

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 December 2010

Public Authority: Warwick District Council
Address: Riverside House
Milverton Hill
Leamington Spa
CV32 5HZ

Summary

The complainant made a request to Warwick District Council ("the Council") for all emails exchanged between two named employees in a specified period of 21 months. The Council refused the request on the grounds that it was vexatious and applied section 14(1) of the Act. The Commissioner, on balance, considers that the Council was entitled to refuse the request under section 14(1). However, the Commissioner also found that the Council breached section 17(5) of the Act because it failed to inform the complainant that it was relying upon section 14(1) within 20 working days of receiving the request.

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.

The Request

2. The complainant wrote to the Council on 11 September 2009 with the following request for information:

"All emails sent from [first named employee] to [second named employee] and all emails sent from [second named employee] to [first named employee] for the period January 1st 2008 to 11 September 2009."

3. The Council responded to the request on 29 October 2009 and stated that it considered the request to be vexatious. It therefore applied section 14(1) of the Act. The Council also said that some of the requested information was exempt from disclosure under section 43(2) of the Act.
4. On 29 October 2009 the complainant wrote to the Council and requested an internal review of its response to the request.
5. The Council provided its internal review response on 30 November 2009 and upheld its original decision that the request was vexatious. In its response it explained that it believed the request clearly met three of the five factors identified in the Commissioner's guidance on section 14.

The Investigation

Scope of the case

6. On 2 December 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the Council's decision to refuse the request and the delays in the Council providing its response.
7. The Commissioner's investigation has focussed on whether the Council was correct to cite section 14(1) of the Act to refuse the request.

Chronology

8. On 8 February 2010 the Commissioner wrote to the Council and requested detailed arguments in support of its decision to apply section 14(1) to the request.
9. The Council provided a response to the Commissioner's enquiries on 12 April 2010. In its response it explained that the context and history of the request supported the view that the request was vexatious.

10. On 19 May 2010 the Commissioner contacted the Council and requested that it provided supporting documentation referred to in its response of 12 April 2010. The Council provided this to the Commissioner on 17 July 2010.

Analysis

Substantive Procedural Matters

Section 14(1) - vexatious request

11. Section 14(1) of the Act states:

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

12. The term “vexatious” is not defined further in the Act. The Commissioner notes, however, that it is the request rather than the requester which must be vexatious.
13. When determining whether a request is vexatious, the Commissioner considers the strengths and weaknesses of both parties’ arguments in relation to some or all of the following five factors:
 - i. Could the request fairly be seen as obsessive?
 - ii. Is the request harassing the authority or distressing to staff?
 - iii. Would complying with the request impose a significant burden in terms of expense and distraction?
 - iv. Is the request designed to cause disruption or annoyance?
 - v. Does the request lack any serious purpose or value?
14. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However, it states that to judge a request as vexatious a public authority should usually be able to make persuasive arguments under more than one of the above headings.
15. When determining whether or not a request is vexatious in relation to the five factors listed at paragraph 13, the Commissioner considers it appropriate to take into account the history and context of the request in addition to the request itself.

Could the request fairly be seen as obsessive?

16. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive?

17. The Commissioner's published guidance states:

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

18. Both the complainant and the Council have informed the Commissioner that the request is related a matter stretching back to 2002 and ongoing communication between the parties. The Council's view is that the request in this case is obsessive when considered in relation to the wider context and history of the complainant's dealings with the Council.

19. The Council has explained that the complainant has submitted five formal complaints about one of the employees named in the request. These complaints were handled via the Council's formal complaints procedure. The Council has also said that the request in this case follows a prior information request from the complainant for all email correspondence between the same employee and 19 other parties since 2002, which was refused by the Council.

20. In 2007 the complainant pursued legal action against the other individual named in the request, who was also employed by the Council. The court struck out the claim, finding that it was "totally without merit" and ordered the complainant to pay the defendant's expenses. The Council has also provided the Commissioner with records of email correspondence in which the complainant has previously threatened to take legal action against other individuals in relation to their official duties as Council employees.

21. When considering the context and history of the request in this case, the Commissioner is mindful of the complainant's previous contact with the Council and particularly his apparent willingness to make individual employees the focus of complaints, requests for information and legal action. The Commissioner accepts that there is often a fine line between persistence and obsession, but in this case believes there is evidence that the complainant's previous interaction with the Council has featured undue levels of attention on the identities and personal actions of individuals conducting duties in their official capacity as Council employees.

22. The Commissioner has also considered the nature of the request itself in this case, which requests all email correspondence exchanged between two named Council employees over a period of 21 months. Again, the Commissioner believes that a request which targets two individual employees, yet is framed so broadly as to encompass all email correspondence exchanged between them over such a lengthy period, has the combined effect of suggesting an undue level of scrutiny on individual Council employees. Also, the nature of the information requested indicates a likelihood that the complainant regards the request as a means to furthering what appears to be a personal campaign against specific Council staff. The Commissioner considers that this is a relevant factor when assessing whether a request could be seen as obsessive.
23. The Commissioner considers that the request in this case could be characterised as obsessive even when viewed in isolation. However, further taking into account the complainant's previous interaction with the Council and willingness to pursue action in relation to the identity of individual employees, the Commissioner believes there is a strong case that the request can fairly be seen as obsessive.

Does the request have the effect of harassing the public authority or its staff?

