

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2019

Public Authority: London Borough of Camden

Address: Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant has requested information related to the costs paid in a specific legal claim brought against the council. The request was refused on the grounds that it was 'vexatious' in line with section 14(1) of FOIA.
2. The Commissioner's decision is that the London Borough of Camden ("the London Borough") has correctly relied upon section 14(1) of FOIA in relation to the complainant's request.
3. The Commissioner does not require the London Borough to take any further steps.

Background

4. The London Borough has set out to the Commissioner that it considers the request to be part of a long running series of requests, submitted by the same complainant, in relation to the redevelopment of Bacton Low Rise estate. In this instance, the request relates to legal proceedings brought by the complainant against the London Borough. The London Borough explain that this legal action is linked to the acquisition of the complainant's leasehold in a property on the estate through a Compulsory Purchase Order (CPO).

Request and response

5. On 30 September 2018, the complainant wrote to the public authority and requested information in the following terms:

"Could you provide information on the costs paid in the legal proceedings in the claim [name redacted] v London Borough of Camden (claim No [redacted]), amounts paid and the dates on which the payments had been made, payment confirmations and invoices, please?"

Please also include copies of the contracts setting a legal basis for the payments."

6. The public authority responded on 25 October 2018. It confirmed that it held the requested information but refused the request under section 14(1) of the FOIA.
7. In the refusal notice the London Borough gave the following grounds for refusing the request under section 14(1) of FOIA:

"This exemption applies because:

- *you have already made numerous information requests that are about or are connected to the development concerning Bacton Low rise*
- *it seems that no response from the council will ever satisfy you and will inevitably result in numerous follow up enquiries no matter what information is supplied*
- *you have also unsuccessfully pursued action about these issues through the courts and are seeking to reopen or keep the issues going on a continuing basis*
- *the affect of your persistent requests causes a disproportionate and unjustified level of disruption, irritation and distress"*

Please note the council will not respond to any more requests about or connected to the development concerning Bacton Low rise."

8. Following an internal review the public authority wrote to the complainant on 6 November 2018. It maintained that section 14(1) applied.

Scope of the case

9. The complainant contacted the Commissioner on 22 November 2018 to complain about the way his request for information had been handled.
10. As part of her initial investigations, the Commissioner noted that the request concerned legal action to which the complainant was a party. She asked the London Borough if they had considered whether the request was for the complainant's personal data and, if so, whether this had been appropriately responded to under Data Protection legislation. If this was not the case, the Commissioner asked the London Borough to provide a response under the DPA within 20 working days.
11. The London Borough responded on 23 April 2019 and stated that they considered some of the requested information to be the complainant's personal data. The London Borough provided a copy of their response of 12 April 2019 (SAR19087) in which they consider the complainant's request as a Subject Access Request (SAR) under the DPA 2018. In their response to SAR19087 the London Borough refuse the request as manifestly unfounded or excessive subject to Article 12(5) of the GDPR.
12. The London Borough went on to explain that they consider the remaining information falling within the scope of the request (costs, dates of payments and invoice contracts) to not amount to personal data. The London Borough confirmed that this information fell under the refusal of the request under section 14(1).
13. The Commissioner notes that the complaint in this instance concerns the London Borough's handling of the request under the FOIA. In light of the above, the Commissioner considers the scope of this case to be to determine if the public authority has correctly applied section 14(1) of FOIA to the request.

Reasons for decision

14. Section 14(1) of FOIA states that 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 FOIA. 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* (GIA/3037/2011). 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.
16. 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.
17. 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).
18. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests¹. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.
19. 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.

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

20. The Commissioner's guidance suggests that if a request is not patently vexatious 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. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
21. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.

The Complainant's position

22. The complainant's position is that the London Borough's application of section 14(1) is unreasonable and unlawful. The London Borough has, in his view, misinterpreted the meaning of "vexatious request" and their claims that he has submitted frequent and overlapping requests are unfounded.
23. According to the complainant, it is he who the London Borough find to be vexatious and not the request. He states that this has resulted in the London Borough purposefully denying him access to information that would otherwise be disclosable.
24. Throughout his correspondence with the Commissioner the complainant makes various claims that the London Borough and its employees are engaging in a campaign of discrimination and harassment against him. In response to their internal review, the complainant stated that London Borough staff are being instructed by members of senior management "not to comply with their statutory duties and to deliberately create me difficulties, in breach of statutory and convention rights".
25. When referring to claims of his harassment of public authority employees in their refusal of his request, the complainant submits that the London Borough actually mean "embarrassing". This is because complying with the request would reveal evidence of the London Borough's "unlawful discrimination, abuse of the public office and misfeasance".
26. Finally, the complainant makes numerous claims that the London Borough is acting outside of the law. According to the complainant, the London Borough has acted "contrary to the EU Data protection directive 95/46/EC...contrary to the General Data Protection Regulation, including Article 15 of GDPR...and deliberately acted contrary to Article 8 of the EU Charter for Fundamental Rights by unreasonably withholding requested information".

