

Freedom of Information Act 2000

Decision Notice

Date: 9 February 2011

Public Authority: South Gloucestershire Council
Address: Council Offices
Castle Street, Thornbury
South Gloucestershire
BS35 9BJ

Summary

The complainant made a series of requests to South Gloucestershire Council regarding costs, staffing levels and service procedures within the Council's taxi licensing department. The Council refused to comply with the requests, claiming that they were vexatious under section 14(1) of the Act. The Commissioner finds that the Council correctly applied section 14(1) to the requests, and requires no steps to be taken. The Commissioner also finds that the Council breached section 17(7)(a) of the Act as it failed to provide the complainant with details of its internal review procedure.

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. Approximately three years ago the complainant appealed a taxi licensing decision made by South Gloucestershire Council (the Council). The complainant won his appeal and the Council was ordered to pay the costs of the appeal. However, the complainant did not accept the level of costs awarded and has, since the appeal, made a

number of requests to the Council relating to the issue of costs and staffing levels within the taxi licensing department of the Council.

3. The complainant has referred two of his requests to the Council to the Local Government Ombudsman (LGO). These are still under investigation.

The Request

4. In January 2010 the complainant made three detailed requests to the Council relating to costs and staffing levels within the Council's taxi licensing department, the Council's service standards regarding telephone queries, and all costs associated with the complainant's court case. The detail of these requests can be found in Annex 1 at the end of this Notice.
5. On 19 February 2010 the Council issued a refusal notice to the complainant in respect of all three requests. It cited section 14 of the Act as a basis for refusing to comply with the requests, as it considered them both repeated and vexatious. The Council advised the complainant that it would not respond to similar requests made by him until a period of nine months had passed. The complainant was not advised of any internal review procedure.

The Investigation

Scope of the case

6. On 9 March 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 following points:
 - The Council's application of section 14 to the requested information.
 - The Council's decision to block any further requests for information for a period of 9 months.
7. Given the circumstances of this particular case, the Commissioner used his discretion to accept the complaint without requiring the Council to carry out an internal review of its decision not to disclose the requested information.

Chronology

8. On 18 August 2010 the Commissioner wrote to the Council requesting further details regarding its application of section 14(1) to the requests.
9. On 15 September 2010 the Council provided a detailed submission to the Commissioner.

Findings of Fact

10. During the course of the investigation the Commissioner established that in June 2008 the Council conducted a review of the level of fees charged for providing taxi and private hire licences. As a result of that review, all costs information and staffing levels were supplied by letter to every licensed taxi driver in the South Gloucestershire area, of which the complainant was one. That information has also been provided in newsletters to the South Gloucestershire Taxi Association and is available in an outline form as part of the Council's publication scheme.
11. The Commissioner has been provided with evidence of information requests made by the complainant dating back to 8 September 2008 with at least 16 requests being made in the seventeen months prior to the requests which are the subject of this Notice. The Commissioner notes that he has already dealt with complaints relating to two of those requests.

Analysis

Substantive Procedural Matters

Section 14 – vexatious and repeated requests

12. The Council claimed section 14 of the Act as a basis for its refusal to comply with the three requests which are the subject of this Notice. The Council stated in its refusal notice to the complainant that it believed the requests to be both vexatious and repeated. Therefore, the Council has relied on both sections 14(1) and 14(2) of the Act, and the Commissioner has considered each in turn.

Section 14(1) – vexatious requests

13. Section 14(1) is an exclusion that provides that:

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

14. The Commissioner has issued guidance in relation to the issue of vexatious requests¹. This guidance explains that for a request to be deemed vexatious, the Commissioner will consider the context and history of the request. The Commissioner will also consider the strengths and weaknesses of the arguments presented by the complainant and the public authority against the following five factors:

- whether the request can otherwise fairly be characterised as obsessive;
- whether the request has the effect of harassing the public authority or its staff;
- whether compliance would create a significant burden in terms of expense and distraction;
- whether the request is designed to cause disruption or annoyance;
- and whether the request has any serious purpose or value.

15. The Commissioner does not consider it necessary to consider each of the five factors in every case, but has set out below the relevant factors in this case, and the applicable arguments.

Can the requests fairly be seen as obsessive?

16. The Commissioner has considered whether or not the complainant's requests can be characterised as obsessive or manifestly unreasonable, bearing in mind that at times there is a thin line between obsession and persistence on the part of a complainant.

