

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 3 November 2011

Public Authority: Sunderland City Council
Address: Civic Centre
Burdon Road
Sunderland
Tyne and Wear
SR2 7DN

Summary

The complainant submitted two requests to Sunderland City Council ('the council') for information regarding funding for business initiatives. The public authority refused the requests, citing section 14(1) of the Act, which applies to vexatious requests. The Commissioner has investigated and found that, on balance, the council was not entitled to refuse the requests under section 14(1). The Commissioner therefore requires the council to either comply with section 1(1) or issue a valid refusal notice compliant with section 17.

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 Difference Engine project is a funding programme for new businesses. The council is a project partner and investor for the scheme. On [its website](#), the Difference Engine is described as:

"...a full time 13 week acceleration programme which combines investment capital of £5,000 for the idea plus £3,200 per founder (to a maximum of three founders) for 6% of the business with

mentoring, support and office accommodation with various other services provided by our partners”

3. The complainant is a director of a company. This company has made a complaint to the regional development agency One North East, another partner in the Difference Engine, about the way that a funding application had been dealt with and managed. This complaint and subsequent appeal was investigated by One North East. The complainant also submitted a number of freedom of information requests relating to the management of Agency funds, which was one of the concerns raised in the formal complaint.
4. On 7 July 2011, the Commissioner issued a decision notice ([FS50361346](#)) regarding a complaint the complainant had made against One North East. This decision notice found that that One North East was entitled to refuse the complainant's request under section 14(1).

The Requests

5. On 21 March 2010, the complainant submitted a request to the council regarding several aspects of its involvement with the Difference Engine Project. Amongst other requests, the complainant requested confirmation that the council had transferred £100,000 to the project as agreed in the business plan. The council responded on 21 April 2010 and confirmed that the money had not yet been transferred..

On 6 July 2010, the complainant submitted the following request to the council via the website [WhatDoTheyKnow.com](#):

“...I would be grateful if you could provide ...confirmation of the date that your £100k capital contribution has been/will be transferred to the North East Business & Innovation Centre”

6. The complainant chased up a response to this request on 11 and 25 August 2010. On 7 October 2010 the complainant requested confirmation

“that the capital contribution been transferred and what amount of capital has been transferred”.

7. On 6 November 2010, the complainant chased up a response to this request. On 8 November 2010 the council confirmed that no capital contribution had been transferred. On 9 November 2010 the complainant requested that the council confirm:

"...that a capital contribution will be made and what amount that capital contribution will be?"

8. The council responded on 9 November 2010 and stated that it "was not able to confirm at this stage".

9. On 23 November 2010, the complainant submitted the following request to the council:

"Please can you provide a list of all tenants at the Evolve Centre ... and businesses at the Rainton Bridge Business Park ... where you have provided financial support and/or assistance since the opening.

Please provide:

- Details of any Rent/Business rate reduction provided
- Details of any Accommodation/relocation grant(s) directly provided and/or supported (eg relocation grant received by other organisations such as One North East)"

10. On 22 December 2010, the complainant requested "an update" on the matter of the capital transfer.

11. On 23 December 2010, the council issued a refusal notice in response to both requests, citing section 14(1) of the Act. The complainant requested an internal review of this decision on the same day. The council provided its internal review on 31 January 2011. This upheld the original decision.

The Investigation

Scope of the case

12. On 14 February 2011 the complainant contacted the Commissioner to complain about the way his requests for information had been handled.

13. The council issued one refusal notice in response to both requests, and relies on the same submission to the Commissioner in relation to both complaints. The Commissioner has consequently decided to consider both complaints FS50380006 and FS50374873 in this decision notice. Case reference number FS50380006 relates to the complainant's request of 22 December, and case reference FS50374873 relates to the complainant's request of 23 November 2010. The Commissioner will

consider whether the council was entitled to rely on section 14(1) in refusing the complainant's requests.

Chronology

14. On 10 March 2011 the Commissioner wrote to the council to inform it that he had received two complaints from the complainant. The council responded on 4 May 2011 with a submission about why it considered the requests to be vexatious.

Analysis

Substantive Procedural Matters

Section 14

15. Section 14 provides that a public authority is not obliged to deal with a request for information if it is vexatious.
16. There is no single test for deciding whether a request might be considered vexatious. Therefore, each case has to be judged on its own merits, taking into account all of the circumstances of the request.
17. In his guidance entitled '[Vexatious and repeated requests](#)' the Commissioner has outlined a list of criteria to consider when deciding whether a request for information is vexatious or not. These are:
 - Could the request fairly be seen to be obsessive or manifestly unreasonable?
 - Is the request harassing the authority or distressing the staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Does the request lack any serious purpose or value?
 - Is the request designed to cause disruption or annoyance?
18. It is not necessary for all of the above to apply. However, it is the Commissioner's view that at least one must apply and that, generally, the more that apply the stronger the case will be. 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 Information Tribunal upheld this approach in [Rigby v ICO and Blackpool, Fylde and Wyre Hospitals NHS Trust](#) (EA/2009/0103), commenting that:

“it is entirely appropriate and indeed necessary when considering whether a request is vexatious, to view that request in context”
(para 40)

The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exclusion to be engaged.

