

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2016

Public Authority: Blackpool Council
Address: PO Box 4
Blackpool
FY1 1NA

Decision (including any steps ordered)

1. The complainant has requested information relating to the South Beach Selective Licence schemes. The Commissioner's decision is that Blackpool Council has correctly applied the provision for vexatious requests at section 14(1) of the FOIA.

Request and response

2. On 25 March 2016, the complainant wrote to Blackpool Council ('the council') and requested information in the following terms:

"Following FOI request ref: 160092 giving details of South Beach Selective Licence accounts.

Please give details if these costs:

Total Invoiced (679,184)

MIPS (45,482)

Government Grants (7,500)

From reserves (41,483)

are total costs over the 5 year period or current costs up until the current date 25/03/2016.

Please provide details of what MIPS are.

Please provide details of what government grants were given and what date.

Please provide details of "total invoiced" is this money solely raised from the selective licence fee.

Please provide details of what "reserves" are and why they are included in these accounts for selective licencing.

Please provide further details of minutes spent on the landline and line rental and any other costs and how the calculation of £7373 was calculated. Please give details if these are total costs over the 5 year period or current costs up until the current date 25/03/2016.

Please provide further details of how many mobiles are used within the south beach selective licence scheme and how the calculation of £2288 was calculated. Please give details if these are total costs over the 5 year period or current costs up until the current date 25/03/2016.

Please provide details of what office equipment was purchased in relation to the south beach selective licence scheme.

Please provide details of postage cost calculations.

Please provide details of what uniforms selective licence officers wear.

Please provide details of printing and copying calculations.

Please provide details of what advertising was carried out with regards to the south beach selective licence scheme. And how the calculation of £4546 was calculated.

Please provide details of how many land registry searches were sent and at what cost.

Please provide details of what External advisors were used within the selective licence scheme.

Please provide details of what training took place and how many officers had this training.

Please provide details of what meeting room was used?

Please provide details of what Hospitality was provided within the south beach selective licence scheme.

Please provide details of what a Transfer Payment of £2,013 was.

Please provide details of what Expenses - Payroll £1,653 was.

Please provide details of what the salary of an ASB officer and also the salary of a apprentice. Please give details if this is Transfer to if these

are total costs over the 5 year period or current costs up until the current date 25/03/2016."

3. The council responded on 22 April 2016 citing the exemption for vexatious requests at section 14 of the FOIA and providing reasons why it believes the exemption applies.
4. On 22 April 2016, the complainant requested an internal review as follows:

"I would like an internal review on this matter. The information is not published nor been discussed at any selective licence meetings. Furthermore by meeting senior council meetings in a meeting that is not recorded to discuss these FOI's presumably they would need the information that I am asking for which you are now refusing to send me in black and white, but it would seem are happy to tell me face to face as long as its not recorded.

Drilling down into accounts is important as it appears money has been used elsewhere and without the full facts in front of me, like you have it is very hard for me to gather the evidence needed for a Judicial Review."

5. The council replied on 6 May 2016. It informed the complainant that it will not undertake an internal review because his requests are placing an unacceptable burden on the council, its services and its officers and to internally review the vexatious refusal would place a further burden on the same officers and services. It also said that officers up to the very senior level of the council have been involved in the decisions on how the council handles and responds to the requests and it does not therefore have an officer of sufficient seniority to review the previous decisions made.

Scope of the case

6. During the course of investigating a separate complaint regarding the application of the exemption where the cost of compliance exceeds the appropriate limit at section 12 of the FOIA¹, on 6 May 2016 the complainant contacted the Commissioner to complaint about the refusal of the request made on 25 March 2016.

¹ ICO reference FS50619079

7. The Commissioner has therefore considered whether the council has correctly applied section 14(1) of the FOIA to the request for information dated 25 March 2016.

Reasons for decision

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 term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*², 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.
10. 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).
11. 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.