17. The Commissioner has also had regard to the Tribunal's comments in the case of *Ahilathirunayagam v London Metropolitan University* (EA/2006/0070). The Tribunal found the request in that case to be vexatious by taking into account the following matters:

“(ii) The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

detailed content of which had previously been debated with the University

(iii) The tendentious language adopted in several of the questions demonstrating that the Appellant's purpose was to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess

(iv) The background history between the Appellant and the University...and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before..." (para 32)

18. This means that even if the requests appear reasonable in isolation, they may be vexatious when considered in the context of the correspondence generated by them, which in turn leads to new requests being made regarding the same subject area. The Commissioner has therefore taken into account the previous dealings that the complainant has had with the Council when determining whether the requests can be correctly characterised as obsessive.
19. The Council states in its letter to the Commissioner dated 15 September 2010 that the complainant's requests are "incessant and repetitive". That letter goes on to state that, "the requests were obsessive, relentless and manifestly unreasonable" and that it believes that the complainant's behaviour is "deliberate and repetitive". This re-iterates the Council's arguments as to the requests constituting a significant burden in terms of expense and distraction, as set out above.
20. The Commissioner has considered the evidence put forward by the Council in support of its position. This included details of the complainant's correspondence to the Council regarding costs, staffing levels, service standards and his court proceedings dating back to September 2008. The Commissioner is satisfied that the complainant's initial requests were fully responded to by the Council. Since 2008, the Council has received a number of similar requests from the complainant for information and other voluminous correspondence, all of which relate to the original dispute and the subsequent appeal and costs order.
21. Since the complainant was provided with a full response to his September 2008 request and was consulted as part of a formal consultation process regarding details of costs and staffing levels the Commissioner considers that his subsequent correspondence and the tone and language of this, up to and including the requests which are

the subject of this decision, demonstrates a pattern of obsessive behaviour. The Commissioner notes that the complainant had been kept informed of all matters relating to costs and staffing levels within the Taxi Licensing department and had received the letters sent out to Taxi Association members as a result of the Fees Review, been included in the formal consultation process and had access to the information placed on the Council's website and contained in the Licensing Division's newsletter.

22. The Commissioner considers that the three requests which are the subject of this Notice sought information which the complainant already possessed, attempting to re-open issues which had previously been resolved. Therefore, the Commissioner is satisfied that the complainant's requests can be fairly characterised as obsessive.

Do the requests have the effect of harassing the public authority or its staff?

23. 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.
24. 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.
25. The Commissioner has seen evidence to support the Council's assertion that there is a high volume and frequency of correspondence in relation to these requests. The Council has described the complainant's approach as "acrimonious and personal" and has stated that this approach has left "the team and specific individuals within it feeling specifically targeted, bullied and harassed". The Council has further stated to the Commissioner that some of the complainant's requests have contained accusations against individual members of the team, which has caused a high level of distress among staff within the taxi licensing department.
26. The Commissioner has examined a considerable amount of information relating to the complainant and its background and history. He considers that the language and tone of the complainant's correspondence is often abusive, at times attacking the personal

integrity of certain staff members. In light of this the Commissioner accepts the Council's assertion that team members within the taxi licensing department feel harassed by the complainant's approach and the tone of his requests. Therefore the Commissioner is satisfied that the complainant's requests have the effect of harassing the Council and causing distress to its staff.

Do the requests constitute a significant burden in terms of expense and distraction?

27. When determining whether a request imposes a significant burden, the Commissioner believes that a public authority should:

*"... consider whether complying with the request would cause it to divert a disproportionate amount of resources from its core business. However, where the **only** concern ... is the burden on resources ... it should consider whether it would be more appropriate to apply section 12..."*

28. The Commissioner is also assisted by the Information Tribunal's comments in the case of *Gowers v the Information & London Borough of Camden* (EA/2007/0114). The Tribunal emphasised that previous requests received may be considered in the context of the request in question:

"...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor" (para 70).

29. It is therefore appropriate for the Commissioner to take into account the complainant's previous interaction with the public authority when making a determination of whether the requests represent a significant burden to a public authority as noted above. This means that even if the requests do not impose a significant burden when considered in isolation, they may do so when considered in context. Therefore in this case the Commissioner has considered not only the requests themselves but also the background and history to these requests, which have generated a sizeable amount of correspondence between the complainant and the Council.
30. The Council has provided the Commissioner with evidence that the complainant's requests have already necessitated a considerable amount of work within both the taxi licensing department and the legal services division of the Council, and have to date incurred a significant level of costs.

