

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 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 relating to the Council's policies and procedures for assessing rehousing applications.
2. The Commissioner's decision is that the London Borough of Camden ("the Council") is entitled to rely on section 14(1) of the FOIA to refuse to comply with the request.
3. The Commissioner does not require the Council to take any steps.

Background

4. The London Borough has set out to the Commissioner that it considers the request in this case to be part of an ongoing series of requests connected to the redevelopment of Bacton Low Rise estate. The Council explained that the complainant previously owned a leasehold in a property on the estate which has since been demolished. According to the Council, the complainant continues to submit a substantive number of requests relating to the change in their housing situation, including several internal complaints, Subject Access Requests (SARs) and requests for information under the FOIA. The request in this instance concerns the Council's policies and procedures for assessing applications to be rehoused.

Request and response

5. On 25 May 2018 the complainant contacted a member of the Council's Housing Needs team and requested information in the following terms:

"I followed up on our discussion yesterday and asked whether you can send me the policy on the procedure used (e.g. dataflow). You confirmed that you have a document establishing the sequence of processing information and will send it to me, unless your manager [name redacted] would object"

6. For context, the request in this instance was included in a wider chain of correspondence that discussed various issues relating to the Council's decision in respect of the complainant's application to be rehoused.
7. The Council responded on 26 June 2018 and refused to provide the information under section 14(1) of the FOIA.
8. Following an internal review the Council wrote to the complainant on 24 July 2018. The internal review addressed three separate requests for information submitted to the Council by the complainant: FOI11166, FOI11171 and FOI11220.
9. The request that is the subject of this decision notice is FOI11220. With regard to this request, the Council maintained its position and refused the request under section 14(1) of the FOIA.

Scope of the case

10. The complainant initially contacted the Commissioner on 13 June 2018 to complain about the way the Council had handled his previous information request of 21 May 2018 (FOI11166).
11. On 1 March 2019, the Commissioner asked the complainant to clarify the grounds of his complaint with regard to each of the requests included in the Council's internal review response of 24 July 2018 (FOI11166, FOI11171 and FOI11220).
12. In their submissions to the Commissioner of 7 May 2019 the complainant stated that, with regard to request FOI11220, the grounds of his complaint were as follows:

"I confirm that I would like the Information Commissioner to protect my statutory and convention rights by enforcing the Local Authority which is a Data Controller to disclose the requested information. Respectively, I confirm that I wish to pursue the complaint in respect of this request."
13. The Commissioner considers the scope of this case to be to determine if the Council has correctly applied section 14(1) to the request.

Reasons for decision

14. Section 14(1) of the 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 the 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.
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 Council's position

22. As previously stated, the Council consider the request in this instance to be part of a long running series of requests, submitted by the same complainant linked to events following the redevelopment of Bacton Low Rise estate.
23. To illustrate the wider context and history in which the request is set, the Council referred the Commissioner to paragraphs 21-36 of Decision Notice FER0736963². This case concerned a similar request submitted to

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

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

the Council from the same complainant about Bacton Low Rise. Paragraphs 21-36 are provided at Annex A.

24. The Council explained that the time spent responding to the complainant's requests for information had resulted in an unjustified and disproportionate burden on their resources when matched with the potential importance of the request. Furthermore, the Council state that the time spent justifying their position and preparing submissions in various investigations has increased the burden on what is an already busy team.
25. The Council go on to explain that the complainant often submits repeated SAR requests which result in repeated complaints. The Council explain that *"repeatedly justifying our actions on repeated SARs is disproportionate and not an effective use of our time, which of course is publicly funded."*
26. Given the sustained frequency of requests and internal complaints submitted by the complainant, the Council considers that responding to the complainant's request in this instance would simply lead to further requests.
27. According to the Council, the complainant has on occasion mislead staff about his current housing situation. They consider this to be a means of inconveniencing the Council which extend through his continued requests for information on various matters relating to Bacton Low Rise.

The Complainant's position

28. It is the complainant's position that the Council is incorrect in its application of section 14(1) in response to the request. The complainant is seeking the Council to disclose the information they hold within the scope of his request.
29. At internal review the complainant asserts that the Council have classed him as vexatious as opposed to the request. The Council's misunderstanding of the FOIA has, according to the complainant, resulted in a contravention of his human rights.
30. The complainant understands the Council to be withholding information on the grounds that any disclosure to the request would *"expose wrongdoing"*.

31. The complainant has instructed the Commissioner to enforce a disclosure from the Council as a means of protecting his "*statutory and convention rights*".

The Commissioner's position

32. The Commissioner's position is that the request is vexatious.
33. The complainant has made frequent requests over a number of years relating to the redevelopment of Bacton Low Rise estate. The complainant's requests often share the theme that the Council is engaged in a campaign to discriminate against him and is breaking the law. The Commissioner takes the view that this has caused the Council a disproportionate level of disruption, irritation and distress.
34. The Council's submissions in case FER0736963 clearly show that these matters have been comprehensively addressed through the Council's compliance with numerous information requests, SARs, as well as through cooperation with various legal proceedings brought against them by the complainant. Given the ongoing nature of the complainant's requests, the Commissioner considers it highly likely that responding to the request in this instance will only lead to further requests from the complainant.
35. Since the Council provided their submissions in case FER0736963 the complainant has submitted three further requests for information under the FOIA (FOI12039, FOI12320, FOI12838) and two SAR requests; all of which can be considered to stem from the redevelopment of Bacton Low Rise estate. The Commissioner is keen to point out that the request in this case may not be burdensome for the Council to comply with in isolation. However, it is the time and resource spent complying with the wider series of requests, SARs and internal complaints from the complainant that poses a significantly disproportionate burden on the public authority.
36. The Commissioner notes that the FOIA is generally considered to be "applicant blind". However, when establishing whether a request is vexatious, she considers it necessary to take into account the wider purpose and value to the request. The Commissioner notes that the request in this case clearly has a serious purpose as it stems from the complainant's application to be rehoused. Despite the considerable personal interest the complainant may have in obtaining this information, the Commissioner struggles to see how the requested information represents a matter of significant wider public interest. In light of this, the Commissioner considers that the impact of complying with the complainant's requests significantly outweighs any wider purpose or value to the request in this instance.

Reference: FS50868003

37. The Commissioner concludes that the request was vexatious and therefore the Council was not obliged to comply with it.

Right of appeal

38. 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

39. 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.

40. 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

The chronology of the interaction between the complainant and the public authority in the context of the redevelopment project is summarised below. This is taken from the Commissioner's decision notice FER0736963.

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.