

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 November 2007

Public Authority: Norfolk County Council
Address: County Hall
Martineau Lane
Norwich
Norfolk
NR1 2DH

Summary

The complainant made a request to Norfolk County Council ("the Council"), which was the most recent in a series of requests, relating to the care provided to an elderly person by an independent care organisation contracted by the Council. The Council applied the exclusion under section 14(1) of the Freedom of Information Act 2000 ("the Act") because it considered that the request was vexatious. The Commissioner has investigated and was satisfied that the Council was able to demonstrate that the request had been correctly refused.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.

Background to the complaint

2. In his capacity as a "Money Matters" volunteer with Age Concern, the complainant had the responsibility of helping the elderly person in question to handle her financial affairs. She was at that time receiving care via the Council's contracted independent care provider. Following a contract variation, the hours of care reduced from 18 hours to 15 hours per week but this was not communicated quickly enough to the care provider and as a result, the elderly person continued

to pay for 18 hours care. The complainant highlighted this error in March 2005 and the Council remedied this by paying back the amount overcharged. The complainant then alleged that the elderly person had been charged for visits she had not received. When this matter was formally investigated, the outcome was

that although the carer had failed to record accurately her visits to the elderly person, the care had been provided. The elderly person died in December 2005 but the complainant has continued to submit information requests to the Council on the subject of the care received by the elderly person.

The Request

3. On 23 May 2007, the complainant requested information from the Council. The bullet points below provide a summary of the elements of the request and the precise terms of the request as written by the complainant have been set out in Annex A at the end of this Notice.
 - Copies of all contracts between the Council and the independent care provider relating to the elderly person starting from 4 January 2002
 - Copies of any contract variations relating to the elderly person between 4 January 2002 and December 2005
 - Copies of the care plans relating to the elderly person from 4 January 2002 to December 2005
 - Copies of any variations to the recorded care
 - The timesheets of the independent care provider showing the hours of visits as charged to the Council from the commencement of the contract on 4 January 2002 to December 2005 except for those from 3 May 2004 to 31 October 2004
4. The Council responded to the complainant's request on 29 May 2007. The Council referred the complainant to a refusal notice on 17 May 2007 that it had provided in response to previous requests from the complainant on the same theme. It stated that it was not going to respond to the request because it was vexatious and the reasons for this conclusion had already been set out in the earlier notice.

The Investigation

Validity of the complaint

5. The Commissioner usually expects a complainant to have gone through the public authority's internal review procedure before approaching his office with a complaint under section 50. However, it is clear in this case that the request in question was refused by reference to an earlier notice on 17 May 2007 because the request was part of an ongoing theme. An appeal concerning this earlier notice was considered by the Council and on 5 July 2007 it wrote to the complainant and stated that it maintained the exclusion. It is therefore not necessary for the Council to complete an internal review with specific reference to the request on 23 May 2006.

Scope of the case

6. During the course of another investigation that was being conducted by the Commissioner, the complainant explained during a telephone conversation on 5 July 2007 that he wished to pursue a complaint in relation to the request he had made to the Council on 23 May 2007. The complainant specifically asked the Commissioner to consider whether the request had been correctly refused by the Council under section 14(1) of the Act.

Chronology

7. The Commissioner wrote to the Council on 14 September 2007 and referred it to the Commissioner's Awareness Guidance No.22 on vexatious and repeated requests. The Commissioner asked the Council to supply information in support of its application of section 14(1). He also wrote to the complainant at this stage to advise him that his complaint was being investigated.
8. On 27 September 2007, the Council responded to the Commissioner. It supplied relevant background information as well as evidence and arguments in support of the application of the exclusion. The evidence it provided was copies of all of the requests made by the complainant beginning in November 2005 and a log showing all the contact there had been between the Council and the complainant relating to this matter since March 2005.
9. The Commissioner wrote to the Council again on 3 October 2007 to ask for some more information in support of the exclusion. In particular, the Commissioner sought further details concerning the outcome of investigations which had been conducted as a result of the complainant's allegations.
10. The Council responded on 23 October 2007 and provided the information requested by the Commissioner.
11. During the Commissioner's correspondence with the Council, the complainant wrote to the Commissioner on 16 September 2007 and 16 October 2007. The complainant wrote about the background to his complaint and expressed his view that the exclusion had been incorrectly applied.
12. The Commissioner wrote to the complainant on 19 October 2007 to clarify the scope of the investigation in light of the background information contained on the case file.
13. The complainant responded on 21 October 2007 and expressed further frustrations concerning his ongoing dispute with the Council over alleged overcharging. The complainant pointed especially to the importance of the last element of his request on 23 May 2007. He explained that the timesheets he had requested would allow him to "cross check" this information with the carer's logs he had already received. The complainant also expressed the view that his actions could not be considered to be vexatious because he had good cause for his persistence.