31. In addition, the Commissioner notes that the Council stated to the complainant in its refusal notice dated 19 February 2010 that:

“In the course of these requests you have (individually and collectively) repeatedly targeted staff, accusing the Council and its officers of persistent wrongdoing and have consistently refused to accept any of the answers provided”.
32. Having considered the evidence provided by the Council the Commissioner has identified a pattern of the Council’s response to the complainant’s correspondence triggering further correspondence and requests. The Commissioner accepts that, given the Council’s evidence of previous requests generating further correspondence, in answering this request it seems extremely likely that further correspondence, further requests and possibly further complaints against individual Council officers would be forthcoming. These would impose even more of a burden on the Council in terms of time, costs and diversion of resources to deal with the requests. Evidence of the correspondence generated by the complainant’s requests prior to the requests dealt with in this Notice can be found in Annex 2 at the end of this Notice.
33. The Commissioner considers it appropriate for the Council to consider the cumulative effect of dealing with the complainant’s correspondence. As noted above the Council has provided the Commissioner with details of the series of information requests the complainant has made on the same issues, i.e. costs, standards and service levels within the Council’s taxi licensing department, starting in September 2008. The Council provided the requested information, applied an appropriate exemption or stated that no information was held in relation to all of the complainant’s previous requests prior to issuing the refusal notice on 19 February 2010. In conclusion the Commissioner accepts that, taking together the action already taken by the public authority and the potential for further correspondence and follow-on requests from the complainant, the effect of complying with the requests would have placed a significant burden on the Council.

Conclusion

34. The Commissioner notes the complainant’s explanation that he is involved in a long-standing dispute with the Council. The complainant clearly feels that the Council has not treated him fairly. However the Commissioner is of the view that the Council has provided strong evidence that the complainant’s requests represent a pattern of correspondence, often including personal comments which have the effect of harassing the Council staff dealing with the complainant. The

Commissioner is of the view that compliance with these requests would be likely to lead to further correspondence and requests, which place an intolerable burden on the Council. Therefore the Commissioner is satisfied that the three requests were vexatious, and that the Council correctly applied section 14(1) to refuse to comply with them.

Section 14(2) – repeated requests

35. Section 14(2) of the Act states that, where a public authority has previously complied with a request for information from 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 the previous and current requests.
36. The complainant has requested that the Commissioner investigate the Council's refusal to respond to any future requests regarding the issues as set out in this Notice for a period of nine months.
37. Section 14(1) of the Act refers to vexatious requests and section 14(2) refers to repeated requests. The Council has previously stated to the Commissioner that it believes the complainant's requests to be both vexatious and repeated. However, as stated in paragraph 31 above, section 14(2) applies where requests are for identical or substantially similar information, not merely on a similar theme. As the complainant has requested different (albeit linked) information in each of his requests, the Commissioner does not consider the requests to be repeated. Therefore the Commissioner finds that the Council wrongly applied section 14(2) in relation to the three requests.

Procedural requirements

38. Section 17(7)(a) – details of complaints procedure

Section 17(7) of the Act states that:-

"A [refusal] notice under subsection (1) (3) or (5) [of section 17 of the Act] must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure."

39. The Council in its refusal notice to the complainant dated 19 February 2010 did not provide the complainant with details of its internal review

procedure. The Commissioner considers this omission to be a breach of section 17(7)(a) of the Act.

The Decision

40. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the Act:

- It correctly applied the exemption under section 14(1) of the Act to the requested information.

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

- The Council breached section 17(7)(a) by not providing the complainant with details of its internal review procedure.

Steps Required

42. The Commissioner requires no steps to be taken.

Right of Appeal

43. 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 9th day of February 2011

Signed

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

Annex 1 - the complainant's requests

The complainant made the following requests to the Council:

Request 1 (18 January 2010)

Please can you tell me the procedures undertaken by the Licensing Department upon receipt of a request for information regarding Taxis/drivers, where a suitable person is not available to deal with that enquiry?

Does the Council employee advise the caller that the call will be returned and is there a time frame mentioned?

Is a log kept of the original telephone call?

If so, does the date, time and recipient of the call appear on it?

When the call is returned by a suitable person are notes of that call made on the same piece of paper as the original call?

If not what happens to the original log of the call? Is it for example pinned to the response?

Is it logged into the Council's computer system?

Is it destroyed?

How soon after the response telephone call is the record of that call entered into the Council's computer system?

What is the average response time to a service request?

Request 2 (18 January 2010)

Can you tell me how many Council employees in the Licensing Department were dealing with taxi and PHV matters between the following dates 01/01/2008 – 31/12/2008 and, separately, 01/01/2009 – 31/12/2009?

How many personnel joined the licensing department during these two separate periods of time and how many left and what were the dates of their joining and leaving? By way of explanation, if an employee for example left the Council on 31/03/2008 and wasn't replaced until 01/05/2008, then for that period there would be one short.

How many hours are devoted exclusively and collectively to taxi matters by members of licensing staff per week?

How many hours are devoted strictly for the issue of taxi vehicle/drivers and PHV vehicle/drivers per week?

Please can you tell me the procedures undertaken by the Licensing Department upon receipt of a request for information regarding Taxis/drivers, where a suitable person is not available to deal with that enquiry?

Request 3 (29 January 2010)

Please provide the following itemised information up to and including the date of this request: -

All costs associated with the events and legal proceedings regarding the plating of [the complainant's] Renault Trafic.

