexatious about a request for information about a request. It follows that authorities should not treat meta requests as vexatious as a matter of course.

Rather, an authority should only consider refusing a meta request as vexatious where it can point to specific evidence that the request will cause a disproportionate or unjustified level of disruption, irritation or distress."

24. The Commissioner notes that the arguments submitted by the council to this request are arguments of this general type. The council has not described in any sort of detail the work which would be required to respond to the request. It has not outlined reasons why there is no purpose or value to the request other than to argue that there is no purpose or value in such requests generally.

25. The council does argue that the request is intended to harass its employees by seeking to allow the public oversee the work its FOI department, or particular employees carry out their work. In its response to the complainant it stated:

"Officers within the City Council, while always adhering to their responsibilities and obligations under the Freedom of Information Act 2000 should not be expected to be subject to such levels of public scrutiny of their roles and performance and the City Council considers this type of request to be bordering upon an abuse of the Freedom of Information Act 2000 and there is no justification for officers to, in practice, cease their everyday activities and provide correspondence to an individual where there is no legitimate reason to do so. The City Council considers this is a request specifically designed to cause

disruption to the relevant officers identified and, consequently, will not be providing the information asked for."

26. The council further argued that:

"In the present climate of financial cuts to Local Authorities it cannot be perceived to be in the public interest for officers to stop the work they are paid to do in order to collate emails to specific officers purely for the purposes of scrutiny under the Freedom of Information Act 2000. While the Act can, indirectly, ensure officers are held to public account the City Council already has such processes in place and there is no requirement for members of the public to feel they need to assume this role, either on behalf of the City Council or other members of the public."

Additionally, a precedent would be set in terms of any future requests of this type which the City Council may receive. If all officers of the City Council were to be subject to this level of scrutiny in the future there would be a tangible adverse effect upon both their individual and departmental performance."

27. In response to this the complainant argued that she had not asked for details on, or even identified any particular officer. She argues that the council has a record of failing to meet deadlines on responding to requests, and taking too long to answer requests for review. She said that her request was seeking to find why bottlenecks were occurring within the FOI process at the council, thereby delaying valuable public information from being disclosed in a timely manner.

28. It is fair to point out, however, that the request was made via Whatdotheyknow, and in comments on the relevant web page the complainant had made the following comment: *"We have a real problem with the quality of the senior officers we have, and this request is a feeble attempt to start to show this."* She was particularly critical of the council's FOI responses to hers (and others) previous requests. She was very clear however that that the intention was to get the council to handle the request properly, not to cause disruption.

29. Although there is no set public interest test required by section 14 there are public interest arguments which strengthen the purpose and value arguments which the complainant has voiced to the council. The Commissioner considers that there is a public interest in meta requests as they:

- increase the transparency and accountability of the request handling and decision making process;

- help the public better understand the reasoning behind decisions; and
 - foster public confidence in the request handling process.
30. This means that meta requests have an inherent public interest value as an alternative means of scrutiny, independent of public authorities' own request and complaints procedures. In para 65 of its decision in the case of *The Home Office and Ministry of Justice vs ICO (EA2008/0062, 20 November 2008)* the Tribunal found that "*It is vital to show and to be seen to show that the fundamental compliance processes of the Act are being observed.*"
31. The Commissioner considers that the council has failed to demonstrate any real evidence that the request in this case is vexatious. It has instead relied upon generic arguments that all such requests are inherently vexatious, a position with which both the Commissioner and the Tribunal have previously disagreed. The Commissioner's guidance to public authorities on this is clear.
32. In this respect, the Commissioner does not consider the council to be correct in its statement that there is no purpose or value to the requests of this nature, and considers that the council has failed to establish its evidence to demonstrate that the actual request in this case was intended to harass its officers or managers in any way. At the time of the request the complainant had sent numerous chasing letters to the council reminding it that it had failed to meet the statutory timelines for responding to the original request, and had taken too long to carry out a review of the decision to withhold information. The council had continued to state that the request was under consideration. The complainant is entitled to make a request of this nature to determine why delays were occurring.
33. In finding this the Commissioner has predictably also decided that the council has failed to establish a disproportionate burden on it in responding to the request which outbalances the lack of purpose and value which it argues is the case with this request.
34. The council's failure to meet statutory requirements in responding to requests is likely to leave requestors angry that the council is not responding to requests appropriately or efficiently. The Commissioner considers that this will increase the likelihood that they will make further requests of this nature to better understand why the council cannot meet the deadlines it is required to. Whilst this is a formal role of the Commissioner, a reason for the introduction of the Act is to empower the public to be able to make their own inquiries, with a view to increasing public trust in authorities and their actions.

35. The Commissioner therefore considers that the council was not correct to apply section 14(1) to the request in this instance.

Section 10(1)

36. Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

37. The complainant made her request for information on 16 October 2015. The council responded to that request on 20 November 2015.
38. This falls outside of the 20 working day period provided by section 10(1) to respond to requests.
39. The Commissioner has therefore decided that the council breached section 10(1) in respect of its response to his request.

Other matters

Time for review

40. The Commissioner notes that the complainant made a request for review on 23 November 2015.
41. The council provided its final response to the request for review on 6 January 2016. This was a period of 30 working days to respond, discounting the Christmas and New Year bank holidays.
42. Under the Act, there is no obligation for an authority to provide a complaints process. However, it is good practice (under the section 45 code of practice) and most public authorities choose to do so.
43. The Commissioner advises that where an authority has a review process in place it should:
- ensure the procedure is triggered whenever a requester expresses dissatisfaction with the outcome;
 - make sure it is a straightforward, single-stage process;
 - make a fresh decision based on all the available evidence that is relevant to the date of the request, not just a review of the first decision;

- ensure the review is done by someone who did not deal with the request, where possible, and preferably by a more senior member of staff; and
 - ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.
44. The council did not provide any details of any exceptional circumstances for delaying its response, however the Christmas period may obviously create a degree of backlogs to respond. The Commissioner would however point out to the council his guidance above and ask the council to ensure that it does meet the 20 working day response time for reviews other than in exceptional circumstances which it can specify to the complainant.

Right of appeal

45. 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

46. 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.
47. 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
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