

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 July 2010

Public Authority: North Devon District Council
Address: Civic Centre
North Walk
Barnstaple
Devon
EX31 1EA

Summary

The complainant made 18 requests to North Devon District Council ('the Council') on 11 April 2009 and a further request on 19 April 2009. The Council refused to provide the information requested, citing section 14(1) of the Freedom of Information Act 2000 ('the Act'). The Commissioner has concluded that it was reasonable for the Council to apply section 14(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 Commissioner notes that the relationship between the complainant and the Council has deteriorated over time. The complainant believes that the Planning Department of the Council attempted to pre-determine a planning application for nine wind turbines at Batsworthy Cross in North Devon. The Commissioner notes however, that the complainant made an unsuccessful complaint about this issue to the

- Local Government Ombudsman ('the LGO') in 2009 (after the requests for information subject to this Notice). The complainant also believes that the Council attempted to cover up potential problems with noise from the turbines. The complainant has further alleged that information that should have been held by the Council has gone missing or been altered. He has not however provided any evidence to substantiate these allegations.
3. The complainant has also alleged that the Planning Department led by Council employee C, ignored emerging noise advice regarding a decision on wind turbines at Fullabrook which was ultimately over-ruled by Judicial Review.
 4. The Council employees named in the complainant's request for information are all associated with this planning decision.

The Request

5. The complainant made 18 requests for information, via email, to the Council on Saturday 11 April 2009 between the hours of 9:07 pm and 10:42 pm. The details of these requests are set out in Annex A, together with the Council's assigned reference numbers. The Council's reference numbers will be used throughout this Notice. In summary however, the requests were largely in respect of the employment history, remuneration packages, and complaints received against five individual council employees who, for the purposes of clarity, have been referred to as employees A to E in both this Notice and Annex A.
6. On Sunday 19 April 2009 at 8:07pm the complainant submitted a further request for information which asked for details of:
 - " 1. The number of complaints against the planning department by year.*
 - 2. The amount of compensation paid if any for complainants listed in 1 above.*
 - 3. The number of complaints directed at [named council employee D] and [named council employee C] by year.*
 - 4. A number of the complaints against the planning department taken to the LGO for further action.*
 - 5. A list of complaints noted in 4 upheld by the LGO."*

The Council assigned this request number 618 and this number will be used throughout this Notice to refer to this request.

7. On 24 April 2009 the Council responded to each of the requests for information submitted on 11 and 19 April 2009. It informed the complainant that:

"The Council is of the opinion that FOI Requests 596 – 613 and 618, when taken together, and bearing in mind previous requests made i.e. FOI Requests 410, 455, 507, 508, 537, 544, 548, 549, and 580 are vexatious."

The Council therefore refused to comply with the requests.

8. The letter also confirmed to the complainant that he had already been made aware of:

"...the Planning Application Tracker operated by the Council and therefore...aware that much of the information you request under FOI Requests 609 and 611 is available on the Council's web site. Similarly, information requested under FOI Request 597 is also available on the Council's web site."

9. On 5 May 2009 the complainant expressed dissatisfaction with the Council's refusal to answer requests 596 – 613 and 618. Later in the same letter, the complainant did however indicate that he had obtained information from the Council's website in respect of requests 597, 609 and 611.
10. On 18 May 2009 the Council communicated the outcome of its internal review to the complainant. The letter provided further explanation of the Council's decision to refuse the requests on the basis that it considered them to be vexatious.

The Investigation

Scope of the case

11. On 3 August 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
12. As the complainant indicated that he was satisfied with the Council's responses to requests 597, 609 and 611 they did not form part of the Commissioner's investigation but he did consider their relevance to the context and history of this matter when considering requests 596, 598 – 608, 610, 612 – 613 and 618.

13. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

14. On 28 August 2009 the Commissioner contacted the Council to inform it that he had received a valid section 50 complaint in respect of this request for information and to request further information regarding the request.
15. On 3 September 2009 the Council provided information to the Commissioner in respect of its decision to refuse requests 596, 598 – 608, 610, 612 – 613 and 618 as vexatious.
16. The Council also informed the Commissioner that it considered some of the information to be personal information, which it would not release under section 40(2) of the Act.
17. On 27 November 2009 the Council provided further information to the Commissioner in respect of complaints made to the Council by the complainant during the period from 11 August 2008 to 12 May 2009.

