



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2007/0114
Information Commissioners Ref: FS50122016

Freedom of Information Act 2000

Heard on the papers
on 16 April 2008

Decision Promulgated:
13 May 2008

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

Anisa Dhanji

and

LAY MEMBERS

Anne Chafer and Henry Fitzhugh

BETWEEN:

MR DAVID GOWERS

and

Appellant

THE INFORMATION COMMISSIONER

and

Respondent

LONDON BOROUGH OF CAMDEN

Additional Party

FREEDOM OF INFORMATION ACT 2000

DECISION

The Tribunal finds that the Decision Notice was in accordance with the law, and therefore dismisses this appeal.

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr. David Gowers (the "Appellant"), against a Decision Notice issued by the Information Commissioner (the "Commissioner"), dated 8 October 2007. The Decision Notice relates to a request for information made by the Appellant to the London Borough of Camden (the "Council"), under the Freedom of Information Act 2000 ("FOIA").

The Request for Information

2. The Appellant made a number of requests to the Council about the work of its Central Complaints Unit ("the CCU").
3. The Council responded to certain requests, but on the basis of sections 12 (cost of compliance exceeds appropriate limit) and 14 (vexatious or repeated requests) of FOIA, it refused 10 of the Appellant's requests.
4. Since these requests related to the CCU and any internal review of the Council's decision would have been conducted by the CCU, the Council advised the Appellant to pursue any further complaint directly with the Commissioner.

The Complaint to the Commissioner

5. On 24 January 2006, the Appellant complained to the Commissioner who undertook inquiries. He concluded that that all 10 requests were vexatious, and that accordingly, the Council had correctly applied section 14(1).
6. Having reached this finding, the Commissioner considered that he did not need to go on to assess whether the Council had also correctly applied section 12.
7. Although the Commissioner dismissed the Appellant's complaint, he found the Council to be in breach of section 17(1) of FOIA because it had refused the Appellant's request dated 8 September 2005 outside the 20 working days time limit prescribed by FOIA. However, the Commissioner did not require the Council to take any steps in respect of this breach.

The Appeal to the Tribunal

8. By a Notice of Appeal dated 1 November 2007, the Appellant appealed to the Tribunal. In his Notice of Appeal, he says simply that he believes that the Commissioner did not carry out a thorough investigation, and did not check that the information given to him by the Council was correct. In a separate document, comprising some 7 pages and running to over 30 paragraphs, the Appellant expanded on his grounds of appeal by setting out the issues he takes with the individual paragraphs of the Decision Notice.
9. In his Reply, the Commissioner summarises the Appellant's grounds of appeal under seven heads and addresses each in turn. The Council has

adopted the same framework for its written submissions, as indeed has the Appellant. For convenience, we have set out these seven heads below:

- The Commissioner erred in concluding that the Appellant's requests were vexatious, given that in 2007, the Council allowed further requests for information made by the Appellant.
 - The Commissioner erred in failing to make reference, in the Decision Notice, to a number of material facts and considerations, in particular to (i) the content and recommendations of the Appellant's Research Report; (ii) the fact that the Appellant was allowed to present his report to the Council executive in September 2007; (iii) the fact that certain of the Appellant's complaints had been fully or partially upheld, including by the Ombudsman; and (iv) the fact that of the 3 box files of correspondence held by the Council, only 15 of the Appellant's complaints had ever been deemed vexatious and repetitious.
 - The Commissioner failed to investigate the reason why the Appellant began his research into the CCU, and accordingly erred in concluding that the Appellant was on a one-man crusade to criticise the CCU.
 - The Commissioner erred in failing to keep the Appellant informed of the progress of his investigation and in failing to allow the Appellant to comment on the explanations advanced by the Council in support of the exemptions claimed. As a result the Commissioner took the word of the Council verbatim and only looked at evidence supplied by the Council.
 - The Commissioner erred in failing to investigate and rule on the section 12 exemption also claimed by the Council.
 - The Commissioner erred in failing to require steps to be taken in relation to the 'matters of concern' identified at paragraph 46 of the Decision Notice.
 - The Commissioner erred in failing to conclude that the Council had breached section 10(1) of the Act, and in failing to refer to this in the Decision Notice.
10. Additionally, in his written submissions to the Tribunal dated 4 April 2008, the Appellant says that for the reasons he has set out at some length, the Commissioner's employee who investigated his complaint was not impartial.

