

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 May 2011

Public Authority: Warwickshire County Council
Address: Shire Hall
Warwick
CV34 4SA

Summary

The complainants asked Warwickshire County Council whether it had received any fees or advantage as a result of introducing its employees to a particular pension scheme. The public authority issued a refusal notice stating the request was exempt by virtue of the exclusions under sections 14(1) (vexatious requests) and 14(2) (repeated requests) of the Freedom of Information Act 2000.

The Commissioner has considered the submissions of both parties and has determined that the public authority's application of section 14(1) was properly applied; however he finds that section 14(2) was not engaged. The complaint is therefore partly upheld.

The public authority's handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

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. One of the complainants is a former employee of Warwickshire County Council (WCC). She has been in correspondence with WCC since 2001 in relation to her Local Government Pension and her excess voluntary

payments from a previous non-Government pension which were paid into an Equitable Life (EL) AVC (Additional Voluntary Contributions) policy. EL was WCC's AVC provider at the time.

3. In 2002, the complainants complained to the Pensions Ombudsman primarily because they were dissatisfied with WCC transferring the excess contributions into the EL AVC policy, particularly given the performance of EL at that time. In 2003 the Pensions Ombudsman concluded that their complaint should not be upheld.

The Request

4. The complainants (husband and wife) made a request to Warwickshire County Council ('WCC') on 29 June 2010 for the following information:

"Did WCC receive any fees or any other advantage, monetary or otherwise, as a result of introducing employees to EL? Answers are required in 20 working days, in writing to the above address. Failure to comply will result in further complaints to ICO."

The complete version of the request can be found at Annex A attached to this Decision Notice.

5. In the absence of a response from WCC, the complainants hand-delivered a further letter dated 5 August 2010 requesting a response. On learning that the previous Head of Finance to whom the original request had been addressed was no longer employed by WCC, the complainants wrote again on 6 August 2010, addressing their letter to his successor.
6. The complainants complained to the Commissioner on 7 September 2010 about the non-response from WCC. The Commissioner wrote to WCC on 6 October 2010, enclosing a copy of the request and asking WCC to provide a response to the complainants within 20 working days.
7. On the same day, WCC contacted the Commissioner and provided a copy of the response it had sent to the complainants dated 9 September 2010. WCC advised the Commissioner it had refused to respond to this request on the basis that it found the request to be both vexatious and repeated in accordance with sections 14(1) and 14(2) of the Act. In its letter of 9 September 2010 WCC referred to two previous letters it had sent to the complainants, dated 28 January 2010 and 16 June 2010 respectively, in which it indicated it would consider applying sections 14(1) and 14(2) to any other similar

requests. WCC confirmed that it had applied sections 14(1) and 14(2) to the complainants' request of 29 June 2010. The issue of exactly when WCC issued its refusal notice in respect of it applying sections 14(1) and 14(2) is considered further under the *Analysis* section.

8. On 27 September 2010 the complainants requested an internal review. WCC provided the result of its internal review on 2 November 2010 in which it upheld the decision to apply sections 14(1) and 14(2) to this request.

The Investigation

Scope of the case

9. On 10 November 2010 the complainants contacted the Commissioner to complain about the way their request for information had been handled. Their letter of complaint included background information about the pension issue, together with a chronology of key correspondence from 23 March 2009 to 5 November 2009. The complainants stated that it was *"pointless to continue the above list. Suffice to say that WCC have responded, or rather failed to respond, in much the same way right up to the present day"*. The complainants also provided their views on WCC's application of sections 14(1) and 14(2) and specifically asked the Commissioner to consider whether WCC had correctly applied sections 14(1) and 14(2) to their request.
10. The complainants also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. On 22 February 2011 the Commissioner wrote to the public authority and asked it to provide any additional information in support of its applications of sections 14(1) and (2) in respect of the request. The Commissioner also sought clarification as to exactly when WCC had issued its refusal notice on the grounds of the request being vexatious and repeated, as this was not entirely clear from the correspondence he had seen.
12. The public authority responded on 14 March 2011, enclosing copies of 41 pieces of correspondence between WCC, the Pensions Ombudsman and the complainants on the subject of the pension (see Annex B of this Notice). WCC submitted some additional background information about the context and history surrounding the request and an explanatory chronology of the correspondence it had enclosed. WCC also clarified when it had issued its refusal notice applying sections 14(1) and 14(2).