² UKUT 440 (AAC) (28 January 2013)

12. 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 requests³. 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.
13. As way of background and in order to provide context and history, the council explained that the complainant has submitted 36 requests in relation to the selective licensing scheme and that 33 of those requests were submitted since 1 January 2016. It said that when looking at the 33 requests received this calendar year, it has expended considerable effort in locating, collating, and formatting responses to 20 of these requests. It explained that the time spent on two individual requests alone (regarding the breakdown of the overall budget figures) has far exceeded the appropriate limit defined within the Freedom of Information (Fees and Appropriate Limit) Regulations 200 but it was decided that it would commit the time of officers of varying seniority within a number of services, to work on these requests to ensure that the complainant was provided with correct information. The council also said that the subsequent 13 requests have been identified as requests for information on the already supplied information i.e. 'drilling-down' to a level which is unjustified and burdensome and the request in this case for information regarding MIPS, government grants, income and reserves is caught by this.
14. As stated in paragraph 11 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 detrimental impact of complying with the request, the council referred to 77 hours of work already undertaken responding to the 2 account requests which form the basis of the request in this case. In the decision notice for the case referred to in paragraph 6, the Commissioner accepted that the council had already spent 77 hours responding to the requests and considers that it is appropriate to take that time into account in this case.

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

16. The council said that it acknowledges that a refusal could have been issued under section 12 but submitted that the burden of time and costs, places a further significant burden on it and therefore makes the request vexatious. It said that in determining this it has considered the decision in *Salford City Council v Information Commissioner and Tiekey Accounts*⁴. As stated in the aforementioned guidance on vexatious requests, the Commissioner considers that the Salford City Council decision demonstrates how balancing the impact of a request against its purpose and value can help to determine whether the effect on the authority would be disproportionate.
17. The council also said that it has considered not only its staff resources, but also other factors such as the financial cost of complying with the request and that in line with paragraph 10 of the aforementioned *Dransfield* case, it has a duty to protect these resources from unreasonable requests. It then explained the request is multi-limbed and requires input from a number of officers, placing a strain on resources as follows:

“- The Council has limited resources to manage the selective licensing schemes and housing enforcement tasks for a reasonably small Borough area that has a large quantity of housing stock that falls within these work streams. These limited resources are focussed on delivering improvements within the local housing stock. To respond to the further detail [complainant] has requested the Council would be required to divert officers, especially the Housing Enforcement Manager and a Housing Enforcement Officer, from their day-to-day operational duties to enable them to liaise with colleagues other services including the Accountancy. This will impact on their ongoing core functions including their enforcement roles and the number of visits that these officers could undertake in order to comply with other statutory duties and performance targets.

- As with many other Council services, the Finance Service (Accountancy) has limited resources. They would be required to allocate a suitably qualified officer to assist in the search for and establish the financial detail necessary to respond to a number of the questions presented in the request [Council Ref: ref 160322]. This would have a detrimental impact on, not only their day-to-day operational duties, but also the scheduled monitoring of accounts for a wider range of Council services which form part of their core functions.

⁴ Appeal no EA/2012/0047 [19]

- Prior to disclosure, senior officers would be required to verify the information for the response and the Information Governance Team (formerly FOI Team) would be required to assist with advising on any exemptions that may be applicable together with assisting with the production of the formal response and response. Again, this would divert these Officers from their day-to-day operational and managerial duties necessary for the Council."
18. As mentioned in paragraph 12, there may be various indicators which identify a request as potentially vexatious. In this case, the council has said that it has noted the number of requests on the same topic which the complainant has submitted before it has had opportunity to complete the tasks necessary to respond to the previous requests. It explained that there is an identifiable pattern as 10 requests on the same topic were submitted in this manner in a short period of time and it maintains that these are overlapping requests. The Commissioner has noted that the request in this case seeks further details relating to a previous request before the council had opportunity to respond to the internal review request of that previous request which was made 3 days before the request in this case.
19. The council has submitted that the number of requests made indicates a clear pattern of persistence and frequency which is unjustified. It explained that the complainant has been provided with opportunities for not only reading published information on the Selective Licensing schemes and proposals, but has also attended and spoke at an Executive meeting where the proposal to introduce a new scheme was discussed and information would have been available. It argues that the frequency of the requests shows an unreasonable persistence to seek information that has already been provided to him, albeit, perhaps not in the format that he expects as evidenced by his requests for account information⁵; or which has already been made available in the public domain (through publication on the council website or through other organisations, or at council/executive meetings). It said that it has provided the locations and URLs of this published information, or

⁵ The Commissioner understands, from the investigation into case reference FS50619079, that a full set of accounts is not required to be held during or at the end of the Selective Licensing schemes as the schemes fall within wider departments or directorates and that the financial records for the schemes form part of the wider department or directorate accounts. He also understands that these are published in the council's statement of accounts and the complainant has previously been provided with a link to them.

provided the names of the organisations that the complainant can contact to seek the more detailed information.