Determination on the Papers

11. This appeal has been determined on the papers pursuant to Rule 16 of the Information Tribunal (Enforcement Appeals) Rules 2005.
12. The Commissioner and the Council submitted that the appeal could properly be determined on the papers. The Appellant requested that it be determined

at an oral hearing. At least part of the reason why the Appellant wished to have an oral hearing was to challenge remarks that had been made about him which he considered were defamatory. However, the Tribunal considered that any such challenge would not assist it in the issues it had to determine. In any event, since none of the parties were intending to call witnesses, the Appellant's challenge would need to be by way of submissions, and this could be done in written submissions.

13. Taking into account the nature of the issues in this appeal, and that there were to be no witnesses (albeit that the Appellant had said he was unable to call witnesses because he could not meet their costs), the Tribunal ruled that that the appeal could be properly determined without a hearing.
14. We have considered all the documents received from the parties (even if not specifically referred to in this determination), including in particular, the documents in the agreed bundle and the parties' written submissions and replies.

The Tribunal's Jurisdiction

15. The scope of the Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the Decision Notice is not in accordance with the law or, to the extent that it involved an exercise of discretion by the Commissioner, he ought to have exercised that discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, it must dismiss the appeal.
16. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the Decision Notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, the Tribunal will often receive evidence that was not before the Commissioner.

Legislative Framework

General

17. Under section 1 of FOIA, any person who has made a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.
18. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA or if certain other provisions apply. In the present case, the Council has invoked sections 12 and 14. These sections do not provide an exemption as such. Their effect is simply to render inapplicable the general right of access to information contained in section 1(1). We will consider both sections in more detail, below.

Section 12

19. Section 12 provides that a public authority is not required to comply with a request for information if it estimates that the costs of doing so will exceed the “appropriate limit”.
20. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Regulations”), prescribe the appropriate limits in relation to referred to in section 12. For a public authority, like the Council, which is not listed in Part 1 of Schedule 1, the appropriate limit is £450.
21. Regulation 4 sets out the costs that the public authority is allowed to take into consideration in estimating its costs of compliance. Regulation 5 permits public authorities to aggregate the costs of complying with two or more requests for information by the same person where the requests relate to the same or similar information or are received within 60 consecutive working days.

Section 14

22. Section 14 sets out two grounds on which a public authority may refuse a request. The first is where the request is vexatious. The second is where the request is identical or substantially similar to a previous request that the public authority has already complied with.

23. Specifically, section 14 provides as follows:

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

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

Evidence and Findings

Issues

24. The issue to be determined in this appeal is whether the Council was entitled, under the terms of FOIA, to refuse the Appellant’s 10 requests. The Council has relied on sections 12 and 14(2) in refusing certain of the requests, and on section 14(1) in respect of all 10 requests. It would be logical, therefore, to begin by considering whether the 10 requests were properly refused under section 14(1); if they were, this will determine the appeal regardless of whether the Council was also excused from compliance by reason of any other sections.

Definition and Principles – Section 14(1)

25. The first question when considering section 14(1) is what is meant by “vexatious”. FOIA does not define the term. The concept of vexatious litigants from other legal contexts is not an appropriate analogy to use because what

section 14(1) does make clear is that it is concerned with whether the request is vexatious, not whether the applicant is vexatious. This is of course consistent with FOIA being motive-blind (which we will say more about in due course).