19. The Commissioner first notes that the council’s arguments that the request is vexatious are based not so much on the history of the complainant’s previous requests to the council itself, but rather on other requests that the complainant has made to another public authority, One North East. One North East is a regional development agency, and one of the partners in the Difference Engine Project.
20. The complainant has submitted requests to the council, One North East and other authorities via the website whatdotheyknow.com. A visitor to this website can click on the name of any applicant who has submitted a request. This takes them to a page listing all of the applicant’s requests made via the site. The council has therefore been able to see that the complainant has made a series of requests to One North East about the Difference Engine.
21. One North East deemed one of these requests vexatious. This response was also visible to the council via whatdotheyknow.com. The complainant complained about One North East’s decision to apply section 14(1) to his request to the Commissioner. The Commissioner has considered that complaint and issued decision notice [FS50361346](#). The Commissioner did not uphold the complaint and found that One North East was entitled to refuse the request under section 14(1). The Commissioner found that the first four factors listed in paragraph 16 above were satisfied. In particular, the Commissioner noted that all of the requests concerned information about project funding and funding management. The complainant’s company made a complaint to One North East about the way its funding application was managed, and this is the subject of a wider dispute.
22. In decision notice [FS50099755](#), the Commissioner found that the Cabinet Office was entitled to take into account the requests it was aware an applicant had made to other public authorities when assessing whether a request was vexatious. This decision was issued in May 2006. The Commissioner would emphasise that, as with all decision notices this did not set a precedent, but merely demonstrated the Commissioner’s approach in that particular case. In this case, the Commissioner has also considered the history of requests made to other public authorities when assessing whether the request is vexatious.

Could the request fairly be seen to be obsessive or manifestly unreasonable?

23. It is the Commissioner's view that obsessive requests are usually a strong indication of vexatiousness. Relevant factors could include the volume and frequency of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered. The guidance to vexatious requests explains that the wider context and history of a request is important to this question. It 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"

24. In this case the Commissioner notes that the complainant has only made about seven requests to the council itself, of which it appears five were repeat requests for information about whether a capital transfer had been made. However, the council's initial response – that no date had been set for the transfer of the funds – implied that the payment would at some point take place. The council could not provide the complainant with an estimated date for the transfer of funds. The Commissioner therefore considers that the fact that the complainant submitted repeated requests for information on this particular matter is not in itself indicative of obsessiveness. This is because it was reasonable for the complainant to believe that the transfer would at some point take place and that the council would then hold information relevant to his request. The Commissioner further notes that the complainant left periods of around six weeks between resubmissions of requests for information on this particular point and he accepts that this is a reasonable interlude.

25. More generally, the Commissioner notes that all of the complainant's requests to the council concern funding for business initiatives. Although there do not appear to be an excessive number of requests to the council when taken in isolation, the Commissioner notes that the complainant has made requests about this matter to several public authorities, and has in particular submitted numerous requests to One North East. In decision notice [FS50361346](#) the Commissioner concluded that the complainant's requests on this matter to One North East could reasonably be judged as obsessive, because of the "context and background to the requests, and the frequency with which the complainant contacted One North East". The requests made to One North East all concerned the funding for the Difference Engine and

other initiatives. The Commissioner accepted in that case that the complainant's requests about these matters were obsessive.

26. However, the Commissioner has also noted that requests made by the same individual on a similar topic to other public authorities have not resulted in those authorities refusing the requests as vexatious, nor have they appeared to lead to significant further correspondence or requests from the complainant. In other words the pattern of requests made to One North East does not seem to have been repeated elsewhere. In the Cabinet Office decision referred to above (paragraph 22) on the other hand, the complainant had made 22 requests to the Cabinet Office, 347 to the police and 412 to the Ministry of Defence, in addition to requests to other authorities. The Commissioner therefore does not consider the context of his decision in that case to be directly comparable to the current complaint.
27. In the particular context of the requests to the council, the Commissioner notes that the council has based its arguments almost entirely on the experience of a different public authority. It has not submitted any evidence of its own that the requests were obsessive but has relied on the broader context. While the Commissioner considers it appropriate to take into account the wider context and history of a request in order to assess whether or not it is vexatious, he would at least expect some evidence of it from the authority's own perspective. As this was not the case here, he finds he is unable to conclude that the requests to the council were obsessive.

Would complying with the requests impose a significant burden in terms of expense or distraction?