14. The Commissioner also discussed the background to the case and the scope of the investigation with the complainant during a telephone conversation on 23 October 2007.

Analysis

Exclusion

15. The details of the relevant provisions of the Act have been set out in the Legal Annex at the end of this Notice.

16. In considering the exclusion under section 14(1), the Commissioner has had regard to Awareness Guidance No. 22 on vexatious and repeated requests issued by his office which states that:

“While giving maximum support to individuals genuinely seeking to exercise the right to know, the Commissioner’s general approach is that a request (which may be the latest in a series of requests) can be treated as vexatious where:

- it would impose a significant burden on the public authority in terms of expense or distraction and meets one of the following criteria:
- it clearly does not have a serious purpose or value
- it is designed to cause disruption or annoyance
- it has the effect of harassing the public authority
- it can otherwise fairly be characterised as obsessive or manifestly unreasonable”.

17. The Council presented arguments to the Commissioner that the request would impose a significant burden, has the effect of harassing the Council and can fairly be characterised as obsessive.

Significant burden

18. At the time when the request was refused, the Council had already received 20 separate requests for information from the complainant relating to the care of the elderly person. The requests had been made at fairly regular intervals of nearly every month since November 2005, with the complainant sometimes submitting two or three requests within one month. It was also apparent, both from the summary of the requests and the actual requests themselves, that the complainant’s requests were often very detailed and contained multiple elements interspersed with allegations of fraudulent activity.
19. In addition, the Commissioner also took into account that by the time of the Council’s refusal notice on 17 May 2007, the Council stated that it had received some 73 letters and 17 postcards from the complainant relating to the care of the elderly person.
20. The Council also explained that the complainant often writes to several council officers at once and also writes to different offices or departments within the

Council. It has explained that this is difficult to manage and often leads to confusion for both parties. It has stated that it is often the case that it has not been able to respond to one request or item of correspondence before the complainant sends another on the same theme.

21. The Commissioner is satisfied that the request under consideration imposed a significant burden on the Council in terms of expense and distraction. The Commissioner has considered it reasonable to consider the request in the context of the number, frequency and scope of previous requests, together with the significant amount of related correspondence generated as a result of the complainant's letters and postcards.

Has the effect of harassing the public authority

22. This element of the criteria takes into account the effect a request has had on a public authority regardless of the applicant's intention.

23. The Council argued that individual members of its staff have felt particularly harassed by the complainant's requests and that the general tone and nature of the requests and related correspondence have had the effect of harassing the Council. In correspondence to the Commissioner, the Council has stated the following:

"The personal wellbeing of one member of staff has been significantly affected by repeated negative and personal comments and allegations made about this person by [the complainant] in his correspondence. The ongoing tone and nature of these letters has left this person worn down and anxious. A second member of staff...has felt unable to open or read letters from the complainant, having to 'psych' themselves up for 24 hours before approaching the matter".

24. The Council highlighted that many of the complainant's letters are several pages long and that the general tone is accusatory with large portions written in capital letters to accentuate the message. The Council has stated that the complainant has made a wide range of allegations including that it has not looked into his allegations properly, not acted in accordance with a duty of care owed to the elderly person, and had colluded with Age Concern to put pressure on the elderly person to change her mind about pursuing a complaint. The Council also stated that the complainant repeatedly accuses it and the independent care provider of "fiddling", "stealing" and "filching" money from the elderly person and tax payers.
25. Further, the Council advised the Commissioner that although it has informed the complainant in writing on more than one occasion that it would not deal with any further requests on the same theme because they are considered to be vexatious requests, the complainant completely ignored this advice and, without waiting for the outcome of the Commissioner's investigation, continues to regularly submit requests and correspondence to the Council on this matter.
26. The complainant has made it plain to the Commissioner that he believes he has good reason for his persistence and as such, the Commissioner acknowledges that it probably was not the complainant's direct intention to harass the Council.

However, in view of the tone and nature of the complainant's requests and related correspondence on the same theme, coupled with their volume and frequency over a long period of time (and this despite investigations having been conducted into the matter and the Council's advice to the complainant that it would no longer respond), the Commissioner is satisfied that in this case the requests have had the effect of harassing the public authority.

27. The Commissioner has further considered the impact of the investigations which have taken place in the following section of this Notice which deals with whether the requests can otherwise be fairly described as obsessive or manifestly unreasonable.

Can otherwise fairly be characterised as obsessive or manifestly unreasonable

28. The Commissioner recognises that requests for information often come about as a result of there being some grievance which the complainant has against a public authority and the Awareness Guidance states the following:

"In circumstances where requests are used solely for the purpose of going over the same ground raised in a previously closed complaint which has exhausted available procedures...there will be a strong suggestion that this is an inappropriate use of the FOIA and that the requests are vexatious. However, this should not be used as an excuse to avoid answering awkward questions where there continue to be requests for information about an issue that has not been resolved satisfactorily (such as where completely new evidence comes to light or the complaints procedure was wholly inadequate). A public authority should therefore also take account of whether the information being requested would (objectively) make a material difference to the outcome of the closed matter. If disclosing the information would manifestly make the public authority's position untenable (for example contradicting previous conclusions) the request would not be vexatious".

