

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 02 June 2011

Public Authority: West Dorset District Council
Address: Stratton House
58/60 High West Street
Dorchester
Dorset
DT1 1UZ

Summary

The complainant asked for permission to visit the Council's archives and "have access to, research and make copies" of all documents relating to the transfer of property previously owned by the former Lyme Regis Town Council to West Dorset District Council. The Council refused the request on the basis that it considered it to be manifestly unreasonably under regulation 12(4)(b) of the Environmental Information Regulations 2004 but during the course of the Commissioner's investigation sought to rely on section 14(1) (vexatious requests) of the Freedom of Information Act 2000. The Commissioner agrees that in this case the Act is the relevant legislation and he found that the Council had appropriately applied section 14(1).

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. From the information provided to the Commissioner in relation to this complaint, and previous complaints and enquiries made to the Commissioner by the complainant, it is clear that there is a long history of correspondence and information requests submitted to the Council by him, regarding the transfer to it of property previously owned by Lyme

Regis Borough Council. It appears that the correspondence and requests regarding this topic date back to at least January 2009.

3. The Council maintains that the history of contact with the complainant goes back much further and relates to incidents and disputes regarding a different matter that date back to 1992, culminating in 1996 when the Council revoked a license held by the complainant.

The Request

4. On 23 July 2010, the complainant wrote to the Council to request an internal review of its handling of a previous request for information. He included the following new request for information:

"I further request to visit your archives and have access, research and make copies where possible of all documents transferred to West Dorset District Council relating to property owned by the former Lyme Regis Borough Council as indicated in the copy letter from the Lyme Regis Town Council dated 9th April 1974."

5. The Council responded on 18 August 2010 and said that it considered the request to be manifestly unreasonable under section 12(4)(b) of the Environmental Information Regulations 2004 (the "EIR") and that the public interest favoured maintaining that exception to disclosure.
6. On 3 September 2010, the complainant emailed the Council to request an internal review of its handling of his request 23 July 2010.
7. Following the Commissioner's intervention the Council provided the outcome of its internal review to the complainant on 3 February 2011. It maintained its decision that the request was manifestly unreasonable under the EIR.

The Investigation

Scope of the case

8. On 16 November 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Council's refusal of his request but he did not specify the particular request he was complaining about. However it was apparent to the Commissioner that the complaint related to the request of 23 July 2010. At that time the complainant had not received a response to his request for an internal review and the Commissioner wrote to the Council on 6

January 2011 to ask it to conduct a review. The Council sent the findings of its internal review to the complainant on 3 February 2011. The complainant remained dissatisfied with the Council's handling of his request.

9. The specific points that the Commissioner considered during his investigation were:
 - The correct legislation under which the request should have been considered.
 - Whether the Council appropriately applied that legislation when it refused to comply with the request of 23 July 2010.

Chronology

10. Following a telephone conversation with the Council to discuss this complaint, the Commissioner wrote to it on 13 April 2011 to ask it for further information to support its position and he received its response on 18 May 2011.

Analysis

Substantive Procedural Matters

The relevant legislation

11. It is apparent that there has been some confusion about the relevant legislation under which the request of 23 July 2010 should have been considered. This seems to have arisen from correspondence between the Commissioner and the Council in relation to a similar complaint from the same complainant. In that case the Commissioner advised that the EIR might have been the appropriate legislation and that clearly influenced the Council's handling of the request of 23 July 2010. For the sake of clarity the Commissioner has therefore set out his view of the applicable legislation in this case.
12. The request of 23 July 2010 was for access to and copies of "all documents transferred to West Dorset District Council relating to property owned by the former Lyme Regis Borough Council as indicated in the copy letter from the Lyme Regis Town Council dated 9th April 1974". The Commissioner has been unable to examine the information in question because to require the Council to produce it would expose it to the burden that section 14(1) of the Act and regulation 12(4)(b) of the EIR are designed to prevent. The Commissioner has therefore based

his decision on the request itself and the information with which he was provided during his investigation.

13. The Commissioner has determined that the information in this case – ie information on property ownership – is not likely to meet the definition of environmental information defined by regulation 2(a)-(f) of the EIR. His decision is based on the fact the information on the ownership of property is not information on the state of the elements of the environment, factors likely to affect the elements of the environment or measures likely to affect the factors and elements referred to in regulation 2(a) or 2(b). It is also unlikely that the information would meet the definition of environmental information set out in regulations 2(d)-(f); reports on the implementation of environmental legislation, cost benefit analysis of relevant measures or information on the state of human health and safety.
14. The Commissioner would like to point out that following a telephone discussion regarding this matter the Council agreed that the Act, rather than the EIR, was the relevant legislation under which the request should have been considered. Having agreed that the Act was the relevant legislation in this case the Council informed the Commissioner that it was relying on section 14(1) of the Act and provided him with arguments to support that view.

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

15. Section 14(1) of the Act provides that a public authority does not have a 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.
16. 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

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

18. It is important to note that while the above cases and guidance provide a useful guide to assessing whether a request is vexatious, they do not provide a prescriptive test. In arriving at his decision on such matters, the Commissioner will assess each case on its own merits and is mindful of the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088)(at paragraph 26), in which it pointed out that the threshold for vexatious requests need not be set too high.

The Council's position

19. The Council is of the view that, since an incident in 1996 where the complainant was in dispute with the Council, he has, together with another individual, "pursued a campaign against the Council, looking for information relating to all aspects of:

- The Cobb² and its maintenance by the council
- Ownership of the Cobb
- The Council's issue of a boatman's license [to the complainant]...
- Lyme Regis generally
- Ownership of property in Lyme Regis previously owned by Lyme Regis Borough Council prior to the local government reorganisation of 1974."

¹[http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx](http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

² http://en.wikipedia.org/wiki/Lyme_Regis

20. The Council stated that the request of 23 July 2010 is related to the complainant's accusation that property that used to belong to Lyme Regis Borough Council has been transferred in an improper fashion. The Council informed the Commissioner that the complainant is unhappy that it is unable to account for all of the title documents of property transferred to it. The Council has explained to the complainant that it cannot account for all of the properties transferred to it because the transfer occurred over 30 years ago and it had no reason to keep title documents of properties that have been sold or where leases have come to an end. The Council has explained this to the complainant but he continues to submit requests asking for information relating to the transfer of ownership and his latest request is for access to the relevant archives (the deed store) of the Council in order that he can examine and take copies of documents.
21. In addition to raising this matter with the Commissioner the Council stated that the complainant has referred his concerns to solicitors, the Local Government Ombudsman and the police. The Council's view is that taking into account the context and history of the complainant's contact with the Council, the request can be fairly seen as obsessive. The Council also set out in its response to the Commissioner that the effect of the request could be considered to harass its technical services department and that his request to inspect records in its deed store would, when taken together with the time already spent dealing with his correspondence and information requests, place a significant burden on its resources. The Council made further submissions to the Commissioner and these are considered in further detail below.

The complainant's position

22. The Commissioner is not aware of any specific arguments put forward by the complainant to dispute the Council's decision to refuse to comply with his request. The complainant asked the Commissioner to consider the Council's refusal of the request but submitted no further arguments.

The Commissioner's position

23. The Commissioner has considered the arguments put forward by the Council and, in order to present his decision in a structured format, has considered the five questions set out in his guidance and referred to in paragraph 16 above.

Could the request fairly be seen as obsessive?

24. The Commissioner accepts that at times there is a fine line between obsession and persistence and, although each case is determined on its own facts, he considers that an obsessive request can be most easily

identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. Further, the more independent evidence available, the more likely the request can be characterised as obsessive although a request may still be obsessive even without the presence of independent evidence.

