

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 03 November 2009

Public Authority: City of Westminster
Address: 18th Floor
Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Summary

The complainant made a request for information to the City of Westminster (“the Council”) on 19 January 2008 for a copy of all correspondence and documentation regarding the commissioning, production and issuing of a fire risk assessment report. The Council refused to comply with the request on the grounds that it considered it to be vexatious under section 14 of the Freedom of Information Act 2000 (“the Act”). The Commissioner investigated and found that the Council did not provide sufficient evidence for section 14(1) of the Act to be engaged. The Commissioner also found that the Council breached section 17(5) of the Act for not issuing the refusal notice within the statutory time limit. The Council is required to confirm or deny to the complainant if the information requested is held and either disclose this information to the complainant or provide him with a valid refusal notice in accordance with the requirements of section 17(1) of the Act.

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 Freedom of Information Act 2000 (the “Act”). This Notice sets out his decision.

Background

2. The complainant in this case had made three previous complaints about the Council to the Commissioner relating to Emanuel House. After investigations by the Commissioner, the Council agreed to disclose the requested information in

two of the cases. The third case was informally resolved by the Commissioner requesting that the Council issue an adequate refusal notice in accordance with section 17 of the Act.

The Request

3. On 19 January 2008 the complainant made the following request for information from the Council:

“Thank you for your letter dated 4th January 2008 and the enclosed copy of the corrected version of Trenton's fire risk assessment report (ref. TF34726) dated 5th March 2007.
I should be glad if you could let me have a copy of all internal and external correspondence and documentation regarding the commissioning, production and issuing of this report.
I would particularly require to know why the report published on 5th March 2007 was not made available to leaseholders until 5th December 2007.”
4. The complainant wrote to the Council on 23 March 2008 chasing a response to the request as none had been received.
5. The Council responded on 9 April 2008 stating that following a review of the complainant's requests and the information provided to date on the matter, the Council has decided that the requests are vexatious in accordance with section 14(1) of the Freedom of Information Act. The Council stated that it had received over 70 requests from the complainant, had spent in excess of 90 hours responding to the queries, is satisfied that it had provided all the information the complainant had requested and that any additional information will add no further value to the complainant's understanding of the works at Emanuel House. It also stated that the requests are unreasonable and in some cases asking for information which has previously been provided or superseded by previously supplied information. The Council stated that they will not be responding to these requests or to any further requests the complainant may make for information relating to Emanuel House.
6. On 11 April 2008 and again on 1 May 2008 the complainant wrote to the Council requesting a review of its decision to categorise the requests as vexatious.
7. A response to the review was provided to the complainant on 8 May 2008. The Council provided a list of documentation it had provided to date together with a list of topics of requests made by the complainant and the time the Council had spent responding. The Council stated that it had taken into account the volume of correspondence and time already taken in responding when considering the current request and that information on the category of request has already been provided and the Council is not prepared to provide this again. It also stated that when information has been provided, the complainant continues to request it and other related information and that requests for information on Emanuel House are being sent on an almost daily basis causing an unnecessary burden on resources

of the Council. The Council also stated that the requests are unreasonable and have the effect of harassing the Council as it is required to divert resources from other projects in order to respond.

The Investigation

Scope of the case

8. On 9 April 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically stated that he wished to know who decided that the report should not be disclosed to leaseholders.
9. The Commissioner wrote to the complainant on 8 May 2008 to inform him that the case would be closed until the Council conducted an internal review of the case.
10. On 7 June 2008 the complainant again contacted the Commissioner to complain about the way his request for information had been handled following the Council's internal review of the case.
11. The Commissioner has considered whether the Council was correct to apply the provision at section 14(1) of the Act to the request and whether it responded to the request in accordance with the procedural requirements of the Act.

Chronology

12. The Commissioner undertook a preliminary assessment of the case based on the initial correspondence from the complainant and wrote to the complainant on 28 May 2009 requesting that he withdraw the request as at that stage he considered it likely that section 14(1) of the Act applied.
13. The complainant responded on 30 May 2009 and the 6 June 2009 detailing further reasons, in addition to those initially submitted, as to why the request should be responded to.
14. On 19 June the Commissioner wrote to the Council requiring further detailed arguments as to why section 14(1) of the Act applies to the request. The Council responded on 20 July 2009.
15. After having carefully assessed the response, the Commissioner wrote to the Council on 23 July 2009 requesting that they reconsider the response and disclose the requested information.
16. The Council responded on 5 August 2009 submitting correspondence between themselves and the complainant as additional evidence and requesting that the Commissioner reassess his preliminary view.

Analysis

Substantive Procedural Matters

Section 14 – Vexatious or repeated requests

17. The Commissioner has considered whether the Council correctly applied section 14(1) of the Act to the complainant's requests for information.

Vexatious requests

18. Section 14(1) states:

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

19. The Commissioner's Awareness Guidance 'Vexatious and repeated requests' (AG22) states:

“Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?”

Context and history

20. The Council have stated that the history in this case has an important bearing on its decision. It explained that the complainant's correspondence dating from November 2004 to May 2008 relates to major planned works at Emanuel House and that as time progressed he disputed the need to undertake these works and their legality, as well as disagreeing with some of the proposed works as he felt they were unsuitable for property.

21. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states that:

“A request may not be vexatious in isolation but when considered in context (for example if it is the latest in along series of overlapping requests or other correspondence) it may form a wider pattern of behaviour that makes it vexatious”.

This was the view of the Tribunal in *Betts v Information Commissioner EA/2007/0108* (19 May 2008). In that case the Tribunal considered not just the request but the background and history to the request as part of the long drawn out dispute between the parties. That request was considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.

22. However, the Awareness Guidance also states that:

“The context of a request may occasionally indicate that it should not be considered vexatious. For example, your previous dealings with a requester may show that they have a good reason for making persistent requests...For example, a series of successive linked requests may be necessary where disclosures are unclear or raise further questions that the requester could not have foreseen. Similarly, in the context of a dispute, a request may be a reasonable way to obtain new information not otherwise available to the individual”.

The complainant has submitted that if information had been supplied when requested a great deal of unnecessary correspondence would have been avoided and that the matters have only arisen because of the Council's failure to respond to simple straightforward requests for information when requested. Indeed, the Commissioner has dealt with three other complaints between the Council and this complainant where this has been the case.

23. The Commissioner is of the opinion that an important point to note is that it is the request rather than the requester which must be vexatious. A useful test is whether the information would be supplied if it were requested by another person, unknown to the Council. If this would be the case, the information should normally be provided as the Council cannot discriminate between different requesters. Although, it may be reasonable for the Council to conclude that a particular request represents a continuation of behaviour which it has judged to be vexatious, it is not the view in this case that the previous behaviour of the requester can justify judging the request as unreasonable. As the refurbishment of Emanuel House is a costly exercise affecting all residents and leaseholders, it could be argued that the more information that is in the public domain, the wider the community understanding of the issue which would be a benefit to the project.

24. In order to arrive at a balanced opinion, consideration has been given to the five questions set out at paragraph 19.

Could the request fairly be seen as obsessive?

25. In his Awareness Guidance on the subject of vexatious and repeated requests the Commissioner recognises that obsessive requests are usually a very strong indication of vexatiousness. The Guidance states that:

“Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered”.

26. The Commissioner is of the opinion that there is not a strong argument relating to the volume and frequency of correspondence here as although the Council have stated that the complainant made over 70 requests and corresponds on an almost daily basis, when the evidence has been examined it appears that a number of these requests are requests for review rather than new requests or are letters chasing up responses to previous requests and that the correspondence is not received at such a frequency. The Council have provided the Commissioner with large bundles of correspondence but have not pointed out the requests within that correspondence or provided an index. From the table of requests submitted it appears that around 20 - 25 of them should not be taken into account. Whilst the Commissioner accepts that the volume and frequency of requests is evident to some extent of obsessive behaviour he considers that the situation at the time of the request is only to a level of persistence.
27. The Council has submitted that the complainant is in some cases requesting information that has already been supplied or superseded by previously supplied information and provided a list of categories of requests upon which information had been provided. This list included the category 'Fire Risk Assessment Survey'. However, during the Commissioner's investigation the Council confirmed that it had not previously supplied information relating to this particular request and that the information requested had not been superseded by previously supplied information.
28. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states that:

"It will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they have independent evidence on the issue (eg reports from an independent investigation). The more independent evidence available, the stronger the argument will be'.
29. The Council have confirmed that the complainant's requests relate to the works at Emanuel House and that the issue of these works is ongoing. Although the Council have proposed that the complainant is unwilling to consider a viewpoint other than his own, the Commissioner cannot take this as evidence of vexatiousness as the issue is unresolved.
30. The Commissioner accepts that at times there is a thin line between obsession and persistence and each case should be determined on its own facts. As stated in paragraph 28 above, the Commissioner considers that an obsessive request can most easily be identified as where a complainant continues with a request despite being in possession of other independent evidence or adjudication on the same issue. In this case, the Commissioner does not consider that the nature of the request falls within this definition of obsession, there is no evidence that the matters related to the information requested by the complainant have been resolved by due process under other mechanisms. The matters the complainant is concerned about remain unresolved and there is a possibility that more information could be made available to assist understanding of the issue.

31. The Commissioner also notes that even if a request could be classed as obsessive, if there is a serious purpose or value behind the request then despite the other findings it may not be deemed as vexatious, dependent on the circumstances of each case. In this case the Commissioner considers that the requests did have legitimate purpose and value.
32. For the above reasons the Commissioner finds it difficult to conclude that the request is obsessive.

Is the request harassing the authority or causing distress to staff?

33. The Commissioner notes in his Awareness Guidance on the subject of vexatious and repeated requests that;

“The focus should be on the likely effect of the request (seen in context), not on the requester’s intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing.”
34. The complainant has proposed that requests he has made should not have the effect of harassing the Council as they merely involve copying documents already in existence rather than requiring the Council to compile and collate specific items of information.
35. The request for information by itself does not contain any evidence of deliberate harassment. However, the Council have submitted that the requests have the effect of harassing the Council. It has argued that the level of contact involved in receiving more letters on the same topic before the Council has had time to produce a response results in distress to the member of staff allocated to deal with the complainant’s queries.
36. Whilst it is acknowledged that the receipt of further letters on the same topic before the original letter has been dealt with can be distressing for the member of staff dealing with the correspondence, the Council have not submitted any significant arguments in relation to this area. The Commissioner is of the opinion that the requests themselves do not have the effect of harassing or causing distress as they appear to request information that should be readily available if the Council’s records are managed appropriately.