With reference to the word "Staff" throughout this request it refers to any council staff, for this or any other authority, engaged in this matter.

Staff costs to be broken down by grade/hour. In the event of any overtime payment at what rate was it paid?

Measurements

All staff costs regarding measurements of [the complainant's] Renault Trafic and [name redacted] Taxis Renault Trafic. To include travelling costs, stationery costs, and meal allowances. At the following venues: Two visits at [redacted 'a'], two visits at [redacted 'b'], two visits at [redacted 'c'], one visit at [redacted 'd'] and one visit at [name redacted] Taxis.

Meetings

All staff costs with regards to inter-departmental meetings, meetings with barristers or their representatives, debriefing after court attendances. Meetings at the draughtsman's office. Meetings with [name redacted] Taxis' representatives and [the complainant], to include travelling costs, meal allowances, stationery costs, printing costs.

Telephone calls

Itemised costs of all calls related to this matter, to include staff wages costs.

Letters

All staff costs and number of letters written to include emails, all stationery, printing and postage costs to other authorities, inter-departmental, legal, [name redacted] Taxis and [the complainant].

Statements

All costs in preparing written witness statements, all pre-trial papers, to include staff wages, printing, stationery and postage.

Court attendances

All staff wages costs, to include travel costs and meal allowances. All staff costs present although not involved in actual proceedings, to include travel costs and meal allowances. All costs incurred from other authorities' witnesses, to South Gloucestershire Council, to include travel and meal allowances. All barrister's costs.

Adjudication cost

Cost of cost draughtsman, including travelling, printing stationery costs, excluding meetings held (mentioned elsewhere).

Support staff

All staff costs for staff deputised to act while other staff were engaged in this matter.

Plates

Costs of issuing and manufacturing vehicle licensing plates for [name redacted] Taxis and [the complainant].

Councillors

Any councillors' cost with regard to pre-trial meetings, correspondence or court attendance.

FOI

Any costs incurred in fulfilling this FOI request. Any other costs implied but not specified.

Annex 2- the complainant's correspondence with the Council prior to his requests of January 2010

19 December 2007 – Fax from the complainant regarding Renault Traffic Vehicle.

6 March 2008 – E-mail from the complainant requesting contact from Taxi Licensing department.

8 September 2008 – 7 linked FOI requests from the complainant.

29 September 2008 – 2 faxes from the complainant's solicitor, one following up on FOI requests, one requesting further information regarding the complainant's Renault Traffic vehicle.

23 October 2008 – Complaint to Local Government Ombudsman.

17 March 2009 – 4 FOI requests from the complainant.

23 March 2009 – E-mail from complainant checking FOI requests are being dealt with (Council responded 24 March 2009 to confirm they were being dealt with).

24 March 2009 – E-mail from complainant to thank Council for reply.

29 March 2009 - E-mail from complainant requesting written confirmation that FOI requests have been received (personal attack on honesty of a member of Council staff) (Council responded 31 March 2009 stating that written confirmation would be provided and refuting allegations of dishonesty).

6 April 2009 – FOI request from complainant regarding staff salaries (that information had already been provided to the complainant on several occasions).

6 April 2009 – FOI request from complainant for copy of Taxi Licensing department's telephone bill.

6 April 2009 – FOI request from complainant regarding all costs of his court case.

20 July 2009 – FOI request from complainant regarding transcript of Council staff member's interview with police re complainant's court case.

25 July 2009 – E-mail from complainant checking that FOI request received (Council confirmed this on 27 July 2009).

3 August 2009 – E-mail from complainant stating that he was going to make a complaint to the Information Commissioner (Council responded 4 August 2009).

6 August 2009 – Letter from complainant copied to three Licensing Member spokespersons requesting that the Council respond to previous e-mail (Council replied and confirmed it had responded on 4 August 2009).

25 August 2009 – Complaint letter from complainant stating Council had not responded to his request (necessitated Council writing another letter and checking e-mail and complaints records).

7 September 2009 – Letter from Council to complainant asking which requests had not been responded to (no response from complainant – generated investigation by Council, which ascertained all requests had been responded to).

13 October 2009 -E-mail to complainant from Council checking which requests complainant believed were outstanding – complainant replied 13 October 2009 asking for his outstanding requests to be dealt with.

14 October 2009 – E-mail from complainant to Council questioning the Council's competence and stating that his requests had not been answered.

Legal Annex

Freedom of Information Act 2000

Section 1 – General right of access to information held by public authorities

- 1(1) 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.

Section 14 – Vexatious or repeated requests

- 14(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- 14(2) 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 the previous request and the making of the current request.

Section 17 – Refusal of request

- (7) A notice under subsection (1) (3) or (5) must –
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure.