

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2011

Public Authority: Sefton Metropolitan Borough Council

Address: Balliol Road
Bootle
Merseyside
L20 3FF

Decision (including any steps ordered)

1. The complainant requested the council to confirm or deny that named areas of land, registered to the council, were transferred to a housing association on 24 December 1993.
2. The Commissioner's decision is that the council correctly relied on section 14(1) (not to comply with the request) and 17(6) (not to provide a refusal notice) of FOIA.

Request and response

3. The complainant, on 26 January 2011, requested from the council, the following:

"Will you confirm or deny that the areas of land hatched in black and marked in green on the enclosed section of OS SJ13396 mapping, consisting of; a section of the public highway at the bottom of Lime Grove, a section of the public highway in Maple Close and a section of the public highway at the junction of Maple Grove and Beuniaris Street which on December 24 1994, was registered to the council, was land included in the transfer to Maritime Housing Association on December 24 1993."

4. Both parties agree that the council did not provide a substantive response to the complainant's request for information.

Scope of the case

5. The complainant contacted the Commissioner to complain about the council's handling of his request for information.
6. The Commissioner will consider whether the council correctly relied on FOIA's sections 14(1) not to comply with the request and 17(6) for not providing a refusal notice.

Reasons for decision

Section 14(1) – Vexatious requests

7. Section 14(1) of FOIA states that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”
8. The Commissioner's published guidance on section 14(1) 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.
9. In line with the Commissioner's guidance, when assessing whether a request is vexatious, the Commissioner considers (in the context of the complainant's interactions with the public authority) 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?
10. 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. The Commissioner recognises that some arguments will naturally fall under more than one heading.
11. In order to reach a proper determination on the above the Commissioner sought from the council (via correspondence dated 18 August 2011) clarification on its reliance on section 14.
12. The council replied on 12 September 2011. In précis it said as follows:

- It had received a stream of correspondence from the complainant for ten years. These related mostly to alleged damage to his house caused by demolition works.
 - It currently holds approximately 3000 pages and thousands of message board "Whatdotheyknow" website e-mails, copied letters and attached documents (at 2-3 per week) directed at the council from the complainant, each of which has had to be searched for embedded requests.
 - The complainant pursued a case found unsatisfactory by ombudsmen and courts, all of which have used their powers to restrict his "abuse".
 - The complainant has tied up thousands of hours of time and hundreds of thousands of pounds of the council's finances.
 - On a number of occasions over the years, the council has attempted to get the complainant to clarify his request but each time this results in more copious communication and allegations of malfeasance.
 - The council also provided a web link to numerous FOI requests made to it by the complainant recorded on the "Whatdotheyknow" website.
 - The key staff he "ties up" are needed to deal with other demands regarding information access.
13. In order to ascertain the veracity of the above allegations the Commissioner sought the complainant's views on the same in a letter to him dated 5 October 2011.
14. The complainant replied to the Commissioner's queries in an undated letter that the Commissioner received on or about 26 October 2011. The complainant refers to a number of apparently past legal proceedings involving himself, the council and third parties. As to the allegations laid out in paragraph 12 above, the complainant was silent as to their veracity.
15. On 1 December 2011, the council sought to rely on additional evidence that showed the obsessive behaviour of the complainant. It produced a general civil restraint order issued against the complainant by an acting High Court judge made on 31 January 2008. The order noted that an earlier restraint order (18 February 2006) had been issued against the complainant in the context that he had pursued a series of unsuccessful cases around his allegation that his property had been damaged.

16. The Commissioner accepts that the complainant has made in excess of 40 information requests to the council and this is borne out by the Whatdotheyknow website. The Commissioner further finds that the requests, more often than not, take the form of a lengthy discursive letter where the specific nature of the request is not readily apparent. The repetitive form and content of those information requests strongly evidence obsessive behaviour on behalf of the complainant. In addition, the requests usually are connected with the dispute regarding damage to his property.
17. On the balance of probabilities, and having regard to the ample evidence, the Commissioner finds that the complainant's behaviour towards the council and his use of requests for information has become obsessive.
18. The Commissioner next considered whether the information request caused harassment to the authority or distress to its staff. The request in isolation is unlikely to cause harassment but the council's position is that it should be viewed in the context of the complainant's behaviour towards it.
19. A reading of the relevant pages at the Whatdotheyknow website supports the council's assertions. It is not always clear what information the complainant is actually requesting due to the lengthy quasi "legal" meanderings of his correspondence. In the absence of the complainant's retort to these assertions and having regard to the available evidence the Commissioner accepts that, given the contextual background, the council was harassed by the information request
20. The Commissioner next considered whether the information request lacks any serious purpose or value. Objectively knowing whether a local authority owns a particular plot or parcel of land may well have a serious purpose. The Commissioner is therefore not prepared to find that – at least on this very narrow point – it entirely lacks serious purpose or value, nor is he prepared to find that this particular request was *designed* to cause annoyance or disruption. However, in all the circumstances of the case, the serious purpose of the request is considerably mitigated by the exhaustion of the legal processes referred to elsewhere in this notice.
21. Having regard to the available evidence, the council's cogent submissions and the absence of a contrary reply from the complainant the Commissioner's decision, on the balance of probabilities, is that the information request was a vexatious one. In particular, the Commissioner's view is that the complainant has exhibited obsessive behaviour flowing from a situation where he believes that the council was responsible for damage to his property. The relevant behaviour