24. The Commissioner considers that the evidence regarding the context and history of the request is also of relevance here. The examples of the complainant's actions outlined above at paragraphs 19 to 22 provide compelling evidence that this request, particularly when viewed in context, would be likely to have the effect of harassing the Council's staff.
25. The underlying reasons for the complainant's dissatisfaction with the Council are not matters for the Commissioner to consider. However, it is apparent that the complainant has chosen to pursue his grievances in a manner which targets individual officers as the subjects of complaints rather than addressing them more appropriately towards the Council as a body corporate. Similarly, the complainant has both threatened and pursued legal action in relation to individual officers, as described at paragraph 20.
26. The Council has explained that it believes the complainant's conduct towards individual officers amounts to harassment because it has contained allegations about their lack of professionalism. During a period of concentrated communication with an employee named in the request, in one email the complainant wrote: *"I find your dealings with this matter very Corrupt and Underhanded and I am sure that one day*

very soon all of your credibility with the Planning Committee will be gone."

27. The Council has also explained that at one point the complainant informed the employee that he was recording all telephone calls with him. The combination of the complainant's actions resulted in the employee's line manager instructing him to restrict contact with the complainant. The Council believes it is beyond question that the overall effect of the complainant's conduct towards the Council is for individual members of staff to feel harassed. It also believes that complying with the request in this case would be likely to increase the level of harassment felt by the employees named in the request.
28. The Commissioner accepts that whether a request has the effect of harassing the public authority or its staff is an objective test based upon whether a reasonable person would be likely to regard the request as harassing or distressing. In this case, having taken account of the circumstances of the request itself and the history preceding it, the Commissioner is satisfied that it can reasonably be considered to have the effect of harassing staff of the public authority. This is particularly the case in view of evidence regarding the complainant's tone when dealing with the Council's staff and his willingness to hold them personally accountable for his sense of grievance in relation to the official duties they carry out on behalf of the Council.

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

29. When considering whether this factor applies the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.
30. In its submissions to the Commissioner regarding this request, the Council did not expressly argue that complying with this would request would impose a significant burden in terms of expense and distraction.
31. Nevertheless, the Commissioner considers it appropriate to take account of the circumstances surrounding the request, and particularly the fact that it appears to be only one stage of an ongoing pattern of communication from the complainant in the form of requests and complaints regarding his grievances against the Council. Therefore, when the request is viewed in conjunction with the context and history of the complainant's dealings with the Council, the Commissioner considers that some weight can be attributed to this factor when considering whether the request is vexatious.

Is the request designed to cause disruption or annoyance?

32. As discussed in the Commissioner's published guidance, this factor relates to a requester's intention and can therefore be difficult to prove. The Commissioner is mindful of the fact that under the Act the purpose behind any request is not a relevant factor. However, in examining the intent of the requester the Commissioner is considering the effect of the process of complying with the request rather than why the complainant wants the information.
33. The Council has explained to the Commissioner that it believes the request is designed to cause disruption or annoyance because it forms part of an ongoing personal campaign against specific staff employed by the Council.
34. As already outlined in this Notice, the Commissioner considers it is reasonable to see the request as obsessive and having the effect of causing distress to the Council's staff. This is partly in view of the history and context of the request, which points to a pattern of behaviour in which the complainant has chosen to pursue complaints and threaten legal action against individual Council employees. In view of this history to the request and the fact that the request itself again targets individual staff, the Commissioner accepts that, even if not intended, the effect of complying with the request would be to cause disruption or annoyance to the Council.

Does the request lack any serious purpose or value?

35. Whether a request has value is not of significance given that the Act is not concerned with the motives of a requester, but rather with promoting transparency through access to official information. However, the Commissioner acknowledges that if an authority is able to demonstrate that a request has no serious purpose or value it may lend weight to the application of section 14(1) when taken together with other supporting factors.
36. The Council has not expressly argued that the request in this case lacks any serious purpose or value. However, the Commissioner notes that the combination of the other supporting factors already outlined above could reasonably be considered to undermine the serious purpose of a request.
37. Nevertheless, in considering this matter, the Commissioner is not satisfied that the Council has demonstrated that the request in this case lacks any serious purpose or value.

Is the request vexatious?

38. In considering the five factors set out above, the Commissioner acknowledges that the questions overlap and that the weight attributed to each will depend upon the circumstances of the particular request. The Commissioner also notes that, in his view, it is not necessary for each of the five factors to be satisfied in order to refuse a request on the basis of section 14(1) of the Act.
39. The Commissioner has taken account of the evidence presented in relation to the context and history of the request, and particularly the complainant's apparent desire to pursue his dissatisfaction with the Council through formal complaints and threats of possible legal action against individual staff. The Commissioner has also considered the nature of the request itself and the fact it appears to be a continuation of a personal campaign against individuals conducting official duties in their role as Council employees. On the balance of the factors above, with regard to the context of the request and particularly its impact upon the public authority and its staff, the Commissioner finds that the complainant's request is vexatious.
40. As the Commissioner has found that the Council is entitled to rely upon section 14(1), he has not got on to consider the application of section 43(2) of the Act.

Procedural requirements

Section 17 – refusal of request

41. 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.”

42. 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."

43. 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."

44. In other words, if a public authority wishes to rely upon section 14, it must issue a refusal notice stating whether or not it holds the information within 20 working days following receipt of the request.

45. In this case, the Council states that the request of 11 September 2009 was received on 16 September 2009. The Council issued its refusal notice 31 working days later on 29 October 2009.

46. Therefore, the Commissioner finds that the Council breached the requirements of section 17(5) by failing to issue a refusal notice within 20 working days.

The Decision

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

- It was entitled to refuse the request under section 14(1) of the Act.

48. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- It breached section 17(5) by failing to inform the complainant of its reliance on section 14(1) within 20 working days of receiving the request.

Steps Required

49. The Commissioner requires no steps to be taken.

Right of Appeal

50. 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 16th day of December 2010

Signed

**Andrew White
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 14 - 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 17 – 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."