Would complying with the request impose a significant burden in terms of expense and distraction?

37. The Commissioner’s Awareness Guidance on the subject of vexatious and repeated requests states that;

“You need to consider more than just the cost of compliance. You will also need to consider whether responding would divert or distract staff from their usual work.”
38. In order to demonstrate this, the Council have claimed that it has spent approximately 90 hours responding to the complainant’s requests which have

proved an unnecessary burden on the resources of the Council requiring them to divert resources from other projects in order to respond. The Council added that this amount of time does not reflect the time taken to respond to other correspondence about Emanuel House received from the complainant in the same period.

39. The Commissioner is aware that the time spent on the requests has been over a time period of 16 months, that the requests do not appear to be seeking information that would not be produced as part of the project, and that the Council have not submitted that it would be particularly onerous to respond to the request in question. Therefore, in his opinion the question of whether the request imposes a significant burden in terms of expense and distraction could be argued either way. However, if the Council's main concern is the cost of compliance, this factor will not be enough on its own to show vexatiousness and the request should have been considered under section 12 rather than section 14.

Is the request designed to cause disruption or annoyance?

40. As this factor relates to the requester's intention and the complainant has not explicitly stated that he wants to cause disruption or annoyance in relation to this request, the Commissioner cannot conclude that this element of vexatiousness is present.

Does the request lack any serious purpose or value?

41. The Council have asserted that any additional information will add no further value to the complainant's understanding of the works at Emanuel House. It has stated that there is nothing further that can be provided to assist the complainant and that as he regularly attends meetings to discuss the works, as a Major Works Committee member, he is kept completely up to date with any relevant changes at these meetings. The Council specifically pointed out that as the complainant has already received a copy of the Fire Risk Assessment Report and been provided with explanations regarding the reasons for commissioning the report, there is no further understanding regarding the works to be gained by providing correspondence relating to its commissioning and production.
42. The Council also added to this argument the fact that the complainant confirmed in a meeting that his primary concern was the loss of the staircase at Emanuel House rather than any other issue.
43. The Commissioner does not agree that there is no further understanding of the issue to be gained from correspondence relating to the fire report's commissioning, production and issuing. For example, it can be envisaged that such information may explain any delay between the assessment being conducted and the report being issued. The Commissioner is of the opinion that it would be difficult for the Council to decide that certain information would not add to someone else's understanding of an issue or be of genuine value to them.
44. The Commissioner believes that, although this case is finely balanced, the available evidence does not demonstrate that the request is vexatious.

45. In reaching this decision the Commissioner notes that the findings are made on the circumstances at the time of the request and that this finding does not preclude the Council from using these provisions again in respect of requests from the same applicant if the Council objectively find that the provisions apply. He notes that if the complainant was to use further information requests he may reach a different conclusion to this decision.
46. The Commissioner would also like to remind the complainant about responsible freedom of information requests and specifically refers the complainant to the Commissioner's guidance entitled "The ICO charter for making responsible freedom of information requests" available at www.ico.gov.uk. This guidance states the factors a requester should consider before making a request and specifically refers to requests which are the latest in a series of requests or could be regarded as part of campaign that a requester, for example:
- Will another request serve any further purpose?
 - If the request is about a changing situation, would it better to allow a reasonable period of time to pass before making a further request?

Procedural Requirements

Section 17 'Refusal of request'

47. Section 17(5) states:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

48. The complainant's request for information of 19 January 2008 was refused on 9 April 2008, after the time limit set in section 10(1) had elapsed, in breach of section 17(5).

The Decision

49. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that section 14(1) was applied incorrectly.
50. The Commissioner also finds that the public authority failed to comply with section 17(5) of the Act for the late issue of the refusal notice.

Steps Required

51. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Confirm or deny to the complainant if the information requested is held and either disclose this information to the complainant or provide him with a valid refusal notice in accordance with the requirements of section 17(1) of the Act.

52. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

53. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

54. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

In its response of 9 April 2008, the Council suggests that future requests made by the requester in relation to the same topic will be deemed vexatious as defined within section 14(1) of the Act.

Aside from detracting from the functionality of section 14, which is only applicable in relation to specific requests, the Commissioner does not consider it good practice or within the spirit of the Act for authorities to suggest to requesters that future requests will be deemed vexatious

The Commissioner would wish to make the general observation that, in some instances, persistent enquiries and supplementary requests from requesters can sometimes be a symptom of inadequate request handling, as an applicant attempts to secure a complete response to their original request.

The Commissioner expects that, in its future handling of requests, the Council will observe the good practice recommended in his awareness guidance, as published on the ICO website here:

http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

Right of Appeal

55. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 3rd day of November 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

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”

Refusal of Request

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”