

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2017

Public Authority: Basildon District Council
Address: The Basildon Centre
St Martin's Square
Basildon
Essex
SS14 1DL

Decision (including any steps ordered)

1. The complainant has requested information which concerns his long-standing and on-going complaints against Basildon District Council. The Council determined that the complainant's 6-part request is vexatious and should be refused in reliance on section 14(1) of the FOIA.
2. The Commissioner's decision is that Basildon District Council has correctly applied section 14(1) of the FOIA and consequently the Council is entitled to refuse to comply with the complainant's request.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 11 May 2016, the complainant wrote to Basildon District Council and requested information in the following terms:
 1. "Since your letter dated 28th April 2016 fails to confirm whether you hold a copy of the Judgment for case CO/5222/2007 I am again requesting this information and am also requesting to be told whether you hold a copy of the amended Court Order that the enclosed Court letter shows to have been issued and sealed on the 20th June 2012.
 2. Your letter dated 28th April 2016 tells me the Council now understand from the Forestry Commissioner that a license to fell trees in respect of application 14/00746/FUL which granted permission for a new replacement dwelling in Glentowy did not require a license. I am

requesting any recorded information showing why, when and how the Council came to understand this from the Forestry Commission.

3. I am requesting any recorded information showing the Committee that refused planning application 11/00404/OUT for a new replacement dwelling at Glentowy to have been informed that they, and the Planning Inspectorate were seriously misled and that permission was therefore refused on invalid grounds. I am also requesting any recorded information showing Councillor Allport-Hodge [sic] or any other elected Members to have been made aware of the fact that the Committee were misled when refusing application 11/00404/OUT on invalid grounds
4. I am requesting any recorded information showing why application 11/00404/OUT remained undetermined for approximately six months before being referred to the Committee.
5. I am requesting any recorded information showing whether application 14/00746/FUL was determined by a Committee and if so whether they were made aware of the planning history, including the fact that application 11/00404/OUT had been refused, or if not determined by Committee the name of the person that made the decision to grant permission.
6. The ICO have consistently confirmed they consider the Council to be in breach of the DPA while the subject access request that I made to the Chief Finance Officer dated 7th October 2015 and to the Chief Executive dated 30th October 2015 both remain totally ignored. I am therefore requesting to be told whether you have in fact sent any letter or letters by Councillor Allport-Lodge concerning matters that I had brought to her attention."
5. The Council responded to the Complainant's request on 3 June 2016, advising him that it holds the information he had requested but that it was refusing his request in reliance on section 14(1) of the FOIA. The Council informed the complainant that the following indicators had been met: Personal grudges; unreasonable persistence; unfounded accusations; frequent or overlapping requests; futile requests; and no obvious intent to obtain information.
6. On 13 June 2016, the complainant wrote to the Council to complain about its refusal to provide him with the information he had requested. The complainant asked the Council to review its decision to withhold the requested information, noting that some of the information had also been withheld when the Council responded to his subject access requests.

7. The Council wrote to the complainant on 21 June 2016. It informed him that it had reviewed the decision set out in its letter of 3 June and that "the decision remains the same".

Scope of the case

8. The complainant contacted the Commissioner 9 August 2016 to complain about the way his request for information had been handled.
9. The Commissioner reviewed the documents which the complainant supplied in support of his complaint and determined that the focus of her investigation should be to determine whether the Council is entitled to rely on section 14(1) of the FOIA to refuse the request for information the complainant made on 11 May 2016.

Reasons for decision

Is the requested information "environmental information"?

10. Regulation 2(1)(c) of the Environmental Information Regulations, concerns any measures affecting, or be likely to affect, the elements referred to in 2(1)(a) or the factors referred to in 2(1)(b) will be environmental information.
11. The Commissioner recognises that the complainant has made reference to planning applications in some parts of his information request. Ordinarily such reference would direct the public authority and the Commissioner to consider the request under the provisions of the Environmental Information Regulations where those provisions apply.
12. Here, it is the Commissioner's opinion that the information which the complainant seeks does not meet the requirements of Regulation 2 of the EIR: Rather, the complainant is asking to be given documents, commentary or information which is tangential to approved planning applications.
13. The Commissioner has therefore decided that the complainant's request falls wholly to be considered under the terms of the Freedom of Information Act 2000.

Section 14(1) of the FOIA

14. Under section 14(1) of FOIA, a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.

15. The term 'vexatious' is not defined in the legislation, however in *Information Commissioner v Devon County Council & Dransfield*¹ 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.
16. 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.
17. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess 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.
18. However, the Upper Tribunal also cautioned 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).
19. The Commissioner has therefore considered whether the complainant's 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. In effect, it falls to the Commissioner to undertake a balancing exercise. This requires her to weigh the evidence of the request's impact on the authority against its purpose and value.
20. 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 requests². 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

¹ UKUT 440 (AAC) (28 January 2013)

² http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

considered in reaching a judgement as to whether a request is vexatious.

