

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 August 2011

Public Authority: London Borough of Richmond Upon Thames
Address: Civic Centre
44 York Street
Twickenham
Middlesex
TW1 3BZ

Summary

The complainant submitted a series of requests to the public authority for information regarding the costs of a Community and Police Partnership. He was particularly interested in how a named individual's role was funded. The public authority determined that the complainant's most recent request was vexatious. The Commissioner has investigated and found that the public authority correctly applied the provisions of section 14(1) of the Act.

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. The Richmond upon Thames Police and Community Consultative Group (PCCG) was established in February 1986 and changed its name to the Community and Police Partnership (CPP) in September 2006.¹ It is formally recognised by the Home Office as the principal Forum for police

¹http://www.richmond.gov.uk/home/policing_and_public_safety/community_safety_partnership/community_and_police_partnership/community_police_partnership_background_and_history.htm

and community consultation in the Borough under section 106 of the Police and Criminal Evidence Act 1984 (PACE). The CPP consists of people drawn from the local community, the Council and the Police. It includes representatives of the:

- Ethnic Minorities Advocacy Group (EMAG)
- Victim Support
- Police Liaison Group (PLG)
- Neighbourhood Watches
- Resident's Associations and Richmond Churches

Statutory agencies are also represented. The CCP is independent of both the Police and the Local Authority. The stated aim of the CPP is to open up channels of communication between the Police and the community in order to develop a mutual understanding of their concerns and priorities.

The Request

3. On 25 August 2010, the complainant wrote to the Chief Executive of the London Borough of Richmond Upon Thames (the "Council") to ask for details of the activities/initiatives of the CPP. He also asked for a breakdown of the amounts listed as administration costs, stating where and to whom they were paid for the previous year and the year to date.
4. The Council responded on 21 September 2010 and disclosed a table detailing the CPP's budget for April 2010 to March 2011, which set out the total budget, broken down by sub-headings under the main headings of 'administration' and 'activities and initiatives'. It also disclosed a list of CPP activities and initiatives for the years 2009/2010 and 2010/2011 to the date of the request.
5. On 23 September 2010, the complainant sent a further request to the Council. He stated that he had expected the list of activities and initiatives to include details of the costs of those activities and initiatives. He also asked for "all the details, including monetary payments for all the items listed on the 2010/11 Report". The complainant stated that he wanted information detailing the amounts paid and to whom they were paid, under the heading staff payments, document reproduction, advertising and publicity and catering and that he wanted the information immediately.
6. On 7 October 2010, the complainant wrote to a named employee of the Council chasing a response to his request of 23 September 2010. This email forms part of the Council's argument that the latest request is vexatious and its contents are referred to later in this email. The

complainant also emailed the Council's Information Lawyer on the same date to re-state his request and chase a response. There followed correspondence between the Council and the complainant, some of which is referred to later in this notice.

7. On 4 November 2010, the Council issued a response to the complainant's request of 23 September 2010. It disclosed a spreadsheet detailing CPP costs, the amounts paid and to whom under the headings document reproduction, publicity and catering. The Council refused to disclose details of staff salaries on the basis that it was exempt under section 40(2) of the Act.
8. On 10 November 2010, the complainant emailed the Council with the following request for information:

"Greetings.

I have been refused information by the Council's legal department (their ref: L/BO/e10431, 4th Nov.) specifically on the grounds that Council employees' wages are a private and should not be provided to the nosey public for personal amusement. (The last bit was a condensed interpretation.)

I would like to make it clear that my request was about the allocation of MPA £50,000 grant to the CPP and the manner in which Council employee, [named individual], is paid i.e. who exactly pays her wages. At the Meet the Public meeting in September, I was given contradictory information by the CPP Chairwoman and the Council's Chief Executive.

At this meeting, I accurately asserted that the CPP was being run fraudulently, its Chairwoman was instrumental in the fraud and [named individual], its administrator, falsified and fabricated the meeting's Minutes. My question was about who was paying her to perform in this manner. While it is perfectly understandable that [named individual] should function as an MPA tart in order to justify her wages (if they pay them), I cannot understand why this money should be laundered through the Council or the reason why she is also a Council employee. If she only performs as the CPP Administrator on a part-time basis and has other duties relating to services on behalf of the public, this should be made transparent – in my opinion. I would, should it be the case, like to know what these other duties are.

