

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 March 2011

Public Authority: Whitby Town Council
Address: Pannett Park
Whitby
North Yorkshire
YO21 1RE

Summary

The complainant submitted a request to Whitby Town Council (the Council) which asked for similar information and matched the format of 6 other requests submitted by different requestors between 19 January 2010 and 5 February 2010. The Council refused to provide the requested information, instead applying section 14(1) to the request. The Commissioner has considered the context and history behind this request and is satisfied that the Council has correctly applied section 14(1). The Commissioner does not require the Council to take any further action.

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. This complaint is closely linked to the Commissioner's Decision Notice in case reference number FS50300910. The format of the request matches the first point of the request in the above case reference number and the Council has provided the Commissioner with evidence

to show that there is a clear link between the two complainants in these cases.

The Request

3. In an email dated 19 January 2010 the complainant submitted the following request:

"Please may I request copies, in e-format [i.e., electronic, not paper or otherwise], of the following documents?

All correspondence between WTC [Whitby Town (Parish) Council] and Scarborough Borough Council, from 1st January 2009 until the date of your response, containing the following words or phrases:

- a) "Endeavour Wharf"
- b) "Cargo Shed"
- c) "Transit Shed"
- d) "Community use".

I am sure you are aware that you have 20 working days in which to respond."

4. The complainant submitted a further request to the Council by email on 6 February 2010 in which he requested:

"I require the email which was sent by Councillor Amanda Smith to the Mayor, Councillor Terry Jennison, during the first week of December 2009, complaining about the conduct of Councillor Robert Sigsworth during his personal approach to her at her business premises; this email was subsequently lost by Councillor Smith as a result of a computer failure, but in January 2010, Ian Anderson from Scarborough Borough Council confirmed that he had obtained this email from you."

5. The Council responded to the complainant on 24 February 2010 in which it refused to supply the requested information on the basis that it found the requests to be vexatious.
6. In an email dated 25 February 2010, copied to another party who had another ongoing complaint with the Commissioner against the Council, the complainant requested an internal review.
7. After receiving no response to his request for an internal review, the complainant contacted the Commissioner on 14 March 2010.

8. The Commissioner wrote to the Council on 15 April 2010 asking that the internal review was completed within 20 working days.
9. The Council issued its internal review response on 25 June 2010 in which it upheld its application of section 14(1).

The Investigation

Scope of the case

10. On 20 May 2010 the complainant contacted the Commissioner again 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(1)
 - The time taken for the public authority to respond to both his initial request and his request for an internal review.

Chronology

11. The Commissioner wrote to the Council on 12 July 2010 asking for detailed submissions regarding its application of section 14(1).
12. The Council responded to the Commissioner in a letter dated 6 August 2010, providing its arguments, supporting documents and the background history behind the request.
13. The Commissioner requested further submissions from the Council in an email dated 4 October 2010.
14. The Council responded to the Commissioner in a letter dated 11 November 2010 in which it provided further arguments and further evidence to show the link between this complainant and another case being considered by the Commissioner.

Analysis

Substantive Procedural Matters

Section 14

15. Section 14(1) of the Act states that:

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

The full text of section 14 is available in the Legal Annex at the end of this Notice.

16. The Commissioner’s approach is outlined in his guidance entitled ‘Vexatious or repeated requests’¹. The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:

- it would create a significant burden in terms of expense and distraction;
- it is designed to cause disruption or annoyance;
- it has the effect of harassing the public authority;
- it can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
- it clearly does not have any serious purpose or value.

17. The guidance indicates that it is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. However it does state that to judge a request vexatious a public authority should usually be able to make persuasive arguments under more than one of the above bullet points. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner* (EA/2007/0130):

“a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf

determination whether a request was vexatious or not might not lend itself to an overly structured approach..." (paragraph 20).

18. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) at paragraph 11 stated that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
19. In *Gowers v Information Commissioner* (EA/2007/0114), the Information Tribunal noted that when considering section 14:

"The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one"
20. The Commissioner therefore views it as appropriate to consider the context and history of a request, in addition to the request itself, when determining whether one or more of the five bullet points listed in paragraph 16 can be satisfied.
21. The Council has sought to rely on three of the points at paragraph 16:
 - *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*
22. The Council has stated that between 19 January 2010 and 11 February 2010 it received 16 Freedom of Information requests from persons connected with a movement in Whitby aimed at discrediting the Council. A number of these requests contained the same wording format and were asking for multiple documents, including letters and emails which contained specific trigger words.
23. The Town Council's staff resources are one full time town clerk working 37 hours and one part time deputy clerk working 24 hours. Its initial response was that the cost of collating the requested information would probably exceed the proscribed limits under section 12 of the Act. However, during this period there were several other issues being pursued by persons connected to the movement described above which the Council feels could only be described as harassing and designed to disrupt the Council. This included the reporting of 16 out of 19 town

Councillors to the Standards Board. The complainant was party to several of these complaints.

24. The Council has stated the information request of 19 January 2010 was not specific and would have led to a considerable burden on the Town Council's staff in relation to finding the information requested. The request seemed to be more of a fishing exercise to find out if any correspondence, emails, or conversations existed rather than a specific request. The Council has also stated that this request could have been directed to Scarborough Borough Council who would have been party to any information relevant to the request and whom have a greater resource pool to respond to Freedom of Information requests.
25. The Council has provided the Commissioner with evidence to show that the complainant in case reference number FS50300910 (and others) had previously copied the complainant into their requests (and vice versa) along with other supporters of the movement against the Council. The request regarding the Endeavour Wharf shed linked directly to previous emails and correspondence from the complainant in case reference number FS50300910 and another member of the movement both of whom had interests in the tender process with Scarborough Borough Council for the building.
26. In relation to the complainant's request of 6 February 2010, the Council stated that this request related to an email sent to the Town Mayor from a female Councillor complaining about the behaviour of another Councillor. The email related to an ongoing Standards Board complaint made by the complainant in case reference number FS50300910. The copy email had been requested by and sent to the Monitoring Officer at Scarborough Borough Council, therefore the complainant in case reference number FS50300910 would have already had access to the requested email as he was the one who had made the complaint to the Monitoring Officer on behalf of the female Councillor. The complainant's request for the email clearly shows that the complainant in case reference number FS50300910, who was already in possession of the email, had been cc'd into the request. In the Commissioner's view the fact that the request was cc'd to a third party who already had sight of the requested information had the effect of undermining the serious purpose of the request.
27. In addition to the above, despite the known absence of the clerk and the difficulties this would cause in responding within the 20 day deadline, emails chasing responses increased the pressure.
28. Based on the volume of requests submitted over a short period of time, and the evidence provided to the Commissioner, it is apparent that

there is a clear link between the requests submitted to the Council, and that there is an obvious link between the complainant in this case and that of FS50300910.

29. The Commissioner is therefore satisfied that the Council were correct in applying section 14(1) to the two requests above.

Procedural Requirements

Section 10

30. Section 10(1) of the Act states 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.”

The Commissioner considers that the Council has breached section 10(1) of the Act as it failed to respond to the request within twenty working days following the date of receipt.

31. The failure of the Council to carry out an internal review within a reasonable timeframe is addressed in the “Other Matters” section below.

The Decision

32. 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:

- The Council correctly applied section 14(1) to this request

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 10(1) of the Act in failing to failing to respond within twenty working days following receipt of the request.

Steps Required

33. The Commissioner requires no steps to be taken.

Other matters

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

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these 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. The Commissioner is concerned that in this case, it took in excess of 40 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

35. 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 7th day of March 2011

Signed

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

Legal Annex

Time for Compliance

Section 10(1) provides that –

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

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

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.”