Analysis

Substantive Procedural Matters

18. The full text of the sections referred to can be found in the Legal Annex at the end of this Notice.

Section 14(1) of the Act – ‘vexatious requests’

19. Section 14(1) of the Act provides that a public authority does not have the duty to comply with a request where it may be considered vexatious. As a general principle, the Commissioner considers that this section of the Act is intended to serve as protection to public authorities against those who may abuse the right to seek information.
20. Although there is no rigid test or definition of vexatious requests the Commissioner has produced guidance to assist public authorities in this area. The Commissioner’s guidance states the following:

“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?"¹

21. To judge a request as vexatious the Commissioner considers that public authorities should usually be able to make relatively strong arguments under more than one of these headings. However, the questions are likely to overlap, and the weight placed on each will depend on the circumstances. The Commissioner considers that public authorities do not need to be able to answer yes to every question, and may also consider other case-specific factors. The Commissioner is also mindful that it is the request, and not the requester which is judged to be vexatious.

(a) Could the request fairly be seen as obsessive?

22. Where a request can fairly be seen as obsessive, the Commissioner is of the view that there is a strong indication that the request will also be vexatious. The Commissioner considers determining factors in deciding whether a request is obsessive will include the volume and frequency of requests. As such, the context and history of the requests is also particularly relevant because it is unlikely that an isolated request will be considered obsessive.

23. The Commissioner is also mindful of the following Information Tribunal decisions:

- In the case of *Coggins v Information Commissioner* (EA/2007/0130), the Tribunal considered that "the number of FOIA requests, the amount of correspondence and haranguing tone of that correspondence indicated that the Appellant was behaving in an obsessive manner".
- In the case of *Betts v Information Commissioner* (EA/2007/0109), the Tribunal considered not just the request, but the background and history to the request as part of a long drawn out dispute between the parties. The request was

¹ http://www.ico.gov.uk/what_we_cover/freedom_of_information/guidance.aspx

considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.

24. In reaching its decision to declare the 18 requests submitted on 11 April 2009 and the additional request of 19 April 2009 as vexatious, the Council considered the history and context of previous requests submitted by the complainant. In its refusal notice of 24 April 2010 the Council pointed out to the complainant that he had made a number of previous requests to the Council:

"Since June 2008 you have made 29 (twenty-nine) separate FOI Requests...Twenty-seven of the FOI Requests have been made since 19 January 2009."

25. The Council argued that the majority of these were made up of several parts with request number 537 consisting of eight parts and request number 580 made up of 14 parts. The Commissioner has viewed all previous requests which in general relate to planning application 43272 for Batsworthy Cross. However, they also include requests for details of complaints against Council employee E and his benefits package, specific emails from council employees D and C, a copy of a draft report written by Council employee B and complaints against the planning department. Whilst the Commissioner notes that some of the requests concern all Council departments, the main focus of these requests is clearly the planning department. The Commissioner therefore considers that there is a significant link between these previous requests and those subject to this investigation.
26. The Council also pointed out to the complainant that requests 596 – 613 were all received on the same day and appeared to have been sent in two batches with those in each batch submitted within minutes of each other.
27. The Commissioner's view is that when considered in isolation, each request may be viewed as reasonable but that 18 requests submitted within two hours viewed in context, the emerging picture supports the view that each request could be seen as obsessive.
28. Additionally, taking the history of the previous requests into consideration only strengthens this view.
29. The Council has also argued that the nature of the requests themselves which asked for information about several Council employees appear to be fixated on delving into their employment records, remuneration packages and whether complaints have been made about them. The Council further stated that the complainant's fixation on certain

members of staff has been repeated in correspondence with other officers. It appears that the complainant has exhausted the core topics relating to wind farms and is pursuing tangential issues such as details about council employees. The Commissioner considers that this apparent fixation on certain members of the Council's staff further supports the view that the requests can fairly be seen as obsessive.

