

## 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

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The complainant asked the public authority to provide information relating to her pension statement and the dates it reached Warwickshire County Council and herself. The public authority did not respond to this request as it was relying on a previous refusal notice citing the exclusion at section 14 of the Freedom of Information Act 2000 (the 'Act'), which relates to vexatious and repeated requests.

In reaching a decision in respect of this complaint, the Commissioner has taken account of the reasoning and analysis of the same history and context he considered in a previous similar complaint from the complainant (Decision Notice *reference FS50348852*) in which he upheld Warwickshire County Council's decision to apply section 14(1) to that request.

The Commissioner has found that section 14(1) also applies in this case and has therefore not upheld the complaint.

### The Commissioner's role

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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. This Notice sets out his decision.

## Background

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2. The complainant is a former employee of Warwickshire County Council (WCC). She has been in correspondence with WCC since 2001 in relation to her pension and her AVC (Additional Voluntary Contributions) which were paid into the company Equitable Life (EL).
3. In reaching a decision in respect of this complaint, the Commissioner has relied on the decision he reached in a previous similar complaint from the complainant (*reference FS50348852*) in which he upheld WCC's decision to apply section 14(1) to the requested information. The Decision Notice in case *FS50348852* is available online at the ICO's website via the following link:

[http://www.ico.gov.uk/tools\\_and\\_resources/decision\\_notices.aspx](http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx)

## The request

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4. On 25 October 2010 the complainant wrote to WCC advising that she had contacted her solicitor in relation to her pension and made the following information request:

*"1. What date did the EL statement reach W.C.C? 2. Was it deliberately held back by any WCC staff? 3. Otherwise, what is the reason for the gap between the EL statement date and the date it was sent to [name of complainant redacted]?"*

5. Although WCC was relying on a previous refusal notice and, as such, considered it should not have to respond at all to this request, the public authority wrote to the complainant on 27 October 2010. It drew the complainant's attention to its earlier correspondence of 28 January 2010, stating that it was re-explaining its earlier response in relation to the fund value and the rules affecting transfer into the Local Government Pension Scheme and use of the lump sum. WCC reminded the complainant that she had already seen copies of the EL statements under a Data Protection Act disclosure made earlier in 2011, but enclosed a further copy with this response. The public authority reiterated its offer to discuss matters directly with the complainant's solicitor. WCC stated that it did not consider this request to be a request under the Data Protection Act. It advised that it did not intend to correspond any further with the complainant on the subject of her pension.

## The investigation

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### Scope of the case

6. On 24 January 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider her view that WCC had not dealt with the refusal properly.
7. The Commissioner considered WCC's continued application of section 14(1) in relation to this particular information request.
8. The Commissioner also considered whether WCC had issued a refusal notice in accordance with section 17 of the Act.

### Chronology

9. The Commissioner wrote to the complainant on 31 January 2011 to confirm that her complaint had been accepted for investigation.
10. WCC contacted the Commissioner on 22 March 2011 explaining that it was relying on the refusal notice citing section 14(1) issued in respect of the previous request detailed in the Summary, confirming that the complainant had been issued with this refusal notice and that, in its view, it would be unreasonable in all the circumstances to serve another refusal notice in response to this information request.

### Analysis

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11. In determining this case, the Commissioner has taken into account the submissions of both the public authority and the complainant. In addition, the Commissioner has taken account of the decision reached in *FS5038852* referenced above. Full extracts of the relevant legislation considered in the case can also be found in the Legal Annex to this Notice.

### Substantive Procedural Matters

#### ***Exclusion – section 14(1) – vexatious requests***

12. 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, 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?
13. 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?
14. 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.
15. In relation to this complaint, the Commissioner has considered the arguments as set out in the Analysis section of the Decision Notice *reference FS50348852*, under section 14(1) only. This is because he concluded in the previous case that section 14(2) did not apply and thus the refusal notice issued citing section 14(2) is not valid. He has therefore not considered any inferred application of sections 14(2) to this information request.

### ***Conclusion***

16. 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.

## **Procedural Requirements**

### ***Section 17(1), 17(5) and 17(6)***

17. Full extracts of section 17(1), 17(5) and 17(6) can be found in the Legal Annex to this notice. Having reviewed the procedural elements pertaining to refusal notices, the Commissioner has concluded that section 17(5) and 17(6) are applicable to this case.
18. As part of the investigation into *reference FS50348852* the Commissioner concluded that the refusal notice had been issued on 9 September 2010. In this case, WCC has explained it was relying on the previously issued refusal notice in deeming this complaint as being vexatious. As such, WCC was not required to issue any response to this request; however it chose to write to the complainant reiterating that it did not intend to correspond with her any further on the matter of her pension. The Commissioner has concluded that WCC acted in accordance with the requirements of section 17(5) and 17(6) in refusing to deal with this request.

## **The Decision**

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

## **Steps Required**

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20. The Commissioner requires no steps to be taken.

## Right of Appeal

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21. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

**Dated the 31<sup>st</sup> day of May 2011**

**Signed .....**

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

## **Legal Annex**

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### **Freedom of Information Act 2000**

**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.'*

### **S.14 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.”

### **s.17 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(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.”