

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 September 2011

Public Authority: Somerset County Council
Address: County Hall
Taunton
Somerset
TA1 4DY

Summary

The complainant asked the Council a series of questions around its involvement in an on-going complaint to CIPFA which he had made against one of its employees. The Council refused the request on the grounds that it was vexatious citing section 14(1) of the Act. The Commissioner has investigated and finds that the Council correctly applied 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 complainant was concerned that the same individual simultaneously holding the role of Senior Responsible Officer ('SRO') for the Council in Improving Services in Somerset (ISiS), which later became Southwest One and acting as Section 151 Officer for the Council represented a conflict of interest
3. Southwest One is a Joint Venture company owned between Somerset County Council, Taunton Deane Borough Council, Avon & Somerset Police Authority (who joined in March 2008) and IBM. Its objective is to

provide a range of back office services, including a transformation programme to improve services to the public in the South West. Its services include; Finance, Human Resources, Information Technology, Property, Facilities Management, Revenues and Benefits, Procurement and a Customer Call Centre.

4. Section 151 of the 1972 Local Government Act requires every local authority in England and Wales to '*make arrangements for the proper administration for their financial affairs*' and to give one of its officers responsibility for meeting this requirement.
5. Due to his concerns regarding the potential conflict of interest, the complainant contacted the Chartered Institute of Professional and Financial Accountants ('CIPFA') to complain about a named Council employee and CIPFA member.
6. CIPFA is a professional institute for accountants working in the public services. Its complaints process is outlined on CIPFA's website under its Disciplinary Scheme. It confirms that all complaints received are referred to a panel of the Investigations Committee who considers whether there is a basis for instigating a formal investigation.
7. Assuming a formal investigation is commenced, the Investigations Unit will make a report to the panel of the Investigations Committee including all relevant evidence gathered during the investigation and any response from the CIPFA member. In complex or technical cases, the Investigations Unit will appoint an independent expert accountant to carry out the investigation which was the process followed in this particular case.
8. In the event that the Investigations Committee panel dismisses the complaint, the complainant is entitled to request a review of the investigation by the 'Reviewer of Complaints'. The complainant must set out the reasons why they are dissatisfied with the investigation, and the CIPFA member has an opportunity to respond to those concerns.
9. At the time of the request, the independent expert had dismissed the complaint and the complainant had appealed this decision. The complaint with CIPFA was therefore on-going and the complainant has yet to set out his reasons why he was dissatisfied with the investigation for CIPFA's 'Reviewer of Complaints'. The complainant has however confirmed that he received a redacted copy of the 'Expert Report' from CIPFA on 14 June 2010.

The Request

10. On 5 August 2010 the complainant submitted the following request to the Council:

Q1. Has Somerset County Council been asked to contribute to a CIPFA investigation into a complaint from the resident [complainant's name] involving the CIPFA Member and Officer [named Council employee].

Q2. List all dates of contributions by the County Council and list all the officers involved in formulating those County Council contributions to CIPFA?

Q3. Has the County Monitoring Officer had a role in the County Council's submissions to CIPFA? If so, what was that role and what were the dates of involvement?

Q4. Has the Officer and CIPFA member [named Council employee] had at any time input or influence into any of the County Council contributions? How was separation between County Council contributions and [named Council employee's] contributions impartially achieved?

Q5. Was the CIPFA investigation brought to the attention of any Councillors? If so, names of Councillors and dates of involvement please?

Q6. Was the CIPFA investigation brought to the attention of any of the County Council's Boards, Panels, or Committees? If so, the names of Boards, Panels or Committees and dates of involvement please?

Q7. Did the County Council see an un-redacted copy of the investigation report? Does the County Council still hold an un-redacted copy of the CIPFA investigation report?

Q8. What involvement in redaction did the County Council have? Was that as the Authority or as the Officer concerned?

Q9. Was any redaction carried out for reasons of commercial confidentiality? If so, please state the areas considered commercial in confidence."