So, there you have it. I want it made clear how [named individual] is paid, by whom and for what purpose etc. I am far more interested in the reasons, methods and underlying logic rather than the amounts – should you be willing to disclose them.

This request is made because of my concerns about the CPP's misappropriation of public funds while being run in contradiction to its Constitution and Terms of Reference etc. In my opinion, [named employee]'s perversions cause great harm to the public attending CPP meetings in order to raise their concerns. I cannot see how these perversions are of any benefit to local tax payers or why she should be on the Council's payroll, so all related information would be nice.

Cheers,

[complainant's name]"

9. The Council treated the complainant's email of 10 November 2010 as a new request for information and on 17 December 2010 wrote to him to inform him that it was refusing to comply with his request. The Council stated that it considered the request to be vexatious and applied section 14(1) of the Act.
10. On 4 January 2011, the complainant sent the following email to the Council together with a copy of his email of 10 November 2010:

"Hello again,

Here, I repeat my request for the information sought in my email. Copy attached. I will not bother to contradict the pig-ignorant, fallacious comments of the previous foi refusal made by [named Council official]. Her devious, attempt to cover-up Council/ CPP thievery is plainly absurd and contrived to deceive and this is my 'grounds for appeal.'

I may write to her to express my disgust at her duplicitous complicity – if I can spare the time.

So, I suggest that you get your finger out and don't take all day.

This is your last chance of coming clean before I contact the ICO and others.

Cheers,

[complainant's name]"

11. The Council responded on 4 January 2011. It stated that it had made its position clear in its refusal notice of 17 December 2010 and that it would not be responding further. The Council informed the complainant that he should raise the matter with the Commissioner if he wished to pursue it further.

The Investigation

Scope of the case

12. On 6 January 2011 the complainant contacted the Commissioner to complain about the way his/her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - He had been trying to obtain information about a Council employee who appears to be paid by the Council and the Metropolitan Police Authority (MPA) but had been refused.
 - The Council's most recent response made it clear "in a wholly vitriolic and abusive email" that he was going to be denied the information requested "claiming, in so many words" that he was the "reincarnation of Satan and unworthy of being treated like a human being".
13. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. He alleged that the CPP was being run in contradiction to its terms of reference and MPA guidelines, that the annual budget supplied by the MPA is being fraudulently misappropriated and that CPP's administrator augments the fraud by issuing fabricated and falsified minutes of its public meetings. The Commissioner has no remit to investigate such issues. Matters of alleged fraud are appropriately addressed to the police. If the complainant wishes to complaint about alleged maladministration on behalf of the Council he should consider contacting the Local Government Ombudsman.
14. The Commissioner has considered whether the Council correctly applied the provisions of the Act when it refused to comply with the complainant's request for information of 10 November 2010.

Chronology

15. The Commissioner wrote to the Council on 7 March 2011 to ask for further information to allow him to make a decision in this case, He received a response on 21 March 2011, which included clarification of the Council's position and supporting evidence.

Analysis

Substantive Procedural Matters

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

16. Section 14(1) of the Act provides that a public authority does not have a duty to comply with a request where it may be considered vexatious.

17. Although there is no rigid test or definition of vexatious requests the Commissioner has produced guidance to assist public authorities in this area. The Commissioner’s guidance states the following:

“Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?”²

18. The Commissioner is also mindful of the following Information Tribunal decisions:

- In the case of *Coggins v Information Commissioner* (EA/2007/0130), the Tribunal considered that “the number of FOIA requests, the amount of correspondence and haranguing tone of that correspondence indicated that the Appellant was behaving in an obsessive manner”.
- In the case of *Betts v Information Commissioner* (EA/2007/0109), the Tribunal considered not just the request, but the background and history to the request as part of a long

²http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

drawn out dispute between the parties. The request was considered vexatious when viewed in context as it was a continuation of a pattern of behaviour.

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

Could the request fairly be seen as obsessive?