26. In the absence of a definition of “vexatious” in FOIA, we must assume that Parliament intended the term to be given its ordinary meaning. In **Ahilathirunayagam v. Information Commissioner and London Metropolitan University (EA/2006/0070)**, that ordinary meaning was taken to refer to activity that “is likely to cause distress or irritation, literally to vex a person to whom it is directed”. Similarly, the Commissioner’s Awareness Guidance Note on vexatious and repeated requests, observes that dictionary definitions of “vexatious” refer to “causing annoyance or worry”. The focus therefore, is on the likely effect of the activity or behaviour. In the FOIA context, the question is whether the request is likely to vex. That will, of course, depend on the facts of any particular case.
27. There are, however, some observations we would make which may be of generic application. The first is that in our view, it cannot have been the legislative intention that a public authority should be relieved of its obligation to disclose information because a particularly sensitive member of staff may be distressed by it, nor that a request to one public authority should be subject to a different standard from that made to another public authority. The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one.
28. Second, and for the same reason, we consider that a request cannot be vexatious just because the applicant is seeking information which the public authority or any of its staff may prefer not to disclose, for example, because it does not reflect well on them. Distress, annoyance, irritation or worry arising from the possible consequences of disclosure cannot turn an otherwise proper request into a vexatious one; indeed that would defeat the purpose of FOIA. This is consistent with the Tribunal’s view as expressed in **Hossack v. Information Commissioner and DWP (EA/2007/0024)**, that for a request to be vexatious, the distress must be unjustified.
29. Third (and this is also a point made in **Hossack**), when considering if a request is vexatious, it is not only the request itself that must be examined, but also its context and history. A request which, when taken in isolation, is quite benign, may show its vexatious quality only when viewed in context. That context may include other requests made by the applicant to that public authority (whether complied with or refused), the number and subject matter of the requests, as well as the history of other dealings between the applicant and the public authority. The effect a request will have may be determined as much, or indeed more, by that context as by the request itself.

Background to the Requests

30. As with many other cases where the issue of vexatiousness arises, the evidence in the present case shows a long history of unhappy encounters

between the parties. The evidence also shows that the Appellant made a number of FOIA requests to the Council, apart from the 10 requests in issue in this appeal, which the Council did comply with. We will look first at this background and context, and then at the 10 requests in issue in this appeal.

31. The evidence is that the Appellant had a number of grievances against the Council dating back to 2000, relating to their services in connection with his daughter's education. In accordance with its internal complaints procedure, some or all of these complaints were referred by the Council to the CCU. In some cases, the CCU carried out a formal investigation of the complaints. In about 15 cases, however, it rejected the Appellant's complaints without investigation on the basis that they were "deliberately repetitious or vexatious".
32. The Appellant was clearly unhappy with how the CCU dealt with his complaints and with their findings. He made a number of allegations about the CCU and its head, Mr. Peter Swingler, to the effect that they and he, in particular, were incompetent and lacked independence. The following example comes from the Appellant's letter dated 25 October 2004 to Mr Swingler after a complaint by the Appellant against the Council's Social Services Department had been dismissed:

"In addition, your department and you are most certainly not independent and to state this is nonsense. Moreover, you are not capable of carrying out any investigation to a reasonable standard."

....

"Furthermore, to have misread the situation.....proves one of two things:

1. *You are incompetent at your work.*
2. *You deliberately distorted the facts to protect Social Services.*

Which is it Mr Swingler?"

....

"You assured me in previous correspondence that you proofread letters, however, it appears that yet another mistake has escaped your notice....

Now this proves one of two things:

1. *You may suffer from 'word blindness'.*
2. *You do not have sufficient capabilities to hold the position of the head of the Central Complaints Unit.*

Which is it Mr Swingler?"

33. Similarly, in a letter dated 18 May 2005 to the Council's Department of Law and Administration, he states:

“... I believe there can only be two explanations why Mr Swingler’s department acts as it does:

- *Mr Swingler and some of his staff do not have the capacity to hold down such a responsible position*
- *Mr Swingler is corrupt and deliberately fails to uphold many serious complaints, as this would be detrimental to the council.”*

34. The Appellant also made a number of complaints against the CCU to the Local Government Ombudsman. We do not have detailed evidence before us about these complaints, but the indications are that some complaints were upheld, although most were not. It is clear, however, that this did not bring matters to an end for the Appellant, and that he remained dissatisfied with the CCU, and particularly with Mr. Swingler.
35. In 2005, after FOIA came into force, the Appellant made various requests for information to the Council, relating mostly to the CCU. These included the following requests:

Request dated 18 April 2005

".....that Camden Council furnish me with the total cost of running the Central Complaints Unit per year and that includes the staffs [sic] salary and all revenue to keep it operating".

Request dated 17 May 2005

- “1. How many formal complaints did Camden’s Central Complaints Unit receive in 2004, at Stage 3?
2. How many were upheld?
3. How many were taken by the complainants to the Local Government Ombudsman?”