The London Borough's position

27. In their internal review the London Borough acknowledge that the request, when viewed in isolation, may not be viewed as vexatious. The wider context and history in which the request is based is fundamental to the London Borough's decision to refuse the request under section 14(1) in this case.
28. In order to illustrate the wider context and history to this request, the London Borough referred the Commissioner to her decision of 14 February 2019 concerning a related request from the same complainant (FER0736963²). To avoid duplication, the London Borough explained that details of the wider context and history provided in paragraphs 20-36 of FER0736963 applied equally to the complaint in this instance (FS50804157). Paragraphs 20-36 are provided at Annex A.
29. Further to their submissions in case FER0736963 and subsequent to the request in this instance, the London Borough explain that they have received four further requests for information under the FOIA from the same complainant (FOI12039, FOI12320, FOI12838, FOI13014). The London Borough note that it has responded to two of these requests as they do not appear to be related to the redevelopment of Bacton Low Rise (FOI12320 and FOI13014). The other requests were refused under section 17(6)³ of FOIA as they requested information related to the redevelopment of Bacton Low Rise estate (FOI12039 and FOI12838).
30. The London Borough argues that this wider context and history illustrates that the complainant is still actively pursuing matters relating to, and connected with, the redevelopment of Bacton Low Rise estate. The submissions in case FER0736963 show that these matters have been fully addressed by the London Borough and through court proceedings. This is, according to the London Borough "disproportionate, particularly as the property has been demolished...dealing with the ongoing requests are disruptive for my small team. It is unlikely that responding to the requests will be an end to the matter".
31. In addition, the London Borough points out that the complainant continues to engage in allegations of discrimination and wrongdoing by London Borough employees. The London Borough dispute the complainant's assertion that they are labelling the complainant as vexatious (as opposed to the request) and point out that they continue

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614353/fer0736963.pdf>

³ Section 17(6) of the Act allows a public authority not to issue a refusal notice when it has already given the same person a refusal notice for a previous vexatious or repeated request and it would be unreasonable to issue another one.

to respond to requests that they consider not to be directly related to the Bacton Low Rise redevelopment (as in the case of FOI12320 and FOI13014).

32. The London Borough explain that, when taking into account the wider context and history of the case, the burden on their resources is disproportionate to the serious purpose of the requestor.

The Commissioner's decision

33. The Commissioner's position is that the request is vexatious.
34. The Commissioner considers the London Borough to have provided ample evidence to show that the request in this instance is part of a long running series of requests stemming from the redevelopment of Bacton Low Rise estate.
35. From the London Borough's submissions in case FER0736963, the Commissioner is aware that the request concerns events that stretch over a three year period during which the London Borough has engaged in significant correspondence with the complainant in an effort to respond to numerous information requests, SARs, internal complaints, requests for submissions in legal cases and investigations into complaints progressed to this office (some of which remain ongoing).
36. Whilst the request in this instance may not impose a significant burden to comply with, the Commissioner recognises that the aggregated burden of dealing with the complainant's overall contact with the public authority has placed a significant strain on the London Borough's resources and this has limited the time staff are able to spend responding to other requests. The Commissioner takes the view that the aggregated impact of complying with the complainant's various requests relating to Bacton Low Rise clearly outweighs any serious purpose to the request.
37. The Commissioner accepts that the request may not appear to be outwardly vexatious when considered in isolation. Furthermore, she acknowledges that the requested information (costs paid in legal proceedings, payment dates, confirmations and invoices) is likely to have a serious purpose as it concerns the spending of public money. However, the Commissioner takes the view that, whilst this matter may be of significant personal interest to the complainant, there is little evidence to show how the requested information is of wider public interest.
38. Considering the history of this request, and the ongoing requests submitted by the complainant, the Commissioner considers that

complying with the request in this instance would only lead to further requests and would serve to further issues that appear to have been fully addressed by the London Borough and through legal proceedings.

39. Finally, the complainant continues to claim that the London Borough is engaged in a campaign of harassment and discrimination against them. However, in the Commissioner's view the fact that the London Borough displays a continued willingness to respond to requests from the complainant (that are not outwardly related to Bacton Low Rise) contradicts any claim of harassment or discrimination.
40. The Commissioner concludes that the request is vexatious and therefore the London Borough is not obliged to comply with it.

Right of appeal

41. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

42. 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.
43. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

20. The chronology of the interaction between the complainant and the public authority in the context of the redevelopment project is summarised below.

21. Following a challenge of the CPO by the complainant, a CPO Inquiry was held in September 2016 before an independent inspector who submitted a report to the Secretary of State for Communities and Local Government on 4 January 2017 recommending confirmation of the CPO. The Secretary of State subsequently confirmed the CPO on 7 March 2017. At the time of the Inquiry the complainant's property was the only occupied property on Bacton Low Rise Estate, all 98 other residential occupiers having vacated the Estate by agreement with the public authority.