20. An obsessive request is often a strong indication of vexatiousness. Contributory factors can include 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.
21. The Council's view is that in response to the complainant's previous requests it has already disclosed the CPP budget sheet and a list of the initiatives for the specified period, which included a breakdown of the costs. The Council stated that the request for specific salary details had been refused on the basis that section 40(2) of the Act was engaged. The Council's view is that, through his numerous requests for information and during correspondence with the Council, the complainant has demonstrated that he will not be satisfied despite its best efforts to meet his requests.
22. The Commissioner's guidance on vexatious requests says that the wider history and context of the request is of particular importance in determining whether a request can be considered obsessive. It is unlikely that a one off request could ever be considered obsessive.
23. The information provided to the Commissioner by the complainant demonstrates that he has been in correspondence with the Council regarding the CPP, and the role of its administrator in particular, since at least April 2010. On 19 April 2010, the complainant emailed a Council employee regarding previous correspondence he had sent to the Council's Chief Executive. He repeated allegations regarding the "blatant theft of public funds" he had made to the Chief Executive. He also stated that he suspected the Chief Executive's failure to respond to his correspondence was because "she is complicit in the theft of public funds". The complainant went on to refer to the CPP administrator and the fact that, although CPP states that is independent of the Council, its administrator has a Council email address.

24. There followed correspondence in which the Council informed the complainant that matters regarding the conduct of the CPP should be raised with that organisation or the MPA who provide the funding support for the CPP. The Council went on to explain its involvement in the CPP; the Chief Executive is Honorary Clerk as a courtesy and the Council was funded by the CPP to provide administrative support under a Service Level Agreement. The support is provided as part of the job description of a Council employee. The Council also explained that it is represented at CPP meetings by both officials and Councillors who attend its meetings in recognition of the partnership approach to a number of community safety issues. The Council went on to say that it would be inappropriate to discuss any specific case over which the complainant had concerns and that if he had a complaint about MPA he should contact that organisation or the Independent Police Complaints Commission.
25. In correspondence to the Commissioner the complainant stated that he was seeking information about the portion of the MPA funding to the CPP that was paid to a named Council employee who was the CPP administrator. In his request for information to the Council of 10 November 2010, the complainant stated that he wanted to know how the CPP's administrator is paid "by whom and for what purpose". He went on to say that he was "far more interested in the reasons, methods, and underlying logic rather than the amounts".
26. The Commissioner notes that on 21 September 2010, the Council disclosed details of the CPP's budget for April 2010 to March 2011. That information included the amount of the budget allocated for "staff support incl. on-costs". As set out in paragraph 24, above, the Council has also explained its involvement in CPP and that it receives funding from CPP to provide administrative support. It appears that the complainant is now seeking details of the role for which the named individual is employed by the Council.
27. The Commissioner considers that when the context and the history of the complainant's correspondence and requests for information to the Council are taken into account, the complainant's behaviour is indicative of an obsession with holding this individual employee to account and demonstrating that the CPP was being run fraudulently.
28. For example, throughout his correspondence with the Council the complainant makes allegations that CPP is being run fraudulently. He has also made various references to the conduct of CPP's administrator. For example, in an email to the Council of 13 August 2010 the complainant asked whether the named individual was employed only as the administrator for CPP or whether she had any other function as a

Council employee. He said that if she fulfilled no function for the Council he could see no reason for her to be employed by the Council.

29. The complainant also stated in his request of 10 November 2010 that he had asserted in a meeting of the CPP that the organisation was being run fraudulently, that the Chairwoman was instrumental in the fraud and the administrator had falsified and fabricated CPP's meeting minutes. In the same email he also referred to the CPP administrator as an MPA tart (see paragraph 8, above).
30. Since his request on 10 November 2010 the complainant also repeated the above allegations on an external website. While he did not attach his name to the website entry the Commissioner is satisfied that it was submitted by the complainant.
31. In summary, the Commissioner has determined that the behaviour of the complainant is indicative of an obsession with demonstrating that the CPP is run fraudulently and holding the CPP's administrator to account for her alleged conduct. His correspondence to date indicates that he will not be satisfied until he receives an admission of fault from the Council.

Does the request have the effect of harassing the public authority or causing distress to staff?

32. 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. This is an objective test, based on whether a reasonable person would be likely to regard the request as distressing or harassing. It is important to note that it is the likely effect of the request that must be taken into account, not the intention behind it.
33. The Commissioner's view is that the available evidence demonstrates that the effect of the complainant's request, when considered in the context of other correspondence and requests he has submitted to the Council, is to harass the Council and cause distress to staff. Despite being advised that the Council is independent from the CPP, the complainant has consistently written to the Council alleging that the CPP is fraudulently run. He has also frequently used language that a reasonable person would consider hostile, abusive and offensive and referred to individual Council officials in derisory terms. The Commissioner has included examples below.
34. In an email of 25 August 2010 to the Council's Data Protection and Information Officer the complainant accused her of acting in a "devious

manner" and also accused the Council's Chief Executive of deliberately misleading the CPP and the public.

