

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 December 2022

Public Authority: Sandwell Metropolitan Borough Council
Address: Sandwell Council House
Oldbury
West Midlands
B69 3DE

Decision

1. The complainant has requested information relating to Sandwell Metropolitan Borough Council (the Council) sending two qualified solicitors to court and tribunal hearings.
2. The Commissioner's decision is that the Council The Commissioner's decision is that the Council was entitled to refuse to comply with the request in accordance with section 14.

Request and response

3. On 2 July 2021 the complainant requested information of the following description:

"It is within my own personal knowledge that SMBC are frequently sending two qualified solicitors to court and tribunal hearings instead of one (even where Counsel is instructed). Even if entitled to costs orders, any recovery would only be in respect of one solicitor and so there is a prima facie loss of public revenue here. Please state:

1 All court and tribunal hearings in the last three years where SMBC have sent more than one qualified solicitor;

2 Assuming that SMBC has a standard "charging" rate per solicitor what are costs for the use of a second solicitor on all these occasions to also include travel/subsistence claims?

3 What, if any costs, has SMBC recovered in respect of the attendance of a second solicitor in the last three years in respect of these hearings?

4 In respect of each and every relevant hearing who authorised the attendance of two solicitors instead of one?"

4. On 15 September 2021 the complainant refined his request stating the following:

"As ever, I am anxious to protect the public purse and so I will amend my request to cover the last two years rather than three.

For the avoidance of doubt, my request is solely in respect of civil litigation (contract, tort, public law etc) and is NOT in respect of first tier enforcement proceedings, prosecutions etc (but should include second tier appeals etc if applicable)".

5. SMBC refused the request under section 12(1) and section 14(1) of FOIA.

Reasons for decision

6. This reasoning covers the Council's application of section 14(1) together with its application of section 12(1) of FOIA.
7. Section 14(1) states that a public authority does not oblige a public authority to comply with a request for information if the request is vexatious.
8. The term "vexatious" is not defined within FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure." The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal. The Dransfield definition establishes that the concepts of

proportionality and justification are relevant to any consideration of whether a request is vexatious.

9. Dransfield also considered four broad issues:
 - The burden imposed by the request (on the public authority and its staff);
 - The motive of the requester;
 - The value or serious purpose of the request; and
 - Harassment or distress of and to staff.
10. It explained that these considerations were not meant to be exhaustive and also explained 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 dealing, the lack of proportionality that typically characterises vexatious requests.”
11. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean it must be vexatious.
12. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: “The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies.”
13. In its submission to the Commissioner, the Council explained that the complainant’s request is considered to be disruptive, burdensome and the complainant has made unfounded accusations against officers of the Council. It stated that it believes the complainant is holding a personal grudge against the Council Solicitors and the legal department more widely who were involved in the litigation with the deliberate attempt to cause annoyance and offence and harass staff.
14. The Council explained to the Commissioner that it considers the motivation of the request is to target two solicitors who have been

involved in litigation with the requester previously. It stated that as of the date of the request two of the Council's solicitors (separately or together) were involved in the following cases where the requester was a party:

- Six Information Rights Tribunal Appeals whereby the requester had appealed against a Decision Notice and the Council had been made a party. The Council provided the tribunal reference numbers to the Commissioner. It explained that three of the matters went to hearings, at which one or both of the solicitors were present.
 - Two civil claims issued by the requester against the Council.
 - A harassment claim issued by the Council's Director of Public Health against the complainant. The Council explained that the hearing took place in June 2021 and two of the Council's solicitors attended. The complainant's request about 'doubling up of solicitors' was received on 2nd July 2021.
15. The Council also stated that it considers that the complainant's motivation in making the request is directed at those solicitors, and the legal department of the Council more widely. The complainant however disputed this in his internal review request.
 16. The Council stated that the complainant has targeted the two solicitors via his online blog and provided the Commissioner with an extract. The Council argued that the extract from this blog demonstrated the complainant's intention in making the request is clear.
 17. The Council also stated to the Commissioner that the complainant has not made any formal complaints to the Council via the complaints procedure in relation to this matter but has instead sought to obtain information via FOIA.
 18. The Council explained that a request was made by the complainant in August 2021 in which he asked for information relating to the cost incurred by the Council's solicitors. The Council stated that it provided the requested information to the complainant.
 19. The Council stated that the above demonstrates a high frequency of requests and the significant burden this imposes on the Council. It therefore believes it is reasonable for the Council to now consider section 14(1) as it is unable to sustain this level of disruption.

