

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2017

Public Authority: North East Lincolnshire Council
Address: Municipal Offices
Town Hall Square
Grimsby
DN31 1HU

Decision (including any steps ordered)

1. The complainant has requested information from North East Lincolnshire Council ("the Council") about a High Court application. The Council refused to comply with the request under section 14(1) of the Freedom of Information Act 2000 ("the FOIA").
2. The Commissioner's decision is that the Council has correctly applied section 14(1). However the Council provided its refusal notice out of time, and therefore breached section 17(1).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 7 September 2016 the complainant wrote to Council and requested information in the following terms:

I would like disclosing any/all correspondence held by NELC relating to the documented High Court application contesting costs, being

withdrawn as of 20 November 2013, as per the council's representations (witness statement [redacted URL]) considered by District Judge in the matter of Council Tax Liability hearing held on 30 October 2015.

5. The Council responded on 7 September 2016. It confirmed that information was held but was exempt from disclosure under section 40(2).
6. Following an internal review the Council wrote to the complainant on 8 September 2016. It maintained its earlier position.

Scope of the case

7. The complainant contacted the Commissioner on 9 September 2016 to complain about the way his request for information had been handled. The complainant specifically contested the Council's position that information was held, and that the application of an exemption was therefore in error.
8. Upon investigation by the Information Commissioner's Office, the Council was asked to finalise its position in respect of the request.
9. The Council subsequently stated that it was withdrawing reliance upon section 40(2) and now sought to refuse the request under the provisions of section 14(1).
10. The Commissioner understands, based on the submissions of the complainant, that the request may partly seek their own personal data. This decision does not relate to any information that is the complainant's own personal data, and to which a separate right of access is provided under the terms of the Data Protection Act 1998.
11. The Commissioner therefore considers the scope of the case to be the determination of whether the Council has correctly applied section 14(1) to the request made under the terms of the FOIA.

Reasons for decision

Section 14(1) – Vexatious requests

12. Section 14(1) states that:

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

13. The Commissioner has published specific guidance on vexatious requests. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes it will be obvious when requests are vexatious, but sometimes it may not. In such cases it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requestor when this is relevant.

The complainant's position

14. The Commissioner understands that the request relates to a Liability Order for the non-payment of council tax that the Council applied for against the complainant.
15. The complainant argues that the Council originally suspended the recovery of the sum ordered in the Liability Order pending an outcome from an appeal made to the High Court, but subsequently began recovery of the sum on the understanding that the appeal had been withdrawn. The complainant contests that the appeal to the High Court was never withdrawn, and the request therefore seeks for the Council to confirm that no relevant information is held.

The Council's position

16. The Council has referred the Commissioner to the context outlined in decision notice FS50636996, FS50637737, FS50637994 and FS50639222; in which the Commissioner found that previous requests submitted by the complainant had been correctly refused under section 14(1).
17. The Council considers that this request represents a continuation of the complainant's intent to frustrate and challenge the Council's effective administration of Council Tax. The Council also considers that, having referred to the complainant's specific comments in correspondence with the Council, there is no serious intention to obtain recorded information held by the Council.

The Commissioner's conclusion

18. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request

does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.

17. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the requests

19. Whilst the Commissioner notes the complainant's concerns and basis for making the request, it is understood that the request has been made in relation to a private interest that the complainant is pursuing. The Commissioner is also aware that the request has taken place during an extended dispute between the complainant and Council in relation to the administration of Council Tax, and a Liability Order that the Council has obtained against the complainant. This context has previously been considered by the Commissioner in relation to six previous requests made by the complainant, and the Commissioner found that these requests had been appropriately refused under section 14(1). Although the Commissioner recognises that the request in this case has taken place in a later context (having taken place in a little under two months since the last request considered in decision notice FS50636996), it is reasonable for the Commissioner to consider that it represents a continuation of the matters identified previously.

The burden on the Council

20. The Commissioner has previously identified that the complainant has communicated with the Council since 2011 in relation to his concerns, and that compliance with the complainant's previous six requests would have caused an unwarranted diversion of public resources.
21. In the circumstances of this case the Commissioner recognises that compliance with the request would of necessity require public resources to be expended.

Conclusion

22. The evidence available to the Commissioner suggests that the request is intrinsically connected to an ongoing dispute about the payment of Council Tax; the wider context of which has previously been considered by the Commissioner. The Commissioner also recognises that the request does not represent a serious intention to gain information (instead, it appears to seek a denial that it is held). Whilst the Commissioner has considered the specific reasons provided by the complainant in making this request, it is evident that any private concerns about the Council's actions would need to be referred to the appropriate authority or court for determination.
23. Having considered these circumstances, there appears to be limited public value that would justify the diversion of public resources that compliance would cause.
24. On this basis the Commissioner must conclude that section 14(1) has been correctly applied to the request.

Section 17(1) – Refusal of request

25. Section 17(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
26. In this case the Council sought to rely on section 14(1) outside of 20 working days following receipt of the information request, and therefore breached section 17(1).

Other matters

27. The Commissioner wishes to refer the complainant's attention to the purpose of the FOIA, which is to provide a public right of access to recorded information held by a public authority. Section 50 of the FOIA provides requestors with the right to apply to the Commissioner for a decision on whether a public authority has dealt with a request in accordance with the FOIA.
28. In circumstances where the Commissioner considers that an application for a decision is frivolous or vexatious, section 50(2)(c) provides that the Commissioner may decline to accept it. In the event of any future applications by the complainant where the request does not represent a serious intention to obtain recorded information, the Commissioner may elect to decline the application as being frivolous or vexatious.

Right of appeal

29. 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

30. 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.
31. 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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