11. The Council responded to the request on 20 August 2010 and refused to provide the information citing section 14(1) of the request.
12. The complainant expressed his objections to the Council's decision on 30 September 2010 and the Council communicated the outcome of its internal review on 25 October 2010.

The Investigation

Scope of the case

13. On 22 January 2011 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(1) of the Act.
14. The complainant also raised other issues that are not addressed in this notice because they are not requirements of Part 1 of the Act.

Chronology

15. On 11 April 2011 the Commissioner contacted the Council for information in respect of this complaint and further background regarding its decision to reject the request on the basis that it was vexatious.
16. The Council provided a full response on 19 May 2011 and enclosed a significant amount of background evidence.
17. The Commissioner contacted the Council on 26 July 2011 with a number of queries to assist with his investigation and the Council responded on the same date.

Analysis

Substantive Procedural Matters

Section 14(1) – Vexatious requests

18. 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 guidance 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,¹ 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?

19. 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.

Could the requests fairly be seen as obsessive?

20. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive? In answering this question, the Commissioner's view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.

21. The Commissioner's published guidance states:

"A request may not be vexatious in isolation, but when considered 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 of behaviour that makes it vexatious."

22. The Council has outlined the context and history of its decision to declare the request vexatious. The Council has advised that it considers the request to be 'obsessive' due to the complainant's pursuit of knowledge relating to one member of its staff and the individual's dealings with the Southwest One Contract.

23. The decision was made against a background of the complainant's attendance since September 2007 at four Scrutiny Audit & Resources sub-committees, a meeting of the Audit Committee, a meeting of the Scrutiny Committee and a meeting of the Executive Board during which he asked 16 questions and tabled two statements in relation to

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

Southwest One and the professional conduct of senior offices, with specific reference to the one member of staff named in his request for information.

24. The Commissioner does not consider that attendance at various committee meetings, asking questions and tabling statements is automatically indicative of obsessive behaviour and has considered the facts of this case. As stated in paragraph 2 of this notice, the Commissioner notes that the root of the complainant's concerns is what he considers to be a conflict of interest with the same individual simultaneously holding both the role of the SRO for the Southwest One contract and the post of Section 151 officer for the Council.
25. The Commissioner has examined the minutes of the various committee meetings referred to above and notes that they all relate to the complainant's concerns with the Southwest One project with the focus often concerning the issue of the perceived conflict of interest of the same individual holding the two roles simultaneously. He also notes that on each occasion the complainant was informed that the Council did not consider there to be a conflict of interest and that the roles could even be considered as complimentary.
26. For example, at the Audit and Resources Sub-Committee on 28 April 2008, the Corporate Director – Resources, in response to the complainant stating that the two roles were in conflict, stated that he had taken various assurances to ensure that the appropriate course of action had been taken at all times, explained that various external bodies had not questioned the arrangement and that the KPMG (external auditors) the 4Ps, (now a joint venture between the Local Government Association and Partnerships UK whose aim is to provide professional support to local public bodies and MAANA, (an independent body with expertise in specialist financial, technical and project management) had all been involved in advising the Council at various stages of the ISiS project.
27. The Commissioner is also mindful that at the time of this request, an independent expert report commissioned by CIPFA had dismissed the complaint although he notes that the complaints process itself was on-going and the complainant had yet to provide his reasons why he was unhappy with the original investigation to CIPFA.
28. The Commissioner however notes that as stated in paragraph 6 of this notice, that CIPFA is a professional organisation for accountants in the public services and has a clear and transparent complaints process. The Commissioner is mindful that the complainant had (at the time of his request) already been provided with a redacted copy of the investigation report which itself answers some of the questions in the request.