20. The Council argued that the complainant is labouring the point of an issue which concluded by way of litigation in 2021 and that this request creates further work to a subject the Council has already diverted significant resources to. The Council also argued that it only has a small team to handle information requests and states that a significant amount of time has been spent dealing with information requests and reviews from the complainant.
21. The Council explained to the Commissioner that given the subject matter of previous requests, the Council considers that responding to this request would be unlikely to be a satisfactory conclusion for the complainant and that this is evidenced by the amount of decision notice appeals made by the complainant and the contents of the complainant's own blog.
22. The Council argued that whilst it recognises there is of course a public interest in the spending of public money, it believes this request does not meet that purpose. It stated that there are likely to be limited cases whereby more than one solicitor is involved in a matter or in attendance at a Hearing and where that is the case, there will be a specific purpose which is the decision for the Council. It argued that the complainant's request does not seek to understand the Council's decision-making process.
23. The Council stated that it fully accepts the important and necessary role that transparency plays to ensure visibility and public accountability in how it discharges its functions. However, its view is that this level of scrutiny on this single matter is unjustified.
24. The Council asserts that the complainant's unrelenting persistence is without merit and is unreasonable having regard to the nature of the withheld information and the value that public disclosure would bring. It argues that it is difficult to see the 'overriding public interest' in this particular request. The Council accepts that the complainant himself has an interest, and that historically, the public interest was greater, the Council takes the view that this is now negligible and outweighed by the ongoing burden to the Council in dealing with the requests.
25. The Council referred to paragraph 49 of *Peter Shaw v IC and Arts Council England* EA/2019/0304 9 April 2020 which states:

"In our view this is the kind of case referred to by the [Upper Tribunal] at paragraph 38 of *Dransfield* where "...the weight to be attached to th[e] value or serious purpose may diminish over time'. It is a case where '...the underlying grievance has been exhaustively

considered and addressed' and where 'subsequent requests (especially where there is "vexatiousness by drift") may not have a continuing justification'. This is a case where, in our view, there is indeed 'vexatiousness by drift', as the Appellant moves from his original concern to the way his correspondence has been dealt with. In our view there is little public interest in this secondary issue."

26. The Commissioner is of the view that this request is directly connected with disputes between the Council and the complainant. The Commissioner agrees with the Council that the complainant is unlikely to be satisfied with a response to the request as he has made a number of requests all relating to the Council's decision making processes, which often result in complaints to the Commissioner, formal decision notices and appeals to the tribunal.
27. The Commissioner's view is that the nature has reached a level which is disproportionate to the value of the request and has become unduly burdensome on the Council.
28. Whilst the Commissioner acknowledges there is some wider interest, it is not proportionate to the time and burden that would be imposed on the Council if it complied with the request. This is further demonstrated through the Council's arguments of its application of section 12(1) (cost limit) to the request. As section 14(1) relates to the burdensome nature of requests in proportion to the value of the requested information, the Commissioner considers that the arguments the Council advanced in respect of section 12 are also relevant to determining the extent of the burden this request and the question of proportionality.
29. In support of its arguments of section 12, the Council explained that it's Case Management System, CIVICA, is not searchable in order to satisfy the complainant's request and therefore an officer would need to manually go through each file to find the relevant information requested by the complainant. This manual review would involve reviewing every Hearing/Attendance note on each file to determine whether two solicitors attended and if any are identified they would need to review the following:
 - The time recording for that file to determine what had been charged
 - all invoices on the file to determine whether any expenses have been claimed

- any recharges to determine whether any costs had been recovered.
 - Emails on the file proprot to the Hearing date to extract information about authorisation.
30. The Council confirmed that over the course of 2 years 4330 files were opened, 1404 files would be classed as litigious and the files which are classed as litigious would potentially fall within the complainant's request. The Council stated that it would take an officer one minute per relevant item and would therefore take 117 hours to complete the task or £2925.
31. The resources that would have needed to be diverted to this task the Commissioner accepts is burdensome. The estimate of the time it would take to comply with the request is clearly over the prescribed limit of 18 hours or £450 as set out in the Freedom of Information and Data Protection (Fees and Appropriate Limit) Regulations 2004. The Commissioner has considered this burden in the context of the arguments put forward by the Council on the vexatious nature of the request.
32. In the light of the evidence provided which demonstrates the clear burden of compliance with this request set against the limited serious purpose in the request, the Commissioner is satisfied that the request is vexatious and that the Council was entitled to rely on section 14(1) FOIA.

Right of appeal

33. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

34. 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.
35. 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

Laura Tomkinson
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