Analysis

Substantive Procedural Matters

13. The Commissioner notes that the public authority has cited both limbs of this exclusion.

Exclusion – section 14

14. 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”.

15. 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”.

Section 14(1) – vexatious requests

16. Section 14(1) provides that a public authority does not have to comply with a request for information if the request is vexatious. The Commissioner’s published guidance¹ explains that the term “vexatious” is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants). Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. In line with the Commissioner’s guidance, when assessing whether a request is vexatious, the Commissioner considers 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?
- Is the request designed to cause annoyance and disruption?
- Does the request lack any serious purpose or value?

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http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

17. It is not necessary for all of the above criteria to be met but, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. It is also the case that some arguments will naturally fall under more than one heading. The public authority in this case has submitted arguments to support its application of section 14(1) under the following factors.

- 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?

18. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exclusion to be engaged.

Could the request fairly be seen as obsessive?

19. The Commissioner's guidance states:

"A request may not be vexatious in isolation, but when considering 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 which makes it vexatious."

20. The Commissioner has considered the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been debated and considered.

21. During the course of the investigation, WCC provided copies of 41 pieces of correspondence between it, the Pensions Ombudsman and the complainant on the subject of the complainant's pension, dating back to 27 July 2001, up to and including 2 November 2010. In this copy correspondence, the complainants specified they were making a request under the Act on 9 September 2009 and 29 June 2010. Following the outcome of the Pensions Ombudsman's review of their complaint, the volume of correspondence about the pension issue to WCC from the complainants decreased, but started again in 2006 and 2009/2010. In its letter to the complainants dated 2 November 2010 (the outcome of the internal review) WCC has stated:

"The Council has received frequent and a large volume of correspondence from you over the past few years in respect of

[complainant's name redacted] pension. An indication of the volume is that 6 letters have been received from you in respect of this matter since August 2010 averaging 2 letters a month and that in total WCC has received around 56 letters from you in total on this matter over the past few years. 26 of these letters have been received since 31 March 2009. This is a strong indication that a request for information in relation to the same matter should be classified as vexatious."

22. WCC further stated:

"[Your request] is also related to the same matter (complainant's pension complaint) that has been the subject of prior requests for information by you. In my view your request demonstrates a clear intention of reopening issues that have previously been debated and considered."

23. The Commissioner has considered the complainants' submissions that their request is not vexatious and that the reason they have had cause to write repeatedly has been *"to try and get [complainant's] pension sorted out. This is a pension with an eleven year history of mistakes by the Pension Manager at WCC."*

24. The Commissioner accepts that there is a difference between persistence and a request being obsessive or manifestly unreasonable. In this instance, the Commissioner believes that the complainants have stepped over this line by using the Act in an attempt to revisit an issue that both WCC and the Pensions Ombudsman have already considered.

25. Furthermore, the Commissioner considers that the pattern of the complainants' requests instils little confidence that compliance would not simply have triggered further correspondence and requests.

26. The Commissioner's guidance states that it will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they already have independent evidence on the issue (e.g. reports from an independent investigation). The more independent evidence available, the stronger this argument will be. Despite an independent investigation by the Pensions Ombudsman which concluded otherwise, the complainants continue to view that WCC was at fault in using Equitable Life as its AVC provider. Against this background, the Commissioner has concluded that the public authority was justified in deeming the request to be obsessive.

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

27. The Commissioner acknowledges that there will often be an element of overlap between the various vexatious criteria. For instance, where a

request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. Whilst the complainant(s) may not intend to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.