29. The Council explained to the Commissioner that by the time the request in question was refused, various investigations had been conducted into the complainant's allegations of overcharging. The Council stated that the complainant first contacted the Council about the charges to the elderly person by telephone in March 2005 when he spoke to the Joint Team Manager for non-residential care charges who assured the complainant that she would investigate his concerns. The Council has stated that a thorough internal investigation took place and information was supplied to Age Concern and the Commission for Social Care Inspection (CSCI). The Council advised that Age Concern completed a report on 29 September 2005 and the CSCI also completed an investigation in August 2006. The Commissioner also understands that an independent complaints investigator was commissioned by the Council in order to satisfy the Council that there was no basis to the complainant's allegations and that this investigation was completed in July 2006.
30. The Council explained that the results of the various investigations have established that although the carer had not recorded all of her visits to the elderly person and that the visits that were recorded did not always match the terms of

the original care plan owing to flexibility in the arrangements, the carer was found to be giving the elderly person the visits and significantly more time that was required by the care plan and contract. This was established by way of interviewing the carer involved and other carers, the elderly person and her neighbours. The Council stated that the carer involved was disciplined as a result of her failure to keep proper records of visits.

31. In correspondence to the Commissioner and during a telephone conversation, the complainant was unable to point to how the information he had requested would make a material difference to the outcome of the previous investigations into this matter. Instead, the complainant advised the Commissioner that he regards the conclusions drawn as a result of the investigations with incredulity. He stated that he does not accept that the carer would not have recorded her visits if she had actually been there. The complainant further explained that he wished to “cross check” against the carer’s logs already provided to him, the “timesheets” from the independent care provider showing how many hours it had billed to the Council. The complainant has claimed that the carer’s logs are “complete information as to what she [the elderly person] should have got, and what she actually got”. The Commissioner assumes that this is a reference to the fact that not all of the visits to the elderly person were recorded. It is not the Commissioner’s view that supplying the complainant with a breakdown of the hours billed to the Council by the independent care provider would shed any more light on the actual issue in dispute, that seeming to be whether the visits which were not recorded in the carer’s logs were actually made.
32. In light of this, the Commissioner considers that the complainant’s ongoing correspondence with, and requests to, the Council comprise an obsessive attempt to reopen a matter which has been considered and resolved to the satisfaction of the Council, Age Concern, the CSCI as well as the elderly person involved and subsequently, the executors of her estate. The Council has been able to demonstrate that it has provided a significant amount of information to the complainant on this matter and has invested a considerable amount of time in investigating his allegations. It has stated that its experience with the complainant suggests that it is highly unlikely that the provision of the information which has been refused would be an end to the matter in that there does not seem to be any amount of information which would satisfy the complainant.
33. The Council has also drawn the Commissioner’s attention to the fact that as a result of the complainant’s persistence in making enquiries about this matter to the Council despite the matter being transferred to more senior persons, the complainant was relieved of his duties as a volunteer for Age Concern. The Council also stated that before the elderly person died in December 2005, she had communicated to both Age Concern and the Council that she was happy with the service provided to her. It is also the case the executors of the elderly person’s estate had expressed their satisfaction with the outcome of the investigations and explained that they felt that no further action was necessary.
34. Taking into account the volume and frequency of the requests and related correspondence on the same theme, the amount of information already supplied to the complainant before a decision was taken to refuse the request, the fact that

the requested information does not seem to be information which would make a material difference to the outcome of previous investigations, and the fact that the elderly person and subsequently her executors expressed satisfaction with the handling of this matter, the Commissioner is satisfied that the complainant's requests could be fairly characterised as obsessive.

The Decision

35. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act because it correctly applied the exclusion under section 14(1).

Steps Required

36. The Commissioner requires no steps to be taken.

Right of Appeal

37. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 7th day of November 2007

Signed

Steve Wood
Assistant Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A – The request on 23 May 2007

- “Copies of all contracts between N.C.C. and [independent care provider] appertaining to ISSIS No 9610636 contract no. ss (c) I no. 68284 and started 4 January 2002”
- “Copies of any contract variations for ISSIS no 9610636 between 4th Jan 02 and December 2005”
- “Copies of the care plans that were relevant to ISSIS no 9610636 from 4th Jan 2002 to Dec 2005.
- “Any copies also of any variations to care as recorded”
- “[independent care provider] time sheets showing the hours of visits as charged to N.C.C from commencement of the contract – 2002 Friday 4th January to December 2005...Except those covering period 3rd May 2004 to 31st October 2004”

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Vexatious or Repeated Requests

Section 14(1) provides that –

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