30. Furthermore, on 27 April 2008 the complainant submitted a complaint to the Council against the planning department for a number of issues including concerns that the Batsworthy Cross planning application reference number 43275 had been pre-determined. The complainant was not satisfied with the Council's response and escalated his complaint to the Local Government Ombudsman ('the LGO'). The LGO communicated the outcome of its investigation to both the complainant and the Council on 8 April 2009 which concluded that there was no maladministration and did not therefore uphold this complaint. The Commissioner notes that requests 596 – 613 and 618 were submitted three days and eleven days respectively after this date.
31. Taking into account the volume of requests received on one day, in such a short timescale, the nature of the requests (which generally relate to the effectiveness of specific council employees and the planning department), the relatively high volume of previous requests, the link between those requests and the requests to which this Notice relates and the complaint to the LGO, the Commissioner is satisfied that the requests form part of a pattern of behaviour which could fairly be seen as obsessive.

(b) Is the request harassing the authority or causing distress to staff?

32. In determining whether a request has the effect of harassing an authority or causing distress to staff, the Commissioner's guidance states that the focus should be on the likely effect of the request seen in context, and not on the intention of the requester. The Commissioner is of the view that the relevant question is whether having to deal with the request would be distressing or harassing, regardless of the subject of the request.
33. The Commissioner considers that relevant factors could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations or complaints.
34. The volume and frequency, and fixation on staff has already been discussed in section (a) of this Notice. However, the Council has also

alleged that responses to the complainant's requests have sometimes resulted in further correspondence.

35. The Council has also maintained that the officers dealing with the complainant's freedom of information requests considered that many of them contained hostile, patronising and in some cases offensive language and gave the following examples:

(a) FOI Request 410:

"...the information will not be an honest reflection of the truth..."

(b) FOI Request 507:

"...no faith in the planning officers...telling the truth and giving me...an honest answer."

"...to say there is no documentation is not true..."

(c) FOI Request 507:

"lie to them..."

"I have never heard such nonsense."

"...a contemptible attempt to cover up..."

"You surprisingly miss the point."

"...this is ...deliberate obstruction, incompetence or just straight forward bloody mindedness."

"...the planning department...is the true villain."

36. The Council has also argued that in addition to the language used in many of the requests, the complainant's fixation on a number of its employees, in particular asking for details of any complaints made against them, is causing the relevant individuals distress.

37. In its refusal notice of 24 April 2009, the Council informed the complainant that in its view:

"...the purposes of your requests are (a) a concerted campaign to pressure the Council towards your view of the planning applications, and (b) to harass the Council and cause distress."

38. The Council has also provided copies of subsequent requests from the complainant dated 23 and 24 April 2009. Although these requests post date those requests to which this Notice relates and do not therefore form part of the present investigation, the Commissioner notes that they serve to illustrate that any response from the Council tends to prompt further requests and complaints from the complainant. For example, a request dated 23 April 2009, refers to two of the Council employees who were the subject of his requests 594 – 613 and 618 and states:

"It also shows officers especially [named council employee A] in a very poor light, with a very arrogant, dismissive and rude attitude to the public who's health he is paid to protect. This is only added to by the obvious manipulative role being played out by [named Council employee C]."

39. The same request also stated:

"Failure of the legal department to pass this information to [named council employee E], or for him to act on it will be a foolhardy move. I am confident that the latest information I have requested...will continue to fuel our quest for the truth and lead to legal action against the people at NDC who have collaborated on this travesty of planning justice and maladministration."

40. The Commissioner considers that the language used in the examples outlined at paragraphs 38 and 39 appears to represent a more deep-seated grievance than frustration. The Commissioner also considers that the aggressive language could be construed as threatening. Furthermore, the Commissioner does not consider that the perceived inadequate handling of requests should result in individuals being subjected to the personal accusations of corruption or maladministration contained within the examples detailed above. The fact that the complainant continues to submit requests and correspondence regarding named individuals also adds weight to the Council's argument that responses to requests will lead to further correspondence and that this has the effect of harassing staff who have to deal with it.
41. The Commissioner has noted the similarities between the circumstances of this case, and the Tribunal's views in *Gowers v Information Commissioner* (EA/2007/0014), in which the Tribunal stated:

*"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...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" (paragraph 53).*

42. In view of the reasons set out in paragraphs 34 to 41 the Commissioner is satisfied that the Council has demonstrated how – in the wider context of its dealings with the complainant – having to consider requests 596-613 and 618 could have the effect of harassing the authority or causing distress to Council staff.