20. In addition, the council has said that, based on the previous behaviour pattern, it considers that any response provided will not satisfy the complainant and will lead to further requests.
21. The council explained to the Commissioner that it has made an effort to engage with the complainant by offering to meet with him. It said that he has been offered a meeting with the Chief Executive of the Council, Director of Community and Environmental Services, Head of Housing, Service Manager for Public Protection and other officers as necessary, to discuss the existing selective licensing schemes. It said that the complainant has, at different times, accepted, refused, and accepted the offer again and has sent his own agenda for this meeting which comprises 9 FOI requests that he has received responses or refusals to. The council provided the Commissioner with an extract from the complainant's email regarding the agenda he has set to highlight the persistence in requesting information through various means, and the continuing approach to do so for requests that the council has already answered or provided explanations for.
22. The Commissioner considers that it is good practice for a public authority to consider whether a more conciliatory approach would practically address an issue before choosing to refuse a request as vexatious. However, a conciliatory approach will not always be appropriate and there is no obligation on a requester to agree to deal with issues arising from information requests in this manner.
23. Turning now to the serious purpose and value of the request, in his request for an internal review, the complainant stated that drilling down into the accounts is important as it appears that money has been used elsewhere and without the full facts it is very hard to gather the evidence needed for a Judicial Review.
24. The Commissioner asked the council to comment on the allegation that it appears money has been used elsewhere. The council said that it refutes that allegation as it has already established in the accounts provided to the complainant that:
 - "The South Beach Selective Licensing scheme which has been operational since April 2012 and is due to cease in March 2017, has expenditure that exceeds the income received therefore money has not been used elsewhere.
 - The Claremont Selective Licensing scheme which commenced in April 2014 and which is currently ongoing; has not yet had all income collected. All expenditure on both schemes is recorded

accurately against the accounts for each and reflected in the summary provided to [complainant]."

25. It is not within the Commissioner's remit to adjudicate whether there has been any wrongdoing in relation to the accounts of the Selective Licensing Schemes. However, he has no reason to doubt the council's statements in the paragraph above and not seen any evidence of wrongdoing.
26. The council has said that the request is a misuse of the FOIA as information required for his application for Judicial Review could be obtained through that legislated process. It said also said that it cannot comment on this particular Judicial Review as it has not received any formal notification or paperwork for the matter.
27. The council has also said that the complainant has stated that he will share any information provided to him with representatives of a campaign and the National Landlords Association. It submitted that these are specific 'bodies' and not the general public and said that these have a private, not public interest. It said that it understands that the campaign primarily relates to the proposal for the Additional Central Area Licensing Scheme. It informed the Commissioner that the complainant has taken the opportunity to speak briefly at an Executive meeting for the proposals for an Additional Licensing Scheme and it is aware that he has been liaising with a Councillor for the ward in which he owns some properties.
28. The Commissioner has considered the serious purpose and value of this request and regards it as relating to the expenditure of public money and the wider operation of the Selective Licensing Schemes. He acknowledges the council's opinion that the complainant is seeking the information to further a campaign for the benefit of landlords and considers that if information requested will be of little wider benefit to the public, then this will restrict its value, even where there is clearly a serious purpose behind it.
29. Returning to the findings of the Upper Tribunal in Dransfield, and its view that a holistic and broad approach should be taken in respect of vexatious requests, the Commissioner has decided that the council was correct to deem the request vexatious. He acknowledges that there is a serious purpose and value to the request but considers that the value is somewhat reduced by the previous provision of information and the engagement with the complainant. He considers that compliance with the request would be likely to result in further correspondence and has seen no evidence to suggest that providing the requested information in this specific request would satisfy the complainant or bring an end to the issue. Conversely, he considers that the complainant may use the

requested information to create further points of dispute which could be tangential to the core issues. 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.

Right of appeal

30. 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

31. 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.
32. 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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