The Council's representations to the Commissioner

21. The Council has provided the Commissioner with information concerning its past dealings with the complainant. It has provided this information by way of putting the complainant's request into context.
22. Around the year 2000, the Council determined the complainant to be a "vexatious complainant". This decision was made in view of the complainant's persistent, repeated and vexatious complaints to the Council over a period of nearly twenty years.
23. During this period the complainant has made complaints about several Council employees and former employees to their regulatory and professional bodies. These complaints are of a very serious nature and none of them were upheld. The most recent complaint was considered by decision being made by the Chartered Institute of Public Finance and Accountancy in September 2016.
24. The complainant has made a number of unfounded and malicious allegations against individual members of the Council's staff. These complaints have had a significant impact on the individuals concerned.
25. As a result of the complainant's past behaviour, he has been given a Single Point of Contact ("SPOC") and advised to send the Council only one letter per month. This system has been in place for a number of years and to date, the complainant failed to comply with this requirement.
26. On several occasions the Council has been obliged to change the complainant's SPOC. This has become necessary in order to minimise the impact of dealing with the volume and nature of the complainant's correspondence on any individual member of staff.
27. The complainant has not been advised of the identity of his current SPOC in order to minimise the impact on that member of staff and to prevent the complainant from targeting that person as he has previously done.
28. The Council has advised the Commissioner that the complainant has made a complaint to the Local Government Ombudsman ("the LGO") in respect of Basildon Borough Council. The LGO found no fault with the Council.
29. On 7 November 2013, the Council wrote to the complainant about his continued harassment. The Council informed him that it may take legal

action against him. Despite this letter, the complainant has continued to send letters to the Council making false allegations against its staff and, in particular, he has targeted his previous SPOC.

30. The complainant's behaviour has not been restricted to sending the Council protracted correspondence. The Council has advised the Commissioner that it has been necessary to ask him not to attend his councillor's local resident's surgeries as the particular councillor was concerned by his contact and was aware that arrangements had been put in place to manage his contact with the Council. The complainant's councillor also expressed her concerns about the complainant's persistence in respect of his complaints.
31. The complainant has made allegations of financial irregularities and overcharging of planning fees by the Council. These allegations have been investigated by internal and external auditors: there has been no finding of any irregularity on the part of the Council.
32. In addition to making complaints directly to the Council, the complainant has issued a civil claim against the Council in the County Court. The claim was made in respect of planning fee - claim number BQ900823, and it was dismissed by the Court on 27 July 1999.
33. Likewise, on 3 February 2014, the complainant made an application to the First Tier Tribunal of the General Regulatory Chamber. The Tribunal stated that, "Viewed in the round it is clear that these applications for information part of the relentless challenge to the Council which has gone on for many years at great expense and disruption to the Council, some distress to its staff with negligible tangible results and little prospect of ever attain them. It is simply pointless and a waste. It is manifestly unreasonable for a citizen to use information legislation in this way".
34. Given this context, the Council asserts that the position has not changed: The complainant continues to challenge the Council in respect of matters which concern the same or similar issues raised over a number of years. The Council stresses that there is little prospect of the complainant stopping or of any progress being made, irrespective of what information the Council has supplied in the past.
35. The Council assures the Commissioner that responding to the complainant's requests and queries has resulted in its diversion of significant resources over a number of years and has resulted in substantial cost to the local tax payer.
36. Whilst the complainant has informed the Council that he has reported its officers to the Police, no action has ever been taken. He has also made an application to the Valuation Tribunal in respect of his council tax

liability. This action was dismissed and the Valuation Tribunal's decision provides an example of the complainant being vexatious and not accepting the information which the Council previously given him.

37. The Council accepts that the foregoing information does not necessarily make the complainant's request of 11 May 2016 vexatious for the purpose of section 14(1) of the FOIA. Nevertheless, the Council has assured the Commissioner that it considered the complainant's request and that it was appropriate to refuse to comply with it in reliance on section 14(1).
38. The Council advised the Commissioner that it would be detrimental to comply with the request which is considered vexatious. Complying with the request would require significant officer time to be spent and this would be disproportionate with regards to any merits of doing so.
39. The Council believe that any response it was to make to the request would not satisfy the complainant: Even if the Council provided the complainant with the information he seeks, he would likely continue to make persistent and unreasonable requests for information as he has demonstrated for the last several years.
40. The Council feels that complying with the request would be disproportionate and unjustified in terms of the officer time that this would require and also given the fact that this information has been supplied to the complainant before or is already publicly available.
41. The Council believes that complying with the complainant's request would not resolve the issues he has with the Council, which is the underlying reason why he seeks this information. Even is the Council was to provide the complainant with the information he has asked for, it is unlikely that he would be able to use it to progress his matters further. It is evident from the complainant's part dealings with the Council that he would not accept the Council's decision or the information supplied.
42. It is the Council's view that the information requested concerns historical issues raised by the complainant. These matters have already been addressed in a number of forums such as the County Court, the Valuation Tribunal, at planning appeals and through contact with the Council.
43. The complainant has previously, on numerous occasions, requested a copy of the Court Order with Claim number CO/5222/2007. This information would have been supplied to him after the court hearing as a matter of course. This Order would also be available from HMCTS for a fee as would a copy of the Judgement.