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

43. The Commissioner's guidance states that when considering any burden imposed in complying with a request, consideration will need to be given not only to the cost of compliance, but also whether staff would be diverted or distracted from their usual work.
44. In the Council's refusal notice dated 24 April 2009, it informed the complainant that the cost of complying with his previous requests has already been significant. It also pointed out that his request referenced 580 had initially been refused on the basis of section 12 of the Act and that the Council had asked him to refine his request. However, the Council has stated that the refined request was as detailed and lengthy as the original.
45. The Council also alleged that the complainant had since:
- "...split requests and sent individual emails, in an apparent attempt to circumvent the provisions of [s].12 of the Act. The Information Commissioner's Office permits the Council to combine requests received from one person in certain circumstances and it is considered that those circumstances apply in this case."*
46. The Council added that:
- "To deal with the current requests would require officers to spend in excess of 100 hours (equivalent to £2,500) and would again distract them from their day to day work."*
47. The Commissioner considers that if the Council had chosen to apply section 12 to the requests, it would have been within its rights to aggregate them under the Fees Regulations. However, since he is not investigating a section 12 (costs exceed appropriate limit) issue he has not considered the figures in any detail. He does however accept that complying with requests 596, 598 – 608, 610, 612 - 613 and 618 could impose a significant burden in terms of expense and distraction and would be likely to take Council officials away from their core duties. The Commissioner also notes that any response appears to generate

further correspondence and requests as outlined in paragraph 38 of this Notice.

(d) Is the request designed to cause disruption and annoyance?

48. The Commissioner considers that this factor relates to the intention of the complainant and therefore can be difficult to prove. As such, the Commissioner is of the view that a public authority will require a strong argument in order to demonstrate that a request is designed to cause disruption and annoyance.

49. In its letter of 24 April 2009, the Council informed the complainant that:

"Whilst it is considered that your earlier requests have some validity, it is questionable whether those received the beginning of April fall into the same category. It is the Council's opinion that the information requested in Request Nos. 596-613 and 618 has been requested for no other purpose tha[t] to cause the Council disruption and annoyance."

50. The Council further argued that the complainant's request number 549 was an example of a request designed to cause disruption and annoyance. The request stated:

"...a Council already failing badly to deliver a fraction of what it and its chief exec[sic] promises. One hopes that the disgusting and reprehensible excuse used recently by staff at NDDC that the Council and its staff are too busy to do their jobs properly is not used here. With recent developments in the planning department it is likely that a claim of maladministration will be raised on this failing council shortly."

51. In the same letter, the Council also referred to an email received from the complainant on 24 April 2009 which it said:

"...contains allegations about the relationship between one of the Council's officers and professional advisers and refers to the prospect of 'criminal charges'.

The Council considers such comments to be not only designed to cause annoyance but they are also threatening and inflammatory."

52. Overall, taking into account his view that it can be difficult to prove that the purpose of requests is to cause disruption or annoyance, the Commissioner does not consider that the Council has provided a sufficiently strong argument in this area.

(e) Does the request lack any serious purpose or value?

53. In its letter to the complainant of 24 April 2009, the Council stated:

"The FOI Requests up to and including FOI Request 545 relate to the planning applications received for windfarms. The other 22 FOI Requests seek information principally in relation to complaints, and information about various members of the Council's staff.

...whilst the Council considers that your earlier requests in respect of windfarms have some validity, it is not of the same opinion in respect of the latest Requests.

54. The Commissioner notes that the focus of the requests subject to this Notice appears to have shifted from their original purpose and has concluded in section A of this Notice that the requests can fairly be seen as obsessive. He has therefore concluded that any serious purpose or value there is, is insufficient to outweigh the other factors.