Request dated 18 May 2005

- “1. How many complainants that have returned your satisfaction sheet were pleased with the outcome of their complaint and how many were not?
2. Can I please have a copy of the collated information in relation to your satisfaction sheet from 2000-2004?
3. How many councillors have said they have appreciated the robustness of the CCU and do you have objective evidence of this?
4. How many voluntary organisations have said they have appreciated the robustness of the CCU and do you have objective evidence of this?

5. When were awarded [sic] the 'Charter Mark' and when does it expire?"

Request dated 8 September 2005

"... you [Mr. Swingler] say that you have various other duties; can I request under the Freedom of Information Act 2000, what all your duties are in your employment for Camden Council and this includes any panels that you are a member of."

Request dated 23 June 2005

- "1. What is the actual procedure a CCU Complaints Officer uses when investigating a complaint. Are they able to make suggestions, are they able to offer their own opinions, are they able to inform you that a complaint is likely to fail, without a report being issued, are they allowed to add information that has nothing to do with the complaint and are they truly independent?
2. Is there any policy or other document that the CCU follow and am I allowed to see a copy if it exists?"

Request dated 27 September 2005

"I have some questions, which I would like responded to under the Freedom of Information Act 2000. All the questions relate to Camden's Central Complaints Unit. My request is as follows:

1. When did the Central Complaints Unit come into being?
2. Were the staffing levels as they are now or have they increased or decreased?
3. What working backgrounds have the officers, past and present, come from?
4. How long has Mr. Swingler been head of the CCU?
5. Did Mr. Swingler work for the Council in another position before joining the CCU?
6. How long has the three-stage system been in operation in Camden and what was in place before this?
7. Are Customer Satisfaction Forms sent to all complainants or just those that reach stage 3?
8. Does every complainant that reaches stage 3 received a Customer Satisfaction Form or is it just a sample of complainants?
9. Does every complainant receive the offer to meet with the investigator at

stage 3, or are there any exceptions?

10. Is the CCU independent of the Council or are they only independent in respect that they are another department of the Council, for example, the housing department would be independent from the environment department?

11. Does any officer of the CCU fraternise with any other officer of the council, except when talking to them formally during an investigation; I refer to working hours only?

12. Has there ever been a quality audit of the CCU and if so, when was this and if there was one, can I obtain a copy of the findings?

13. Did Camden Council take part in the Ombudsman's study of the local authority complaints systems in 1998/9?

14. Do you believe the CCU to be adequately resourced?

15. What does the CCU do with the Customer Satisfaction Forms, once the information has been taken from them?

16. Are the Customer Satisfaction Forms anonymous or does the CCU know which complaint they refer to?

17. Do you believe that Camden's complaints systems works effectively or can improvements be made?

18. How many children have used Camden's complaints procedure and what were the outcomes of these complaints?

19. Does a note taker attend every interview a complainant have [sic] with the CCU or is this only offered to certain people?

20. Does the Council keep records of all complaints they are vexatious [sic] and repetitious and if they do, how many complaints received were vexatious and repetitious between 2002-2005?

36. As the foregoing shows, that the Appellant made numerous requests, in a relatively short period of time, mostly on the same theme, ie, about the CCU's handling of complaints. We also note that when the Council provided information to the Appellant in response to his requests, that generated further requests.

37. It is clear to us that these requests were largely a continuation of the Appellant's grievances against the Council, and against the CCU in particular. In fact, a number of his requests are interspersed with further allegations and complaints. For example, in his letter dated 18 April 2005, along with his request for information on the annual cost of running the CCU, he reasserts his allegation that Mr Swingler and the CCU are not independent and he calls

for the CCU to be disbanded. The Council provided the information requested, but also expressed its confidence in the CCU and rejected the idea that it should be disbanded. The Appellant responded on 18 May 2005, making a range of allegations against Mr Swingler and the CCU, and asserting that the £135,960 it cost to run the CCU could be better spent. On the same day, he wrote another letter requesting further information relating to the CCU's complaints history.