28. The Commissioner's guidance advises public authorities to take into account relevant factors which 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.
29. WCC has provided its view to both the complainants and the Commissioner, that the complainants have submitted a large volume of correspondence (as detailed above) in respect of the pension issue and, in particular, of WCC's use of EL, which WCC states in itself could be considered to be harassing.
30. WCC also confirmed that the complainants have *"often made derogatory statements about members of staff in [your] correspondence, particularly [employee's name redacted] who you have accused on several occasions of being incompetent (letters dated 27.11.01, 2.11.02 and 20.04.09 as examples) and acting out of spite (letter dated 20.04.09 as an example). Furthermore, when you attended Shire Hall on 5 August 2010 the member of staff felt that you had acted in a rude and unpleasant manner, making derogatory statements about staff which included asking if [employee's name redacted] had 'got the sack' for incompetence."*
31. WCC further advised:

"[You] have also tended to fixate on a few particular members of staff in your correspondence [employees' names redacted] holding those members of staff responsible for 'wrongs' you allege the Council to have made in respect of its use of Equitable Life, despite a decision from the Pensions Ombudsman indicating otherwise. Finally, you have tended to mix requests for information or explanations with accusations (usually of incompetence or obstructiveness) and complaints. These factors in the context of the history of the matter in [my] view all indicate that the manner in which you have corresponded with the Council is likely to be regarded by a 'reasonable person' as harassing or distressing."
32. The complainants submitted that:

"the charge that we are causing harassment is not only untrue, it is deeply insulting. [Employee's name redacted] goes on to say we have 'insulted' WCC staff. We have made strong and perhaps blunt criticisms [sic] of WCC staff several times. These have been taken as insults but are not, as they have always been based on solid facts of which we have documentary proof..."

33. The Commissioner has taken into account what likelihood there is that a response ending the ongoing exchange of correspondence could ever realistically be provided. However, given the length of time that WCC has been dealing with this issue and the nature of the enquiries, the Commissioner believes it is reasonable to conclude that the effect of the request is to have harassed the public authority and its staff.

Would complying with the request impose a significant burden?

34. 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.
35. In the Information Tribunal case of *Coggins v the Information Commissioner (EA/2007/0130)*, the Tribunal found that a "significant administrative burden" was caused by the complainant's correspondence with the public authority that started in March 2005 and continued until the authority's application of section 14(1) in May 2007. Similarly, WCC has had to deal with the complainant's correspondence and requests over a sustained period.
36. As is the case here, it was common for the complainants' correspondence to return to earlier matters, particularly where the complainants remain dissatisfied with the response. Whilst the complainants' stated position is that any excess cost has only been incurred due to WCC staff refusing to provide answers to their simpler enquiries, the public authority's view is that its previous experience with the complainants suggests that even providing a response to a relatively simple enquiry is likely to lead to further requests or complaints.
37. WCC advised the Commissioner that it had been corresponding with the complainants in respect of pension complaints since 2001 and has during that time:

"provided information and numerous explanations to [you] in respect of sums paid in and out of [the complainant's] AVC. Despite this, you have continued to make enquiries in respect of this matter and repeatedly asserted that the Council was at fault

in using Equitable Life as its AVC provider in 2000, despite the Pensions Ombudsman's findings otherwise."

WCC referred to extracts from four different letters in which the complainants had indicated that they would pursue the matter further; e.g. in a letter to the Council dated 26 May 2009 about the complainant's pension, the complainants stated they *"could not let the matter rest here because of the mistakes in your pension dept. going back many years and continued recently by [name redacted]"*.

38. The Commissioner has determined that it would seem reasonable for WCC to consider that compliance with this request would involve looking again at matters already addressed and this would be likely to generate further correspondence. Compliance would thereby impose a significant burden.

Section 14(2) – repeated requests

39. The Commissioner's approach to section 14(2) can be found in his Awareness Guidance, as explained above. The guidance states that a request can be refused as a repeated request if:

- "• it is made by the same person as in the previous request;*
- it is identical or substantially similar to the previous request;*
and
- no reasonable time has elapsed since the previous request."*

Are the requests made by the same person?

40. To be repeated, the requests must have been submitted by the same person. This point has not been contested by either party and, as the requests have been made under the same given name(s), the Commissioner is satisfied that they are made by the same person.

Is the request identical or substantially similar to previous requests?

41. The Commissioner's guidance clarifies that a request will be substantially similar to a previous request even if the wording of the request is not identical if it requires disclosure of substantially similar information to respond to it. The public authority has contended that the issue of the complainants' dissatisfaction with the transfer of the excess contributions from a former pension scheme into the EL AVC policy by the Council had been responded to in its letter of 10 August 2001. In this letter, WCC explained that, in line with mandatory government guidance at the time, any monies deemed to be "excess contributions" as a consequence of a reinstated personal pension to the

Local Government Pension Scheme were to be paid to the in-house AVC plan. WCC also advised that at the time, its AVC provider was Equitable Life and therefore WCC had no option but to pay the excess contributions to Equitable Life.