29. The complainant has argued that he wanted this information to help him decide whether to sign the confidentiality statement required by CIPFA but the Commissioner would highlight that this appears at odds since the complainant had already received a redacted copy of this report.
30. The Council also referred to numerous letters and emails from the complainant to a range of officers in the Council including the County Solicitor and Group Managers in the form of enquiries and complaints regarding their handling of the issues raised.
31. The Commissioner has viewed this information and notes that some of the correspondence post dates the request and that the volume of the letters and emails is not as extensive as indicated by the Council. The Commissioner also notes that whilst these complaints were not directly against the named individual Council employee and CIPFA member, he was the focus of the requests for information which led to these complaints against the accuracy of information provided and tone of response from other Council employees, all of which were either upheld or partially upheld.
32. Having considered the context and history of this request, and the arguments of both the Council and the complainant, the Commissioner does not believe that a reasonable person would consider attendance at various committee meetings, asking questions and the tabling of statements is in itself an indication of 'reasonably obsessive' behaviour.
33. However, when viewed in the context of a number of internal responses by the Council that its external auditors and various other external organisations did not consider there to be a conflict of interest, the ruling of the first stage of the independent CIPFA investigation which also concluded that there was no apparent conflict of interest and having seen a redacted copy of the report into that investigation, the Commissioner believes that a reasonable person would view the request as indicative of behaviour of a 'reasonably obsessive' nature.

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

34. The Commissioner is mindful that the focus when considering this factor should be the likely effect of the request as opposed to the requestor's intention. Again, the benchmark for this factor is that a reasonable person must be likely to regard the request as harassing or distressing.
35. The Council has stated that it is this focus of the complainant on the professional conduct of its individual employee that is the principal reason for it considering the request to be vexatious and it has added that the request is causing distress to the individual employee and CIPFA member subject to the CIPFA complaint.

36. Whilst the Council acknowledges that any a senior officer, particularly one in a position of executive authority, must expect to have their judgements and decisions questioned by the electorate, the Council considers that the number of repeated questions raised by the complainant concerning the named individual's professional conduct in the public domain and the CIPFA enquiry he initiated placed a significant degree of stress on the named individual and associated administrative support.
37. The Council has pointed out that the request specifically refers to the named individual in two of the questions and the CIPFA report is mentioned or is the subject in all 9 questions.
38. The complainant on the other hand has categorically refuted that his focus on the individual council employee is personal and has explicitly stated on a number of occasions that the issue has always been about one person holding both the SRO and Section 151 post simultaneously on the same contract which he regards as a conflict of interest. He considers that the Council would not take his concerns regarding this issue seriously and explained that he therefore felt it necessary to make a formal complaint of unprofessional behaviour against the individual in question.
39. He has further stated that the reason for his request was to gain key information to allow him to respond to the CIPFA confidentiality conditions attached to its specialist report.
40. As stated in paragraph 9 of this notice, the complainant has confirmed to the Commissioner that he received a redacted copy of the 'Expert Report' on 14 June 2010 yet the Commissioner would point out that his request for information is dated 5 August 2010. The Commissioner queried this with the complainant who confirmed that he received a copy of the report before he signed the confidentiality conditions and his concern was that CIPFA did not want him to show the report to the MP for Bridgewater who had also taken an interest in the Southwest One Project.
41. Having considered the arguments of both the Council and the complainant, whilst the Commissioner accepts that it was not the intention of the requestor to cause the individual distress, and whilst he notes that the individual in question held a senior post within the Council, he considers that a reasonable person would consider the request as harassing or distressing.

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

42. In its submissions to the Commissioner, the Council has stated that it has never attempted to exempt the request on the basis of cost. However, it has added that the combined volume of resources outlined in the context and history referred to in paragraphs 22 to 28 and 30 to 31 of this notice, has, and continues to put a considerable strain on its resources both in terms of costs and distracting senior staff from carrying out their usual work.
43. The Commissioner accepts that the Council has indeed spent a considerable amount of resources complying with the complainant's various correspondence and verbal requests. He also notes that many of his requests have led to additional requests for information and one internal complaint. However, the Commissioner is not persuaded that the Council has sufficiently demonstrated that compliance with this particular request would lead to a significant number of subsequent requests and complaints. He does not therefore consider that the Council has provided sufficient evidence in support of this factor.