22. On 19 July 2017, the General Vesting Declaration (GVD) served on the complainant by the public authority under the CPO took effect and the complainant's long leasehold in the property on Bacton Low Rise Estate was transferred to the public authority. On 20 October 2017 the public authority lawfully evicted the complainant from the property.

23. Demolition of Bacton Low Rise Estate subsequently began in January 2018 and the complainant's property was demolished on 16 January 2018. The entire Estate has now been demolished and is a cleared site awaiting redevelopment.

24. The complainant has contested the CPO and its enforcement by the public authority via a number of court proceedings. The more pertinent proceedings are summarised below.

25. On 11 August 2016 he issued proceedings against the public authority in the Clerkenwell & Shoreditch County Court for damages and an injunction to prevent the public authority's "soft strip" demolition works being carried out on the Estate. His application for a summary judgement was dismissed on 3 February 2017.

26. On 2 August 2016 he had issued similar proceedings in the Lambeth County Court against the public authority's demolition sub-contractors. On 3 February 2017, at the hearing in the Clerkenwell & Shoreditch County Court, the District Judge also ordered that that the case against the sub-contractors be transferred from Lambeth County Court and that the two cases be listed together for a costs and case management hearing. No further steps have been taken in the two cases since 3 February 2017.

27. On 11 May 2017 the complainant and a company alleged to be a sub-lessee of part of his property on the Estate (the company) issued separate

challenges in the Planning Court to the confirmed CPO. The defendants in each claim were the Secretary of State and the public authority.

28. On 25 May 2017 the complainant issued an application in the Planning Court for permission to apply for judicial review of the GVD served on him pursuant to the CPO. The three sets of proceedings were expedited and listed together for hearing on 1 and 2 August 2017. On 26 September the Judge handed his judgement dismissing all of the claims. On 31 October 2017 the Judge refused to grant permission to the claimants to appeal his judgement.

29. Following the execution of the GVD on 20 October 2017, the complainant made an emergency ex parte application in the Queen's Bench Division (QBD) on 24 October 2017 who ordered the public authority to let him back into the occupation of the property. The public authority made arrangements to do so but the complainant did not return to reside at the property. On 26 October 2017 at the Court's invitation the public authority appeared ex parte and the Judge discharged his Order of 24 October 2017.

30. On 2 November 2017 he applied to the Planning Court to set aside the Order of 26 October 2017 at the QBD and, for an Order under section 24(1) of the Acquisition of Land Act 1981 suspending the operation of the CPO. Both applications were dismissed by the Planning Court on 7 November 2017.

31. On 16 November 2017 he issued an application to the Court of Appeal for permission to appeal against the QBD's Order of 26 October. On 22 November he and the company issued an application to the Court of Appeal for permission to appeal against the Planning Court's Order of 7 November. Neither application for permission to appeal has been determined to date.

32. On 5 December 2017 the complainant and the company issued an application in the Court of Appeal for an urgent order inter alia staying the operation of the CPO and GVD. The application was refused by on 20 December 2017.

33. He has also made complaints to the public authority between April and July 2018 regarding property allegedly in a state of disrepair, housing allocations and homelessness. In some cases pursuing matters to the Local Government Ombudsman (LGO). The investigations that have concluded did not result in any adverse findings against the public authority.

34. He has also submitted 6 SARs to the public authority since 2016 for information relating to his contact with the public authority further to the redevelopment project and related matters. According to the public authority an exceptionally voluminous SAR submitted on 10 May 2018 would have been refused as manifestly excessive had it been considered under the

General Data Protection Regulations and Data Protection Act 2018 which have replaced the DPA 1998.

35. In terms of requests considered under the FOIA/EIR, prior to the request in this case on 12 December 2017, the complainant submitted two requests for information in relation to the redevelopment project on 18 April 2017 and 22 August 2017 both of which were complied with. Subsequent to the request in this case he made further requests for information to the public authority on 21 May 2018, 30 May 2018, 13 June 2018, 25 June 2018, 30 July 2018, 20 September 2018, 1 October 2018 and 14 October 2018. The Commissioner notes that some of these subsequent requests are not directly related to the redevelopment of Bacton Low Rise Estate.

36. The public authority acknowledged that the bulk of the FOI/EIR requests were submitted following the request in this case. It however argued that the requests are relevant because they show a continuing course of conduct –ie- that the complainant is still actively and resolutely pursuing matters which have been dealt with by the courts and the public authority's complaints team. Further, correspondence associated with the requests often contains unfounded allegations of misfeasance and other wrong doing by officers. The complainant's ongoing actions including litigation show a course of conduct that could be characterised as obsessive and demonstrate that he is likely to continue submitting further requests for information in relation to the redevelopment project. In addition, his use of aggressive accusatory language and the levelling of unfounded allegations about staff further indicate that he is unlikely to engage meaningfully with the public authority in relation to the redevelopment project.