44. In 2010, the complainant was advised that he would have to pay the Council's costs amounting to £9,097.67. The Council advised the Commissioner that the Court made a simple typing error when it typed up the Court Order dated 3 November 2010, in terms of who the Respondent and Appellant were and this was amended but in any event the Council are not going to pursue these costs.
45. The complainant has requested information regarding his planning applications on numerous occasions and these have been considered at planning appeals. He has previously made claims against the Council in respect of his planning matters and these have been considered at appeal and have been dismissed. He has also issued civil claims against the Council in respect of various matters including planning fees and these have not been successful.
46. Regardless of these outcomes, the complainant continues to request information in respect of the same planning and council tax matters. These have been ongoing for many years and it is clear that he does not accept the responses that the Council provide. The complainant repeatedly accuses Council staff of misleading the courts and others. This lies behind the Council's withholding of the identity of his current SPOC as it is felt that the complainant may be targeted similarly to past SPOCs.
47. The Council strongly asserts that the complainant's accusations are unfounded and his complaints against Council officers of financial mismanagement have been dismissed.
48. It is the Council's view that the complainant's request is unreasonable: It is persistent, frequent and overlapping with other requests. He exhibits signs that he is holding a personal grudge against the Council in respect of his own planning matters and he has targeted specific individuals within the Council. The complainant's request concerns matters which have been considered previously: It will not assist the complainant in progressing matters further.
49. The complainant's unfounded accusations against Council officers have not been upheld by other professional organisations.
50. The Council has provided the Commissioner with documents which support the representations outlined above. Many of the documents are copies of correspondence which has passed between the complainant and the Council since July 2001.
51. Additionally, the Council has supplied documents relating to the complainant's issues. The documents supplied include, but is not limited to, the following:

- a complaint to the Local Government Ombudsman;
- a 'Warning Letter Before Action' sent to the complainant in respect of his alleged harassment of Council employees;
- a copy of the Council's draft policy for managing unreasonable behaviour towards its staff September 2013;
- a copy of the Council's policy persistent and unreasonable complaints procedure;
- a copy of the First-Tier Tribunal's decision in case EA/2013/0170, which confirmed the Commissioner's decision in respect of the complainant's previous request for information whereby it was determined that his request was manifestly unreasonable – 29 July 2013;
- a Valuation Tribunal Notice of Decision, confirming that the complainant is liable to pay council tax for a particular dwelling; a copy of the Planning Inspectorate Costs Decision – 14 July 2012, where the complainant sought costs against the Council;
- correspondence concerning the Council's decision to make the complainant a vexatious complainant;
- a High Court of Justice order dated 3 November 2010, which superseded a previous order and which struck out the complainant's appeal.

The Commissioner's decision

52. The Commissioner has examined the supporting documents supplied by the Council. She has found these documents to corroborate the Council's representations in respect of the background to the complainant's request.
53. It is clear to the Commissioner that the matters which underlie the complainant's request are extremely long standing: They are issues which are primarily of a personal interest to the complainant; and they are of very limited interest to the wider public.
54. Significant time and resources have been required by the Council to deal with the complainant's matters over a number of years. Similarly, other organisations have likewise been required to spend time and resources on the same matters.
55. The evidence is that the complainant's matters have been resolved, albeit not to his satisfaction. It appears to the Commissioner that the complainant's latest request for information is yet another attempt to

re-open or continue matters which have had a line properly drawn under them.

56. In the Commissioner's opinion, the complainant's request is manifestly unjustified: The request is strongly suggestive of an improper use of the access to information legislation the Commissioner regulates and it is clear to her that the complainant's request lacks any sense of proportionality. In the Commissioner's view, the complainant's request only serves to harass and distress Council staff in respect of a matter which is of very limited interest to the wider public.
57. The Commissioner has no difficulty in deciding that the Council has correctly applied section 14(1) to the complainant's request.

Right of appeal

58. 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

59. 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.

60. 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
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