38. It appears that the Appellant's concerns about the CCU then led him to embark on what he describes as a project to research whether other service users had had positive or negative experiences of the CCU. The Appellant says, in his submissions to the Tribunal, that all his requests were made as part of this research. We note, however, that he appears to have mentioned the research to the Council for the first time on 11 August 2005. On that date, he wrote to the Council's Chief Executive informing her about the research, and inviting the Council's input. Mr Swingler responded on behalf of the Council, stating that he did not consider the research to be *bona fide* since the Appellant had already called for the CCU to be disbanded. The Appellant responded on 23 August, rebutting the suggestion that his research was not *bona fide* and making a further FOIA request as to how many complaints he had made over the years that were repetitious and vexatious. This was followed by a further letter from the Appellant to Mr Swingler taking issue with what he described as Mr Swingler's "knee jerk" reaction in dismissing his research and stating that this was something he would be reporting on.
39. The Appellant also appears to have placed a notice in two local papers soliciting views from other complainants and appears to have written directly to certain people soliciting their involvement in this research.

The Requests in Issue in this Appeal

40. It is against this background that the 10 requests in issue in this appeal must be assessed. The 10 requests were as follows:

Request 1 - Letter dated 8 September 2005

"The officers employed at present in Camden's Central Complaint's Unit, I believe to be as follows:

[List of council officers]

Former members of staff, I believe to be:

[List of council officers]

My request is in three parts and should cover the years 1999-2005.

- 1) Does any of the present team in the Central Complaints Unit, have a partner or relative working for Camden Council at this time and if so, what department do they work in?

2) Did any of the former team members in the Central Complaints Unit, have a partner or a relative working for Camden Council and if so, what departments do they work in?

3) Do any of the present or former team members of the Central Complaints Unit have a partner or relative who worked for Camden Council, but who no longer does?

4) When applying for a position in the Central Complaints Unit, do you have to disclose if a partner or relative works for the council and should a partner or relative begin employment with the Council whilst you are working in the Central Complaints Unit, would you have to disclose this or not?"

Request 2 - Letter dated 19 October 2005

"How many complaints were made against officers in the Central Complaints unit in the year 2000?"

Request 3 – Letter dated 19 October 2005

"How many complaints were made against officers in the Central Complaints Unit in the year 2001?"

Request 4 - Letter dated 19 October 2005

"How many complaints were made against officers in the Central Complaints Unit in the year 2002?"

Request 5 - Letter dated 19 October 2005

"How many complaints were made against officers in the Central Complaints Unit in the year 2003?"

Request 6 - Letter dated 19 October 2005

"How many complaints were made against officers in the Central Complaints Unit in the year 2004?"

Request 7 - Letter dated 19 October 2005

"How many complaints were made against officers in the Central Complaints Unit in the year up until and including the 30 September 2005?"

Request 8 - Letter dated 31 October 2005

"1. Does Camden Council have documentary evidence that the Central Complaints Unit (CCU) has improved its complaints procedure when recommendations have been made under CMSAS 86:2000; and if they have, may I request this documentary evidence? There should be some from 2001-2005".

2. When the CCU has received negative feedback from complaints, what do you do to resolve and change what the feedback has highlighted and is there documentary proof of this; and if there is, may I obtain a copy?

3. Camden Council's CCU are registered with the British Standards Institute (BSI); how much did Camden Council pay the BSI for initial registration and how much do they pay for yearly assessment?

4. The BSI issues certificates on their yearly inspection, I would like to obtain copies of these certificates from 2001-2005."

Request 9 - Letter dated 31 October 2005

"1. On what dates did [names of three council officers] leave Camden Council's employment?

2. Has Camden Council, from the years 2001-2005, consulted and paid for, any outside agency or consultancy in relation to their complaints departments?

3. If Camden Council has consulted and paid for, any outside agency or consultancy in relation to their complaints departments, what dates did this occur and how much was paid to these outside agencies and consultancies?

4. How many training sessions did the CCU give to other boroughs and any other agencies, from 2001-2005; and how much was generated from these sessions?"

Request 10 - Email on 1 November 2005

"Dear [name], I have been reliably informed that you are the partner of Mr. Peter Swingler, Head of Camden's Central Complaints Unit, is this correct?"

41. Requests 2 to 7 comprise the separated elements of an earlier request dated 6 October 2005 which was as follows:

"Under the Freedom of Information Act 2000, I would like to know how many complaints were made against members of the team in the Central Complaints Unit, including Mr. Swingler?"

How many of these complaints were upheld (either fully or partially) and how many were not upheld?