42. WCC has contended that the complainants then made another request for substantially similar information on 2 September 2009 asking whether certain of its employees had been directed by any senior staff to continue to use EL as the Council's AVC provider and for the names and positions of any such senior employees. The complainants also asked to be provided with some insight into how WCC came to be using EL at the time and whether there was any other explanation. WCC referred the complainants to its previous responses of both 10 August 2001 and 28 January 2010 in which WCC had previously provided an explanation in relation to these queries.
43. WCC advised that the complainants' request of 29 June 2010, although not identically worded, would have required disclosure of substantially the same information. WCC explained that the requests relate to an explanation of its previous actions in relation to the pension issue, and that therefore the passage of time between them has not changed the Council's response.
44. The Commissioner has considered the specific wording of this request and has concluded that, although the subject matter is inextricably linked to the pension matter, the complainants had not previously asked this exact question.

Has a reasonable time elapsed since the previous request?

45. During his investigation, the Commissioner has ascertained that, amongst the extensive correspondence submitted in respect of this complaint between the complainants and WCC about the pension, there are two letters which specifically state that the information is being sought under the Act, dated 9 September 2009 and 29 June 2010 respectively.
46. The request of 9 September 2009 sought information relating to the complainant's pension including why WCC was using EL as its AVC provider. WCC responded on 5 November 2009, enclosing a copy of the requested guidance on the Local Government Pension Scheme. This letter also referred to the complainant's right to make further requests for information both under the Act and the Data Protection Act, but highlighted that WCC would take account of the *"previous and protracted history of this matter, to decide whether [your] complaints or correspondence should be regarded as vexatious"*.

47. The request which serves as the basis of this Notice was submitted by the complainants to WCC on 29 June 2010. The request was for substantially similar information to the earlier request of 9 September 2009 as it would require disclosure of substantially similar information in response. The Commissioner's guidance states that when considering what could constitute a *"reasonable interval"* a public authority should take account of the circumstances, including how likely it is that the information is to change, how often the records are updated and any previous advice given to the requester, such as when new information is likely to be available.
48. A period of some nine months separated the earlier information request from that of 29 June 2010 which repeated part of it. The Commissioner has noted that the complainants had not previously asked the specific question *"Did WCC receive any fees or any other advantage, monetary or otherwise, as a result of introducing employees to EL?"* Whilst accepting that the request is related to the previous request because it is another way of asking why WCC had placed the complainant's excess contributions into the EL AVC, the Commissioner is satisfied, having viewed the exchange of correspondence, that the complainants had not asked this specific question previously, such that the passage of time is not a factor for consideration in this particular case.

Conclusion

49. The Commissioner recognises that there is a fine balancing act between protecting a public authority from vexatious applications and the promotion of transparency in the workings of an authority. Taking all the relevant matters into account, including the history and context of the request and that the matter has been considered by the Pensions Ombudsman, the Commissioner has found that the number and strength of the factors in favour of applying section 14(1) are of sufficient weight to deem the request as vexatious.
50. For the reasons outlined above the Commissioner has concluded that the public authority was incorrect to apply section 14(2) to this request.

Procedural Requirements

Section 17 – Refusal of request

51. Section 17(5)(a) of the Act 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”.

Section 17(6) provides that:

“Subsection (5) does not apply where –

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

52. As part of the investigation the Commissioner sought to clarify exactly when the public authority had issued its refusal notice in respect of both sections 14(1) and 14(2). WCC advised that although it considered it could have refused to deal with previous requests for information from the complainants on this matter on the basis that they were vexatious and repeated, it had not done so because it was trying to ensure it had adequately dealt with all of the complainants' outstanding issues with a view to trying to bring the matter to a close. It confirmed that it had not issued a refusal notice until 9 September 2010.
53. WCC explained that it had, in its correspondence to the complainants dated 28 January 2010 and 16 June 2010, stated it would consider any further or outstanding requests from the complainants on the pension issue as vexatious and repeated within the meaning of section 14 of the Act. However, it did not issue its refusal notice until 9 September 2010 in relation to the request of 29 June 2010.
54. The Commissioner has investigated why there was a delay in issuing the refusal notice in this case. In mitigation, the public authority has explained that the original request of 29 June 2010 was addressed to a WCC employee who had retired at the end of March 2010. WCC is unclear about what happened to the request in the interim; however, given that a further copy was hand-delivered it has concluded that the request was not dealt with at that time. The complainants subsequently hand-delivered another copy of their request to WCC's town hall on 5 August 2010, which WCC responded to on 9 September 2010 when it issued its refusal notice citing sections 14(1) and 14(2) of the Act. Whilst noting WCC's explanation, the Commissioner has found a breach of 17(5) of the Act.

The Decision

55. 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 properly applied the exclusion in section 14(1) to the request.
56. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- it incorrectly applied the exclusion in section 14(2) to the request.
 - in exceeding the statutory time limit to inform the complainants of its application of section 14(1) and 14(2), the Commissioner finds that the public authority breached section 17(5) of the Act.

Steps Required

57. The Commissioner requires no steps to be taken.

Other matters

58. The introduction to the section 45 code of practice (the "Code") states:

"All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While in many cases such requests will be dealt with in the course of normal business, it is essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that sufficient staff are familiar with the requirements of the Act and the Codes of Practice issued under its provisions."

Although the introduction does not form part of the Code itself the Commissioner would echo its recommendations and notes that, in this case, the public authority initially failed to recognise and process the request. The Commissioner expects that, in future, WCC will ensure that it has procedures in place which enable it to identify requests for information and deal with them within the timescales set by the Act.

Right of Appeal

59. 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

60. 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.

61. 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 31st day of May 2011

Signed

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

Annex A

The complete request made on 29 June 2010 is detailed below:

"We are writing as a result of eventually receiving the bundle of information send [sic] by [name redacted] as reply to our DPA inquiry [sic] and complaints to ICO which were needed as usual. We were shocked to discover a letter from [name redacted] to CIS asking for a 250.00 pound fee for advice on pension instatements [sic] (not reinstatements as [name redacted] kept saying). What a nerve in light of what happened to [complainant's name redacted] pension. We would not pay him or other WCC responsible for the mess, in washers, let alone money, for what we have seen of his department.

The above letter beggers [sic] further questions. As you know, we have always been puzzeled [sic] as how such senior staff as were involved, could have made such basic mistakes as continuing to use Equitable Life as an AVC provider months after everyone else knew they were fataly [sic] overextended due to their GAR policys [sic].

Due to past uncooperativeness, we must ask the following questions under the FOI act.

Did WCC receive any fees or any other advantage, monetary or otherwise, as a result of introducing employees to EL? Answers are required in 20 working days, in writing to the above address. Failure to comply will result in further complaints to ICO.

Find enclosed a letter to [name redacted] dated 29/6/10. Could you please pass this on to save postage. Also enclosed a copy of a previous letter 18/6/10 to [name redacted] for your information."

Annex B

The following list details the 41 pieces of correspondence submitted by the public authority to the Commissioner in support of its application of sections 14(1) and 14(2) to the request which serves as the basis for this Notice:

1. Letter dated 27 July from [complainants] to the Council demonstrating the complainants' view that the Council was responsible for the position that [complainant's] AVC was in, because the Council took out the AVC with EL without [complainant's] permission or knowledge;
2. Letter dated 10 August 2001 from the Council to the complainants explaining that the Council had no option but to pay [complainant's] excess contributions to EL as they were obliged at the time to pay such contributions to the Council's in-house AVC Plan which was being provided by EL at the time;
3. Letter dated 24 September 2001 from [complainants] to the Council demonstrating the complainants' unwillingness to accept the explanation provided about the Council's position in relation to using EL;
4. Letter dated 19 November 2001 from the Council to [complainants] again reiterating that the Council was obliged to place the money in respect of the "*excess contributions*" in the EL AVC;
5. Letter dated 27 November 2001 from [complainants] to the Council again demonstrating the [complainants] unwillingness to accept the Council's explanation about why the money had been placed in the EL AVC and questioning the competence of senior staff at the Council;
6. Letter dated 2 January 2002 from [complainants] to the Council again questioning why the Council had no choice but to use EL;
7. Letter dated 15 February 2002 from the Council to [complainants] responding to a complaint made by [complainants] in respect of the investment of [complainant's] excess contributions in the AVC provided by EL. Again this response provided a detailed explanation why the Council had no option at the time but to pay the contributions to the EL AVC;
8. Letter dated 20 February 2002 from [complainants] to the Council again disputing the Council's position regarding the EL AVC and again making suggestions about the competency of senior Council staff;