25. In arriving at a decision on whether the request can fairly be seen as obsessive, the Commissioner considered the context and history of contact between the Council, with particular reference to the investigation of the Local Government Ombudsman and the referral to the police.
26. The complainant complained to the Local Government Ombudsman that the Council illegally acquired properties from the town of Lyme Regis during the local government reorganisation of 1974. In April 2011, the Ombudsman concluded that the complaint was outside of her jurisdiction for a number of reasons:
 - She may not normally investigate a matter where the person complaining has known about that matter for more than 12 months for complaining to her. The substantive issues about which the complainant wishes to complain date back to 1974, now some 37 years ago.
 - The Ombudsman may not normally investigate a complaint where the person has a right of appeal to a statutory tribunal. The Ombudsman pointed out that, if the complainant believes that the Council holds information to which he is entitled but is refusing to disclose it, the complainant has a right of appeal to the Commissioner.
 - The Ombudsman must have regard to the level of personal injustice claimed to result from the alleged maladministration and may exercise discretion not to investigate a complaint where she considers the level of personal injustice claimed is not so significant as to warrant investigation. The complainant had informed the Ombudsman that he considered his rights to "have been affected" by a "mass fraud" but did not specify in what ways his rights have been affected. The Ombudsman also pointed out that she was unable to investigate a complaint that concerns something that affects all or most of the inhabitants of the area of the Council concerned and that provision might apply in the case brought to her by the complainant. With regard to allegations of fraud and illegality, the Ombudsman pointed out that alleged criminal matters are properly for the police and courts.
 - The Ombudsman also pointed out that the complaint may have originally been framed as a complaint against the Town Council but

that those types of council do not come under her jurisdiction. When the complainant was advised of this he submitted that his complaint was in fact against the District Council.

27. In conclusion the Ombudsman was unable to conclude that the complaint was appropriate for investigation by her.
28. The Commissioner has seen evidence that the complainant raised the issue of alleged "mass fraud in property titles" with Dorset Police in April 2010. His complaint to Dorset Police appeared to be that in 1974 (following local government reorganisation) property and land owned by the former Lyme Regis Borough Council should have transferred to West Dorset District Council but was sold off privately, allegedly to local employees.
29. An officer of the Council spoke with an officer of Dorset Police in July 2010 but since that time the Council has heard nothing further about whether an investigation is ongoing. The Council considers that it is likely that Dorset Police decided to take no further action but it is not in a position to clarify this point.
30. The Commissioner considers that the fact that the complainant has raised a complaint with other independent bodies – the police and the Local Government Ombudsman – to be significant. It demonstrates that there is a clear link between the various requests the complainant has made to the Council, regarding the issue of property titles and deeds, and his belief that there has been impropriety or criminal activity in relation to the transfer of ownership of land from one council to another. It also demonstrates that the alleged offence dates back to 1974, which the Commissioner considers significant in terms of the likelihood of relevant information being retained by the public authority. It also adds support to the Council's view that the complainant's requests are unlikely to be satisfied until he is able to find evidence of the alleged impropriety or criminal activity.
31. The Commissioner also notes from the evidence provided to him that between January 2009 and July 2010 the complainant submitted at least nine requests for information (including the request to which this notice relates) to the Council for information regarding the issue of the transfer of land and property from the former Lyme Regis Borough Council, much of which is on or around the Cobb. In April 2010, in response to a complaint made to the Commissioner, the Council provided the complainant with details of the properties transferred to it. It also provided the complainant with a list of property still owned by the Council in April 2010 that had "devolved from Lyme Regis Borough Council on statutory devolution in 1974". The Council explained that the list of property still owned was not the same as the property transferred

to it because the transfer took place over 30 years ago. The Council explained that over that 30 year period properties had been sold and leases come to an end and that it had no reason to keep title documents for such properties. The Council also disclosed copies of land registration details and site plans where available. The Council restated its position when it issued the findings of its internal review to the complainant on 3 February 2011.