Is the request designed to cause disruption and annoyance?

44. The Commissioner is mindful that as this factor relates to the requester's intention, it can be very difficult to prove and cases where there is a strong argument are very rare. This was however, one of the factors originally cited by the Council in its decision to declare the request vexatious although since the Commissioner's investigation it has now withdrawn its reliance on this factor. The Commissioner has not therefore considered this factor any further.

Does the request lack any serious purpose or value?

45. The Commissioner notes that if a request lacks any serious purpose or value, it may help an argument that the request is vexatious when taken together with other factors. However, the Commissioner would point out that an apparent lack of serious purpose or value is not enough on its own to make a request vexatious. On the other hand, if a request does have a serious purpose or value, this may be enough to prevent it from being vexatious. If the request forms part of a wider campaign or pattern of requests, the serious and proper purpose must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken.
46. In its refusal notice, the Council informed the complainant that:

"Given the findings of the independent and exhaustive CIPFA investigation, which entirely exonerated [named individual] from any

misconduct whatsoever in connection with the Southwest One Contract, the Council believes that your request lacks both serious purpose and value."

47. The complainant has correctly pointed out that the CIPFA investigation was incomplete at the time of his request as the 'Reviewer of Complaints' had yet to complete her investigation.

48. In his submissions to the Council following its internal review, the complainant informed it that:

"It is possible that the CIPFA Investigations Committee will now rule that the matter should proceed to a publicly held disciplinary hearing ...whilst I have, due to time limits imposed on me, already made my submissions to CIPFA, the FOI questions are still pertinent and necessary because of the potential formal and public hearing of my case."

49. The Commissioner has considered the arguments of the Council and the complainant and believes that the request did have both a serious purpose and value. However, as pointed out in paragraph 45 of this notice, the Commissioner has also considered whether the serious purpose and value justifies both the request itself and the lengths to which the campaign or pattern of behaviour has been taken.

50. The Commissioner has already highlighted that the complainant had articulated his concerns regarding the conflict of interest of the same individual holding the two roles of SRO and Section 151 Officer simultaneously in a variety of ways directly to the Council and had received assurances from the Council that neither it nor its external auditors and a number of professional external bodies considered this to be the case. Additionally, the first stage of the independent CIPFA report had not upheld his complaint on this very issue. The Commissioner has therefore concluded that whilst the request did merit both a serious purpose and value, it did not justify the lengths to which his pursuit of this issue has been taken.

Conclusion

51. In summary, the Commissioner notes that whilst the Council has withdrawn its allegation that the request was designed to cause disruption and annoyance, and whilst the Commissioner considers that the Council has not provided sufficient evidence that complying with the request would impose a significant burden in terms of expense and distraction, he has concluded that the request could fairly be seen as obsessive and that it is harassing the Council and causing distress to the named individual subject to the CIPFA investigation. He has also concluded that even though the request itself merits both a serious purpose and value, that this does not justify the lengths to which the

complainant's pursuit of this issue has been taken. Having therefore considered the five factors relevant in an assessment of whether a request is vexatious, the Commissioner has concluded that on balance, the request was vexatious and that the Council's application of section 14(1) of the Act was correct.

52. The Commissioner would however wish to highlight that this ruling relates solely to the request for information subject to this notice and that his investigation has not extended to the wider issues the complainant has, and continues to raise regarding the Southeast One project. He would also point out that any future requests from the complainant to the Council will each need to be considered on their merits.

The Decision

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

Steps Required

54. The Commissioner requires no steps to be taken.

Right of Appeal

55. 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

56. 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.

57. 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 15th day of September 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

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

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

Vexatious or Repeated Requests

Section 14(1) provides that –

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