35. On 7 October 2010, the complainant sent the following email to the same Council employee:

"...I suspect that you were confused by "immediately." Yes, it is a big word with 5 syllables but I feel certain that, if you ask nicely, a colleague whose first language is English, or a dictionary, would probably help.

I am only presuming that you are in need of assistance because of your colourful name, so I could be way off the truth. The thing is: there are many refugees around, usually over here because they have been persecuted by bloodthirsty tyrants or have sexual leanings unpermitted in their own countries. Are you one of them? If so, may I bid you welcome, fair tidings, and good luck with learning the language and all attempts to behave in a decent manner towards others?

The thing is, if you feel inadequate and useless, don't repress those honest feelings. Nobody's perfect. Strive towards being a better person. That's my motto and it's made me what I am today.

As recommended, I will give your chum, [name of Council's Information Lawyer] a try."

36. The complaint also emailed the Council's Information Lawyer on 7 October 2010 and repeated a previous request for information. His email included the following statement;

"Quite frankly, [name of Council's Data Protection and Information Officer] seemed just a tad on the clueless side of things and not altogether au fait with the English lingo but nobody's perfect, as I informed her."

37. On the same date, the Council's Assistant Head of Legal Services emailed the complainant to inform him that it considered his comments to be racist and offensive and stated that they had caused the individual to whom they were addressed great distress. The Council stated that it expected the complainant to issue an unreserved written apology to the individual concerned.
38. The complainant responded to the Assistant Head of Legal Services on 8 October 2010 and questioned the suggestion that his email of 7 October 2010 had included comments that could be considered racist. He also wrote to the Council's Data Protection and Information Officer and apologised if he had caused her distress. However, he then went on to

ask her to clarify if she had stated that she considered his email to have been racist and said that if she made such a claim she would have to justify it.

39. The Commissioner considers that a reasonable person would consider the comments made by the complainant in his emails of 7 October 2010 to be offensive and likely to cause distress to the recipient. He also considers that a reasonable person would recognise that the complainant's further email of 8 October 2010, in which he questioned the individual who was distressed by those comments, would be likely to cause that person further distress.
40. In other correspondence to the Council regarding his request for information of 10 November 2010, the complainant referred to "employee perversions", accused a Council employee of hiding "under the table while squealing like a little pig" rather than facing up to his "paid for duties" and in the same email referred to the same individual as a "pig ignorant turd". In separate emails and correspondence he referred to another Council employee as a "tart" and referred to "pig ignorant" comments made in the Council's refusal notice of 17 December 2010.
41. After receiving the Council's refusal notice of 17 December 2010, the complainant wrote to the Council's Interim Head of Legal and Electoral Service in a letter headed "Prostitution", in which he stated that the "unscrupulous prostitution of your services in order to conceal Richmond Council's and the CPP's fraudulent antics from local residents is a disgusting way to carry on in my opinion". He also said that "he would not be surprised" to see the individual on a particular website. The Commissioner is aware that an entry has been added to the website in question that is likely to have been made by the complainant, in which he repeats his allegations of fraud and the fabrication and falsifying minutes of CPP meetings.
42. The Commissioner considers that a reasonable person would conclude that the comments referred to above are offensive and that the complainant's continued use of such language towards a number of Council employees would have the effect of causing them distress. The Commissioner also concludes that a reasonable person would conclude that continued allegations of the fraudulent use of the CPP funds and the conduct of CPP's administrator would have the effect of harassing the Council.

Summary

43. Taking into account the specific circumstances of the case, and the history of contact between the complainant and the Council, the

Commissioner has determined that the Council appropriately refused the request on the basis that it was vexatious. The Commissioner considers that section 14(1) of the Act is intended to protect public authorities from those who might abuse the right to request information and he finds that it was correctly applied by the Council.

44. The Commissioner found the strength of evidence in relation to the first two factors referred to in his guidance to be sufficient to conclude that the request was vexatious. He did not therefore go on to consider the remaining factors; ie whether complying with the request would impose a significant burden in terms of expense and distraction, whether the request designed to cause disruption or annoyance or whether the request lacks any serious purpose or value.

The Decision

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

Steps Required

46. The Commissioner requires no steps to be taken.

Right of Appeal

47. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

48. 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.
49. 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 23rd day of August 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Vexatious or Repeated Requests

Section 14(1) provides that –

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