9. Letter dated 27 February 2002 from [complainants] to the Council again questioning why it was not possible at the time to place [complainant's] "*excess contributions*" into the LGPS;
10. Letter dated 15 March 2002 from the Council to [complainants] again explaining why the Council had no option at the time but to place the "*excess contributions*" in the EL AVC;
11. Letter dated 18 March 2002 from [complainants] to the Council again questioning why the Council had no choice but to place the "*excess contributions*" into the EL AVC;
12. Letter dated 24 June 2002 from [complainants] to the Council again questioning the Council's position regarding EL;
13. Letter dated 26 July 2002 from [complainants] to the Council complaining that the Council had placed [complainant's] "*excess contributions*" in the EL AVC;
14. Letter dated 27 July 2002 from [complainants] to the Council again questioning why the Council had to use EL;
15. Letter dated 23 August 2002 from the Council to [complainants] again explaining the Council's position with regard to placing the "*excess contributions*" in the EL AVC;
16. Letter dated 23 September 2002 from [complainants] to the Council again demonstrating [complainants] unwillingness to accept the Council's position regarding EL and again inferring that senior Council staff were incompetent;
17. Letter dated 24 October 2002 from the Council to [complainants] again explaining to [complainants] why the Council had no choice but to put the monies in the EL AVC;
18. Letter dated 2 November 2002 from [complainants] to the Council again demonstrating [complainants] unwillingness to accept the Council's position in respect of EL;
19. Letter dated 7 November 2002 from the Council to [complainants] referring [complainants] to the Local Government Ombudsman as the Council was unable to help them any further with regard to their complaint about [complainant's] pension;
20. Letter dated 20 November 2002 from [complainants] to the Pensions Ombudsman (PO) detailing complaints they wished the PO to investigate, including complaint that the Council took out an EL AVC for

- [complainant] with the excess contributions without her knowledge or permission at a time when EL was unable to meet its commitments;
21. Complaint Form dated 4 December 2002 from [complainants] to the PO setting out details of their complaint;
 22. Letter dated 1 July 2003 from the PO to the Council (enclosing letters sent by PO to complainants) informing the Council that the [complainants] complaint has not been upheld. In particular the PO decided that there was not cause to criticise the Council for continuing to use EL as the AVC vehicle at the time;
 23. Letter dated 14 August 2003 from the Council to [complainants] following the decision of the PO;
 24. Letter dated 18 August 2003 from [complainants] to the Council responding to letter of 14 August acknowledging that the PO had stated [complainant] would have to choose from one of the EL schemes;
 25. Letter dated 13 October 2003 from [complainants] to the Council indicating that they did not accept the PO's decision that the Council was not at fault in using EL – *"In any case, how can you trust [the PO] after they said WCC was not to blame for not realising EL were in trouble as late as March 2000... [Name redacted][the PO] is only covering his own arse [sic] and the arsese [sic] of others in the regulatory "industry" who failed to spot this, and failed to protect people like [complainant];*
 26. Letter dated 27 October 2003 from the Council to [complainants] to the Council stating that in relation to some of the points raised in [complainants] letter of 13 October, the Council had already responded to these points and there would be no value in revisiting them;
 27. Letter dated 31 October 2003 from [complainants] to the Council stating that despite the decision to the contrary by the PO, [complainants] *"still think WCC acted incompetently by still using EL as late as March 2000"*;
 28. Letter dated 1 March 2006 from [complainants] to the Council demonstrating that despite the explanation given on numerous occasions and the decision of the PO, they did not accept that the Council was not at fault in using the EL AVC – *"Although we know the PO [name redacted] judgement is final, we strongly disagree with his view regarding WCC's use of EL as late as FEB 2000.."*;