I require this information from the years 2000-2005".

The Council's Refusals

42. On 10 October 2005 the Council refused the request dated 6 October on the basis that to comply with the request would exceed £450. The Council invited

the Appellant to contact it to discuss the possibility of refining the request. Instead, on 19 October 2005, the Appellant resubmitted the request as six separate requests, which form Requests 2 to 7 above, stating that this should “negate” the costs objection.

43. On 11 October 2005, the Council refused Request 1, citing section 14(1) of FOIA. Taken along with the other requests made by the Appellant about the CCU, it considered that this request formed evidence of a pattern of obsessive requests.
44. On 8 November 2005, the Council issued a notice refusing all 10 requests on the basis that the requests were vexatious and “repeated”, and that in relation to Requests 1 to 9, the estimated costs of compliance would be £687.50.

The Parties’ Positions

45. We come now to the key question in this appeal. Were these 10 requests vexatious? We will refer to each party’s position in turn, and will then set out our findings.
46. The Appellant says they are not vexatious. His grounds of appeal have been summarised at paragraphs 8 - 9 above. We have also considered his written submissions dated 4 April 2008, and his reply to the written submissions of the other parties. The Appellant’s argument appears to be twofold; first that the requests cannot be vexatious because subsequent to its refusal of these 10 requests, the Council allowed his further requests on the same theme, and second, that the purpose of the requests was for the research he was carrying out on the CCU and that this should have been considered by the Commissioner before finding the requests to be vexatious.
47. The Commissioner says that the requests are vexatious. He refers to the criteria in his Awareness Guidance Note on vexatious and repeated requests which states that a request can be treated as vexatious where:
 1. it would impose a significant burden on the public authority in terms of expense or distraction; and
 - 2 it meets one of the following criteria:
 - a) it clearly does not have any serious purpose or value;
 - b) it is designed to cause disruption or annoyance;
 - c) it has the effect of harassing the public authority; or
 - d) it can otherwise fairly be characterised as obsessive or manifestly unreasonable.
48. The Commissioner says that criteria (1) above is met because the requests did impose a significant burden on the Council. The 10 requests for information were only part of the Appellant’s on-going correspondence with Council over a long period of time, which included numerous complaints by

the Appellant against the Council. The Appellant had started making requests for information about the work of the CCU in April 2005, and this theme had continued until the requests that are the subject of this appeal, and indeed beyond that. The Council did not invoke section 14 immediately, but did so only when the nature and pattern of the requests became clear.

49. The Commissioner further says that while the criteria in 2(a) or (b) above have not been met, the criteria in 2(c) is met. Even though this may not have been intended, the requests had the effect of harassing the public authority, and were obsessive or manifestly unreasonable.
50. The Council asks the Tribunal to uphold the Commissioner's decision. Amongst other things, it says that:
- the 10 requests in issue are only part of the Appellant's extensive and on-going correspondence with the Council since 2000;
 - 15 of the Appellant's complaints against the Council have been found to be vexatious and repetitious under the Council's internal complaints procedure which is more than for any other complainant, and these decisions have been upheld by the Ombudsman when challenged;
 - the tone of his correspondence has often been tendentious and abusive;
 - because of the Appellant's personal attacks on staff, the Council had to require him, since June 2004, to address all his correspondence to a specific officer in the Council's Legal Services department;
 - the Appellant has shown an obsessive personal interest in the personal life of Mr Swingler, to the extent of trying to identify his wife and writing to her directly, as evidenced by Request 10;
 - it is disingenuous for the Appellant to say that his research was intended to be independent and not intended to discredit the CCU or criticise individual members of the CCU; he had already declared, in advance of any his research, that he considered that the CCU should be disbanded;
 - the Appellant's attacks have not been limited to the professional integrity of the Council's staff; the Ombudsman also had to write to warn the Appellant against unwarranted attacks on the integrity of his staff; and
 - the CCU consists of the equivalent of only 3 full time staff and the numerous requests made by the Appellant have had a detrimental effect on the Council's ability to respond to complaints made by the public which is the CCU's primary role.