32. The Commissioner considers there to be a clear link between the requests submitted by the complainant from January 2009, regarding the transfer of property previously referred to and his complaints to the Local Government Ombudsman and Dorset Police; a fact supported by the complainant's statement to the police that he had, through the use of requests under the Act, uncovered "mass fraud" in property titles. Despite his complaints to the Local Government Ombudsman and Dorset Police, the complainant appears determined to pursue this matter through further requests to the Council. The Commissioner considers that the proper channels for raising allegations of fraud and illegality are through the police and the courts. He considers that the complainant's apparent desire to continue to draw out his communication with the Council on this matter means that his request of 23 July 2010 can be fairly seen as obsessive.
33. Further, the Commissioner considers that there is a link between the previous requests submitted to the Council by the complainant and another individual, who appear to have been submitting linked requests. Those requests date back to at least August 2007, when the complainant began submitting requests for information regarding bylaws concerning "touting by Boatmen at the Cobb harbour in Lyme Regis". The requests continued through 2008 and the complainant progressed to asking for, among other things, information regarding the Council's "emerging harbour policy" to copies of applications for "ply for hire licenses", copies of the Cobb Committee minutes from 1955 to 1974 and then on to copies of all responses issued by a particular Council employee to information requests submitted by him and the other individual. On 23 January 2009, the complainant submitted a lengthy request for information regarding pleasure boat licenses, ply for hire licences, a copy of the 1821 Cobb Act, copies of byelaws relating to marine activity at the Cobb and copies of all historical documents and records (including deeds) transferred from the former Lyme Regis Borough Council and/or the current Town Council during after the local government re-organisation of 1974. After that request, the complainant's focus changed to the matter of the transfer of ownership of property.
34. Based on the evidence the Commissioner has seen, between 14 August 2007 and 23 January 2009 the complainant submitted at least 11

requests for information. This does not include the correspondence and requests submitted by the other individual referred to above, whose requests and associated correspondence relate to a dispute regarding his failure to obtain the relevant license to allow him to operate a pleasure boat from Lyme Regis. In the Commissioner's view there is a link between that dispute and the requests submitted by that individual and the complainant who both appeared to initially be looking to challenge the Council's position regarding the license. The complainant's requests progressed on to other matters but the Commissioner is satisfied that at their root was the dispute regarding the other individual's application for a license.

35. On balance, the Commissioner is satisfied that the Council has demonstrated that the complainant's behaviour is indicative of an obsession with obtaining information from the Council in order to hold it to account.

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

36. The Commissioner's guidance on vexatious requests states that when considering this issue, "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. Relevant factors under this heading 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 and complaints."
37. The Council has not submitted extensive arguments in relation to this factor and the Freedom of Information Officer has clarified that the requests do not cause him personal upset. He did however state that "the sheer persistence of [the complainant] does indicate an attempt to harass the technical services department who deal with the Cobb and the harbour".
38. It is important to note that it is not the intention of the request that is the key point here but the likely effect of the request. The Commissioner considers that when the context and history of the complainant's requests (as set out in paragraphs 31-34, above) are taken into account, the effect of the request of 23 July 2011 is likely to have the effect of harassing authority. While this may not have been the intention of the complainant and there is no evidence that his requests have contained hostile or abusive language, the Commissioner considers that the volume requests and the pattern of submitting request after request has the effect of harassing the authority and the members of staff who have to deal with the requests.

39. Furthermore, the information provided to the Commissioner includes examples of intermingling requests with complaints and accusations of impropriety. For example a request of 10 September 2008 included an allegation that a Council employee had misled the local MP when he enquired about the issuing of licences. In correspondence regarding a subsequent request the complainant submitted an allegation on 3 January 2010 that deeds for premises "throughout the town and the Cobb Hamlet", may have been falsified. The Commissioner considers that the effect of submitting such allegations with requests for information could, when considered in the context of the high volume of correspondence and requests, have the effect of harassing the Council and causing distress to the employees who have to deal with these matters.

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

40. 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.
41. The Council argued that it has spent "vast amounts of time" already dealing with information requests from the complainant but it has not kept details of the time involved.
42. It is clear to the Commissioner that the time required by the Council to deal with previous requests from the complainant has been significant. It has required input from employees other than the Council's Freedom of Information Officer and has clearly impacted on the Council's resources. The Commissioner agrees with the Council's view that to comply with the request of 23 July 2010, by admitting the complainant to its offices and into its deed store, would place a further significant burden on its resources; notably, a member of staff would need to accompany the complainant at all times to ensure that its records were not interfered with and to assist him with finding and accessing the relevant records. The employee would be taken away from their normal duties and this would be a significant burden on the Council in terms of both expense and distraction.

Is the request designed to cause disruption or annoyance?

43. As this factor relates to the requester's intention, it can be difficult to prove. Cases where this is a strong argument are therefore likely to be rare. However, if a requester explicitly states that they want to cause maximum inconvenience, the request will almost certainly be vexatious.

44. The Council's view is that the likely purpose of the request is to either grind down the Council until it gives in and issues a relevant pleasure boat license to the complainant and/or the other individual or to "seek revenge" for having his licence revoked in 1996.
45. In the Commissioner's view there is insufficient evidence to comment on the intention of the complainant but notes that the Council's arguments overlap with the first three factors considered above.

Does the request lack any serious purpose or value?"

46. If a request clearly lacks any serious purpose or value, it may help an argument that the request is vexatious when taken together with other factors (eg if the request is also obsessive, harassing or burdensome).
47. The Council's view is that the sheer number of separate requests, with a variety of topics, all connected in some way with the Cobb, suggest that there is no genuine purpose for discovering the information.
48. The Commissioner's view is that an apparent lack of serious purpose or value is not enough on its own to make a request vexatious. The Act is not generally concerned with the motives of the applicant, but with transparency for its own sake. In his view, public authorities should therefore not dismiss a request solely for this reason, and should be aware that even a request that seems spurious or tedious to you may have genuine value to the individual.
49. In this case is difficult to demonstrate that the request has no serious purpose or value. However, the Commissioner considers that - even if it could be demonstrated that the request had a serious value - the request is obsessive and indicative of a campaign against the Council. As such, he does not consider that there can be any continuing justification for the request, regardless of whether or not it has a serious purpose or value.

Summary of the Commissioner's position

50. Taking account of the above factors the Commissioner considers that the Council appropriately determined the request of 23 July 2010 to be vexatious. The Commissioner considered the volume and pattern of requests to be of particular relevance in arriving at the conclusion that the request was obsessive. He also considers matters of alleged fraud and illegality to be appropriately raised with the police and the courts. The Commissioner notes that the complainant has raised a complaint with Dorset Police but his request of 23 July 2010 appears to be an attempt to continue to investigate this matter. The Commissioner considers that this is also evidence to support the view that the request is obsessive. For the reasons previously stated in this notice, the

Commissioner also considers that to comply with the request would impose a significant burden in terms of both expense and distraction and that the cumulative affect of the numerous requests submitted to the Council is likely to have effect of harassing it.

Procedural Requirements

51. Section 17(5) of the Act states that a public authority relying on a claim that a request is vexatious must, within the time for complying with section 1(1), give the applicant a notice stating that fact. The Council applied the provisions of the EIR and, while he acknowledges that there were reasons for this and that advice from his office played a part in the Council's decision in this regard, breached this requirement.

The Decision

52. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - It correctly applied section 14(1) when it determined that the request was vexatious.
53. 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 that it was applying section 14(1) of the Act.

Steps Required

54. The Commissioner requires no steps to be taken.

Other matters

55. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
56. As he has made clear in his 'Good Practice Guidance No 5', published in February 2007, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of

the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

57. The complainant initially requested an internal review of the Council's handling of his request on 3 September 2010. The Council did not issue the findings of its internal review until 3 February 2011 and after the Commissioner's intervention. The Commissioner would hope that the Council would take steps to ensure that such matters are addressed.

Right of Appeal

58. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

59. 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.

60. 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 2nd day of June 2011

Signed

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

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"

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."