29. Letter dated 5 April 2006 from [complainants] to the Council again demonstrating (in last couple of sentences) that they did not accept that the Council had not been at fault in using EL;
30. Letter dated 31 March 2009 from [complainants] to the Council - this was in response to some incorrect information that was given to [complainants] which was subsequently corrected. In this letter they again raise the same concerns about the Council's use of the EL AVC;
31. Letter dated 7 April 2009 from the Council to [complainants] apologising for the incorrect information that had been sent;
32. Letter dated 2 September 2009 from [complainants] to the Council making requests for information under the FOIA 2000, including asking if "*mistakes*" made by [name redacted] and [name redacted] were a result of having received orders from more senior staff, then could the details of where these orders came from – for instance "*if [the officers] were directed to continue to use EL despite their well reported imminent failure, please give full details and names of positions held by those people*";
33. Letter dated 5 November 2009 from the Council to [complainants] explaining that the Council already considered that it had answered [complainants] enquiries on this matter;
34. Letter dated 28 January 2010 from the Council to [complainants] – this letter was sent following correspondence from your Office and referred [complainants] to [name redacted] letter of 10 August 2001 in respect of answering their question "*were you directed to continue to use Equitable Life and if so their name and role.*" In addition this letter confirmed that in respect of any outstanding FOI requests concerning the matter of [complainant's] AVC pension and the Equitable Life fund, the Council would consider these to be vexatious and repeated requests within the meaning of s.14(1) and s.14(2) of the FOIA 2000;
35. Letter dated 6 February 2010 from [complainants] to the Council in which the [complainants] indicate that they do not accept [name redacted] explanation for why the Council were using the EL AVC in his letter of 10 August 2001;
36. Letter dated 16 June 2010 from the Council to [complainants] clarifying that the Council's position as previously stated in correspondence to [complainants] (including the letter of 28 January 2010) remains the same – that the Council has been in protracted correspondence with [complainants] about [complainant's] pension and in particular the Council's use of EL and that the Council considers that there is no further purpose that can usefully be served corresponding with them on this issue;

37. Letter dated 18 June 2010 from [complainants] to the Council in response, stating that as *"the EL AVC was taken out by [name redacted] without [their] permission or even knowledge ... [they] feel this is worth questioning in court especially in light of so much reluctance by WCC staff... to provide proper understandable explanations"*;
38. Letter dated 29 June 2010 from [complainants] again reiterating that they *"have always been puzzled as to how such senior staff as were involved, could have made such basic mistakes as continuing to use Equitable Life as an AVC provider months after everyone else knew they were fatally overextended due to their GAR policys [sic]"* and therefore they felt they had to make the following request under FOIA 2000: *"Did WCC receive any fees or any other advantage, monetary or otherwise as a result of introducing employees to EL"*;
39. Letter dated 9 September 2010 from the Council to [complainants] – this letter was in response to the request made in the letter of 29 June, explaining that [name redacted] had retired from the Organisation in March. This letter also reiterated that in respect of their request about the Council's use of the EL AVC, the Council considered that it had exhausted its enquiries on this issue and therefore drew [complainants] attention to the letter of 28 January 2010 in which it was stated that the Council would consider any outstanding requests for information on this issue as vexatious and repeated under s.14(1) and s.14(2) of the FOIA 2000. The [complainants] request of 29 June 2010 was therefore refused on the grounds that it was vexatious and repeated under s.14(1) and s.14(2) of the FOIA 2000, taking into consideration the ICO's guidance on the application of this exemption;
40. Letter dated 27 September 2010 from [complainants] to the Council requesting that an internal review of the decision to refuse this information be undertaken; and
41. Letter dated 2 November 2010 from the Council to [complainants] notifying them of the outcome of the internal review.

Legal Annex

Vexatious or Repeated Requests

Section 14(1) provides that –

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

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 1. that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 2. that the information is exempt information only by virtue of a provision not specified in section 2(3), and

- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

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."

Section 17(6) provides that -

"Subsection (5) does not apply where -

- (a) the public authority is relying on a claim that section 14 applies,

- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

Section 17(7) provides that –

"A notice under section (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, and
- (b) contain particulars of the right conferred by section 50."