Findings

51. Having given careful consideration to the 10 requests, the history of prior dealings between the Appellant and the Council, the submissions of the parties, and to the considerations set out in paragraphs 25 - 29 above, in our view, the 10 requests were clearly vexatious.
52. We will comment first on the context of the 10 requests and then on the requests themselves.
53. At paragraphs 30 - 39 above, we have summarised the history of the dealings between the Appellant and the Council, and have set out a number of excerpts from his letters and emails to the Council. We make no findings as to whether the Appellant's various complaints and grievances against the Council were or were not well-founded, nor do we make any findings about whether the Appellant's research was or was not *bona fide*. These are matters outside the scope of this Tribunal's jurisdiction. What we do find, however, is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient, as hostile, provocative and often personal (particularly in respect of the CCU's head), going beyond any reasonable pursuit of his grievances, and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them. This is true both in the case of the FOIA requests he made to the Council pre-dating the 10 requests, as well as his other correspondence to and about the CCU.
54. Against this background, and knowing that the Appellant had already formed the view that the CCU should be disbanded, any reasonable public authority would likely have perceived the Appellant's 10 requests in issue in this appeal, as a continuation of his campaign. This is likely to have been compounded by the frequency and persistence of the requests, the focus on obtaining negative information about the CCU, and by the fact that the requests were often interspersed with further allegations of incompetence and bias. We find that taken in their context, the requests are likely to have been very upsetting to the CCU staff and that they, and particular Mr Swingler, are likely to have felt deliberately targeted and victimised. This is all the more so because the CCU comprised only a few people.
55. It is of course important that the requests should be assessed individually, and that all requests from an applicant should not be dismissed as vexatious just because some are vexatious. We have considered whether any of the 10 requests ought to be viewed differently. However, in our view, except for Request 10 (which we will address further below), there is little to distinguish between the various requests. To try to do so would be to ignore their overall character and history.
56. If any request stands out, it is Request 10, as being particularly vexatious. This is the e mail dated 1 November 2005, addressed to Mr Swingler's wife who is (or was at the time) also a Council employee, asking whether she was Mr. Swingler's partner.
57. In his grounds of appeal, the Appellant has given the following explanation for this request:

"I asked the question if any officer in the CCU had partners or relatives working for Camden Council. I asked this question so that I could highlight any claim of bias should an officer of the CCU have to investigate a person related to them. Moreover, I was informed by a contributor to my research that Mr. Peter Swingler, Head of the CCU, and his wife, both work for the Council and both are managed by the same department. This request was refused and I went to 192.com put in the name 'Peter Swingler' and his address and the name of his wife were shown. I contacted his wife at the Council and asked if this was she and the Council took exception to this."

58. The Council says it conducted a similar search, that the results showed 5 people of the same name, and that in order to identify the correct individual, the person conducting the search would need to know where the person lived. Mr Swingler's wife is included in the results of the search under her married name. At work she is known by her maiden name of [name]. It says, therefore, that the Appellant must have taken other steps to investigate the identity of Mr Swingler's wife.
59. We make no findings as to whether or not the Appellant did take steps to identify Mr Swingler's address. However, given the history that we have outlined above, and given that there is no evidence to suggest that any of the complaints by the Appellant involved Mr. Swingler's wife, we have no doubt that this request would have been seen as an indication of how far the Appellant was prepared to go to obtain information with which to try to discredit Mr. Swingler. We find it likely that this would have been greatly distressing for both Mr Swingler and his wife.
60. There is no merit in the Appellant's arguments as to why the 10 requests should not be characterised as vexatious. He says that they cannot be vexatious because the Council allowed further requests on the same theme. However, the question of whether the requests are vexatious must be considered in light of the circumstances when the requests were refused. The issue is whether the public authority's refusal was lawful at the time of the refusals, regardless of what happened subsequently.
61. In any event, while section 14(1) provides that a public authority is not obliged to respond to a vexatious request, it does not prevent it from doing so, just as it may choose to respond to a request even when the costs exceeds the limits under section 12. As the Commissioner has emphasised in his Decision Notice, a consistent approach is to be recommended. However, that is different from saying that by responding to a certain type of request, the public authority is then under an obligation under FOIA to respond to all other such requests.
62. As to the Appellant's contention that the requests were not vexatious because they were part of the research he was carrying out on the CCU, it is not clear from the evidence before us that all his requests dating back to April 2005 were for this purpose or whether the research was conceived later. However, as already noted, FOIA is motive-blind. A public authority's obligations under FOIA and an applicant's entitlement to the information requested are not any the lesser or greater by reason of what the applicant's

purpose or motive in making the request may have been. Of course, if an applicant's motives are to harass, irritate or annoy a public authority, it is more likely that his request will be characterised as vexatious, but that is simply because in such a situation, it is likely that his request will be designed to achieve his objective. It does not follow that a request can only be vexatious if the applicant intended it to be so; it may be vexatious regardless of his motives.

Effect of the Tribunal's Findings

63. Our finding that the 10 requests were vexatious means that we uphold the Commissioner's Decision Notice, and the Council is not obliged, therefore, to provide the Appellant with the information requested.
64. Having reached this finding, it is not necessary to consider whether the Council is also relieved of its obligations under FOIA by reason of section 12, section 14(2), or any other section (including section 40 which has not been relied on, but which may also apply). We note that the Appellant has argued that the Commissioner should have gone on to make findings as regards section 12. However, a finding of whether or not the Council properly applied section 12 would not alter the outcome of this appeal, just as it would not have altered the outcome of the Commissioner's decision.

Other Issues

65. There are, however, certain other issues that have arisen in this appeal that we ought to briefly address.

The Council's Refusal Notices

66. We note that the Commissioner found the Council to be in breach of section 17(1) for failing to respond to the Appellant's request of 8 September 2005 within the prescribed 20 days. The Council has conceded this.
67. We find that the Council was also in breach of section 17 because of shortcomings in its refusal notices as regards why the requests were being refused. In its refusal of 8 November which relies on sections 12 and 14, the Council did not specifically mention those sections. Section 17(5) of FOIA requires that a public authority which, in relation to any request for information, is relying on a claim that sections 12 or 14 applies, must give the applicant a notice stating that fact.
68. Also, in its notice of 10 October 2005 in which it refused the precursor to Requests 2 to 7, the Council cited section 12, but gave no indication of what it estimated the costs of complying with the request would be. In its refusal dated 8 November 2005, it gave the estimated the costs of complying with Requests 1-9, but it did not indicate how the figure of £687.50 was arrived at. Given that the Regulations are quite specific about the costs that a public authority is allowed to take into consideration in estimating its cost of compliance, and about the notional hourly rate to be applied, a public authority seeking to rely on section 12 should include in its refusal notice, its

estimate of the cost of compliance and how that figure has been arrived at, so that at the very least, the applicant can consider how he might be able to refine or limit his request so as to come within the cost limits.

69. We do not, however, require any remedial action to be taken in respect of the Council's breach of section 17.

The Commissioner's Awareness Guidance Note

70. We have already referred to the Commissioner's Awareness Guidance Note number 22 on vexatious and repeated requests. This is of course not binding on the Tribunal, although it is a helpful framework. We would urge caution, however, when considering whether requests are vexatious, in placing too much emphasis on whether the requests impose a significant burden on the public authority. The appropriate safeguard for that is section 12, not section 14. We accept that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor, but if the Awareness Guidance Note is intended to indicate that a request can only be vexatious if it imposes a significant burden on the Council in terms of expense or distraction, in our view, that may be going too far.

Other Issues in the Appellant's Grounds of Appeal

71. We have not addressed every point raised by the Appellant. Several are not within the Tribunal's jurisdiction or have no bearing on the outcome of this appeal. However, we wish to comment briefly on the Appellant's allegations that the Commissioner's handling of his complaint displayed bias in favour of the Council. On the evidence before us, there is no foundation for this allegation. The Commissioner appears to have investigated the Appellant's complaint thoroughly and properly. In any event, the Appellant has been able to submit to the Tribunal, such evidence as he considers is relevant, and the Tribunal has considered the evidence and issues afresh. The outcome of this appeal has not, therefore, been prejudiced by what was or was not done or considered by the Commissioner when dealing with the Appellant's complaint.
72. We also do not find that the Council was in breach of section 16. There is no evidence that it failed to provide any advice or assistance that it would have been reasonable to expect.

Decision

73. For all the reasons set out above, this appeal is dismissed. This decision is unanimous.

Signed

Date

Anisa Dhanji

13 May 2008

Deputy Chairman