28. The Commissioner again notes that in this case, the complainant has only made a limited number of requests to the council itself. In isolation, it is unlikely that complying with the requests that are the subject of this complaint would impose a significant burden upon the Council. In decision notice FS50361346, the Commissioner accepted that the complainant's requests to One North East had "constituted a significant distraction from the core business of the employees involved". One North East explained to the Commissioner that it estimated that it had spent over 120 hours in responding to the complainant's thematic requests.
29. The Commissioner believes that in some circumstances it will be reasonable to take into account the overall impact of a complainant's requests to other public authorities, particularly where the requests all relate to the same topic. In the Cabinet Office decision referred to at paragraph 22, he considered that it was appropriate to take into

account the aggregated effect of dealing with the sum of all the requests known to have been made across the public sector. However he considers the circumstances of the current case to be somewhat different, not least because the council has made no argument from its own perspective that complying with these requests would create a significant burden for it. Rather, it has relied upon the 'aggregate' argument. Furthermore it would appear unlikely that the complainant's requests made on the same topic to authorities apart from One North East created a large burden for those authorities.

30. The Commissioner notes that when One North East responded to the complainant's requests, this in every instance led to further requests for clarification and additional information. The Commissioner considers it is possible that if the council is compelled to respond to the complainant's requests, the same pattern may continue, given that the requests all concern the same subject.
31. However, the Commissioner also notes that the complainant has submitted requests to other public authorities via whatdotheyknow.com, and has not pursued the requests further once the authorities had responded. The Commissioner is therefore not satisfied there is sufficient evidence that complying with the requests would necessarily lead to further correspondence between the complainant and the council.
32. The Commissioner has concluded that complying with the requests would not create a significant burden for the council.

Do the requests have the effect of harassing the public authority or its staff?

33. Whilst a complainant may not have intended to cause distress, the Commissioner will consider whether this was the effect of their requests. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.
34. The Council accepts that there is no evidence of any intent on the complainant's part to harass the council or other public authorities. However, in its internal review, the council suggests that the degree to which the request could be seen as harassing the authority is "inversely proportional to the public interest in the subject matter of your questions". The council then goes on to conclude that "...while your line of enquiry is clearly of interest to you, no benefit to the wider public interest has yet been shown".

35. In decision notice FS50361346, the Commissioner concluded that the complainant's requests had the effect of harassing One North East and its staff. This was largely because the complainant's requests for information were intermingled with complaints, and because the complainant made derogatory statements about some of One North East's employees, both in correspondence and online on other websites.
36. However, the council has not provided the Commissioner with any evidence to show that the complainant has targeted, or behaved in an insulting manner towards it, or any of its employees. The council has argued that the requests are harassing because it considers that there is little public interest in the disclosure of the requested information. However the Commissioner does not accept that this is a relevant factor when considering whether a request has the effect of harassing a public authority. Although the Commissioner believes that it may be appropriate to consider requests made to other public authorities when determining whether a request is vexatious, he does not accept that the requests to One North East should be taken into account when considering this specific point. This is because the Commissioner concluded that the requests to One North East were harassing because of their specific content, which was targeted at that public authority alone.
37. The Commissioner considers that, in light of the relatively small number of requests that the complainant has submitted to the council itself, and the tone of these requests, the requests could not be objectively considered to be harassing the council or its staff.

Are the requests designed to cause disruption or annoyance?

38. The council does not argue that these requests are designed to cause disruption or annoyance, and the Commissioner has seen no evidence to suggest that this is the case.

Do the requests lack any serious purpose or value?

39. The council argues that the complainant's requests have little serious purpose or value in a wider public context. This is because the requests appear to be related to the complainant's general complaint about the way funding is managed by One North East and its partners.
40. Although the Commissioner accepts that the requests appear to be related to the complainant's wider dispute regarding the funding decision, he also accepts that the complainant appears to have genuine concerns about the way funding for investment initiatives is conducted.

The Commissioner is therefore reluctant to conclude that there was no purpose or value in the requests to the council.

Are the requests vexatious?

41. The Commissioner notes that this is a slightly unusual case because the council's assertion that the requests are vexatious is largely based on the history of the complainant's requests to other public authorities. The Commissioner does believe it will sometimes be appropriate to consider the requests submitted to other public authorities when assessing whether requests are vexatious, as it is likely to provide a context for the requests.
42. The Commissioner has already found that the complainant's requests to One North East regarding the Difference Engine project were vexatious. However, he notes that the complainant has submitted a limited number of requests to the council, and that the council's arguments for obsessiveness are based almost entirely on the complainant's dealings with another public authority rather than with itself. He does not accept that the requests had the effect of harassing staff, nor that compliance would create any significant burden. He therefore considers that on balance, the requests are not vexatious and the council was not entitled to rely upon section 14(1).

The Decision

43. The Commissioner's decision is that the council was not entitled to rely on section 14(1) to refuse to comply with the complainant's requests.

Steps Required

44. The Commissioner requires the council to reconsider the complainant's requests and either comply with section 1(1) or issue a valid refusal notice compliant with section 17.

Right of Appeal

45. 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,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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

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

Dated the 3rd day of November 2011

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Section 14 - Vexatious or repeated requests

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) 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 the previous request and the making of the current request.

Section 17 - Refusal of request

- (5) 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.