demonstrating this is the frequency and content of his numerous requests for information and ancillary correspondence (over a significant period of time) to the council notwithstanding his apparent exhaustion of the legal process to achieve the resolution he wants. The Commissioner also accepts as cogent evidence of his obsessiveness that the complainant's litigious behaviour (that stems from his belief of tortious damage to his property) has resulted in the issuing of civil restraint orders by the High Court.

22. As well as the complainant's behaviour being plainly obsessive, the Commissioner accepts that, over time, it has also placed a significant burden on the council, which further supports the application of section 14(1). The Commissioner in this context accords with the Information Tribunal "*...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor* (Gowers v ICO, paragraph 70 EA/2007/0114). In this regard, the Commissioner notes the burden that must have been placed upon it, in answering or addressing the complainant's previous requests and ancillary correspondence, given their volume and content.

Section 17(6) – Previous reliance on section 14

23. Section 17(6) states that a public authority is not required to provide a refusal notice 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."*

24. The council, in correspondence to the Commissioner dated 18 March 2011, said:

"The request (I am unaware of which request he is referring) may have been made in 2011, but we would not have responded to it because we have already told the complainant in 2009¹ that we will not respond to any further requests on a certain subject². We took the

¹ The council had originally said 2008 but in a letter to the Commissioner, dated 15 December 2011, clarified it as 2009.

² The complainant's allegation being that the council was responsible for the damage to his house resulting from demolition work on an adjacent plot of land.

above course of action for the reasons listed below and I would be grateful for your comments."

25. The Commissioner has been provided with copy correspondence from the council to the complainant dated 23 February 2009. The correspondence states:

"Regarding your request for a review of our decision to refuse your request(s) on the grounds they are vexatious and/or repeated.

We have considered your appeal against our Refusal Notice in relation to provision of information in accordance with the Freedom of Information Act 2000. Our decision is that your appeal is unsuccessful. This response serves as a refusal notice on the 200+ requests made to Sefton Council via the whatdotheyknow site over the last 4 months. We shall also not be responding to any similar or repeated requests, or requests for review.

We feel that we have no other option, based upon the ICO Guidance on Vexatious/repeated requests, recent ICO and Tribunal decisions, discussions with ICO staff, and on our own documented evidence of your interactions with Sefton Council over a number of years."

26. The Commissioner notes that the council is relying on section 14 not to meet the complainant's information request made on 26 January 2011. He further notes (as evidenced above) that the council has given the complainant a notice, in relation to a previous request for information, stating that it was relying on section 14 not to meet that request.
27. The Commissioner next considered whether in all the circumstances it would be unreasonable to expect the council to serve a further notice. The council (in its letter to the Commissioner dated 18 August 2011) states that it has been receiving a stream of correspondence from the complainant for ten years and that these mostly related to alleged damage to his house by demolition works. As evidence of the complainant's obstinacy over that issue, it states that it currently holds approximately 3000 pages and thousands of message board Whatdotheyknow e-mails. The council has previously informed the complainant that due to the volume of his correspondence regarding an issue that has been fully litigated it would no longer be responding to any similar or repeated requests, or requests for review. As stated at paragraph 14 above the complainant appears not to take issue with the council's assertions regarding the stated volume and type of his correspondence to it.
28. The council stated to the Commissioner (in correspondence received on 15 December 2011) that the complaint had continued to send it an

excessive amount of correspondence on the same and related issues (including FOI requests) since the refusal notice dated 23 February 2009.

29. The Commissioner does not doubt the essential veracity of the council's claims as to the type, frequency, volume and cause of the complainant's correspondence to it. The Commissioner reaches this opinion based on a sample of correspondence and its contents from the complainant to the council. This opinion was also reached having regard to the complainant's excessive use of a website to "bombard" the council with general correspondence and information requests. Having regard to all the circumstances of the case the Commissioner is satisfied, on the balance of probabilities, that it would have been unreasonable to expect the council to serve a further notice as would otherwise have been required by the complainant's information request of 26 January 2011.

Right of appeal

30. 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: 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Alexander Ganotis
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