Conclusion

55. In this case, the Commissioner has concluded that taking into account the volume of requests received in one day within such a short timescale, the nature of the requests, the link with previous requests and complaint about the same issue to the LGO, that requests 595 – 613 and 618 form a pattern of behaviour which could fairly be seen as obsessive. The Commissioner is also satisfied that based on the hostile and in some cases threatening language used in the requests and their fixation on five specific council employees, that the Council has demonstrated how considering requests 595 – 613 and 618 would have the effect of harassing the authority or causing distress to staff. The Commissioner is also satisfied that the Council has demonstrated that responding to requests 595 – 613 and 618 may impose a significant burden in terms of expense and distraction and would be likely to lead to further requests and complaints from the complainant taking staff away from their core duties.

56. The Commissioner notes that whilst the Council considers that the requests were designed to cause disruption or annoyance that it has not adequately demonstrated this. Similarly, it would be very difficult for the Council to demonstrate that the requests lacked a serious purpose or value. However, based on the findings outlined in paragraph 55 of this Notice, the Commissioner has concluded that the Council appropriately applied section 14(1) of the Act.

The Decision

57. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

58. The Commissioner requires no steps to be taken.

Other matters

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

60. The Commissioner notes that in its refusal notice dated 24 April 2009 the Council informed the complainant that:

"...the Council has determined that your FOI Requests are now classed as vexatious and these and any future FOI Requests will not be responded to."

61. The Commissioner would like to point out that under section 14(1) of the Act, even though a public authority may be justified in its determination that a specific request(s) is vexatious, it cannot declare that all future requests (regardless of their content) are also vexatious.

Right of Appeal

62. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 12th day of July 2010

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

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”

Section 14(2) provides that –

“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 a previous request and the making of the current request.”

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Annex A

Request 596

Please supply under the FOI [a]ct 2000 the following.

A full list of all the **northdevon.gov.uk** email addresses for all employees at NDDC by department. Most email addresses are in the public domain so the reasons for the withholding of individual addresses should be itemised and explained. This should include all persons with such an address, including Councillors, contractors etc...

Request 597

Please supply under the Freedom of Information Act 2000 the following.

1. A full list of all NDDC serving Councillors.
2. The position held by persons name in 1 above.
3. List the committee positions held by persons listed in 1.
4. The home addresses and contact details for all the Councillors listed in 1 above.

Request 598

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The remuneration package received by [named council employee A] for his employment at NDDC.

Request 599

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The duration and positions held by [named council employee A] during his employment at NDDC.

Request 600

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The total cost of the legal department at NDDC. This should include a percentage for the office overhead.

Request 601

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.
The number and position of employees in the legal department at NDDC.

Request 602

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The number of complaints received by NDDC against [named council employee B].

Request 603

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The number of complaints received against [named council employee C].

Request 604

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The remuneration package received by [name council employee C]

Request 605

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The remuneration package of [name council employee B]

Request 606

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The remuneration package of [named council employee D]

Request 607

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The duration of employment by NDDC and the positions held by [named council employee B].

Request 608

Please supply under the Freedom of Information Act 2000 the following.

A list of all the employees of NDDC contractible via the Civic Centre, no personal information is requested, only names to address correspondence care of the Civic Centre. This can take the form of email addresses which will be in the public domain or the names of employees that are also publicly known or appear publicly in any way. Any person who has an identity badge that is in the public should be included. Most employees can be regularly seen with identity badges on public view around Barnstaple so great care should be taken restricting the list of names on privacy grounds.

Request 609

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The address of the applicants of all planning applications handled by [named council employee C] during his employment at NDDC.

Request 610

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The duration of employment by NDDC and the positions held by [named council employee C].

Request 611

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The address of the applicants of all planning applications handled by [named council employee D] during his employment at NDDC.

Request 612

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The duration of employment by NDDC and the positions held by [named council employee D].

Request 613

Please supply under the Freedom of [i]nformation [a]ct 2000 the following.

The duration of employment by NDDC and the positions held by [named council employee E].