

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 October 2011

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Beverley
East Riding of Yorkshire
HU17 9BA

Decision (including any steps)

1. The complainant has requested information about the employment record and benefits of one of its previous employees. The complainant has made some related requests and the public authority refused to provide the information on the basis that the request was vexatious.
2. The Information Commissioner's decision is that the public authority was incorrect in finding the request vexatious.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - it should either provide the requested information to the complainant or issue him with a valid refusal notice under the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the high court (or the court of session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background information

5. The Information Commissioner has already made decisions on three of the cases which the public authority refers to when providing evidence to support its view that this request is vexatious. The relevant reference numbers of these are FS50318078, FS50357986 and FS50359540. He is also currently investigating FS50371787, which is

likely to result in a further decision notice. These can be found on his website.

6. The wording of the four requests cited by the public authority to the Information Commissioner can be found in an a non-confidential annex appended to this notice. A further argument submitted to the Information Commissioner by the public authority is also cited.
7. Ms Lockwood used to be Director of Corporate Resources for the public authority; she applied for and took early retirement in 2010. Her husband was the former Chief Executive Officer of the public authority; he took early retirement in 2005.

Request and response

8. On 9 March 2011, the complainant wrote to the public authority and requested information in the following terms:

"My request for information concerns the employment record of Ms Susan Lockwood AKA Mrs Darryl Stephenson with the East Riding of Yorkshire Council. Which should include, starting date, and position employed. All subsequent dates of promotion by whom the Officer was appointed. Together with the salary levels of each post plus 'benefits' i.e. Car allowance and the like. All pay rises which accrued to the Officer during her period of service.

I wish to be supplied in hard paper copy form, all recorded information, emails, Council meeting minutes, research & reports held by you in whatsoever files".

He also made reference to a different decision made by the Information Commissioner which concerns a request for information about the same retired Officer (FS50318078).

9. The public authority responded on 13 May 2011, outside the statutory timescale. It stated that it believed the request to be vexatious. It based this view on six previous requests made by the complainant, three of which directly referred to the same member of staff or her spouse. At internal review it referred to three requests (plus this one) which it stated all related to Ms Lockwood.
10. Following an internal review the public authority wrote to the complainant on 16 June 2011 reaching the same conclusion.
11. During the Information Commissioner's investigation the public authority referred to the requests which are appended to this notice.

Scope of the case

12. On 28 June 2011 the complainant wrote to the Information Commissioner to complain about the way his request for information had been handled.
13. On 7 September 2011 the Information Commissioner contacted the complainant to clarify the scope of his investigation. He advised him that he would be considering whether or not the request was vexatious.

Reasons for decision

14. The public authority has cited section 14(1) in response to the complainant's requests. This provides that a public authority is not obliged to comply with a request if it is vexatious. The examples of earlier requests which the public authority has taken into consideration are appended to this notice in a non-confidential annex – these are the cases which were relied on at internal review stage.
15. The Commissioner's published guidance on section 14(1)1 provides the following five factors that should be taken into account when considering whether a request can be accurately characterised as vexatious.
 - i. Whether compliance would create a significant burden in terms of expense and distraction.
 - ii. Whether the request is designed to cause disruption or annoyance.
 - iii. Whether the request has the effect of harassing the public authority or its staff.
 - iv. Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
 - v. Whether the request has any serious purpose or value.
16. The Commissioner's analysis here is based upon these factors and his conclusion on how many of these apply in relation to the complainant's requests. The Commissioner has taken into account the representations of both the complainant and the public authority when forming this conclusion. Whilst the issue here is whether the *requests*, rather than the *requester*, are vexatious, the wider context of the dealings between the public authority and the complainant may be relevant where these suggest that the pattern of the contact between the complainant and the public authority means that these requests can be fairly characterised as vexatious.

17. The public authority has focused on what it has termed an *"obsessive attitude in seeking information in relation to Ms Lockwood and her family"*. It also advised the Information Commissioner that:

"In the circumstances it is submitted that given the number of requests, the references made to the relationship between Ms Lockwood and Mr Stephenson and the continuing requests for information by other means after the Freedom of Information route is unavailable demonstrate that the request ... is vexatious".

Would compliance create a significant burden in terms of expense and distraction.

18. The only representation made by the public authority which may be said to fall into this category is:

"... the Council cannot continue to support what appears to be a particular fixation with an individual member of staff who has left employment, and their husband who left employment approximately five years ago."

19. The public authority did not expand on this comment and the Information Commissioner is therefore unable to accept the claim that it *"cannot continue to support"* such requests. There are only a small number of requests, over a period in excess of a year, which the Information Commissioner does not consider to be onerous. Therefore, he does not agree with this argument.

Were the requests designed to cause disruption or annoyance?

20. In its refusal the public authority advised the complainant that it has considered disruption and irritation, but provides no further analysis.

21. Having considered the guidance on the Information Commissioner's website, and looked at previous decision notices, the public authority advised the Information Commissioner during his investigation that:

"Another matter that can be taken in to account is 'the tone adopted in the correspondence being tendentious and/or haranguing'.

... in all his requests Mr Bolton refers to Mr [sic] Lockwoods relationship to Mr Stephenson constantly emphasising that there is a relationship between the two ex officers".

22. The Information Commissioner notes that the public authority has provided evidence of four further requests to consider. Two of these refer to Ms Lockwood / Mrs Stephenson, as does the request which is

being considered here. A further request relates to *"all officers whose gross emoluments exceed £100 000 per annum"*.

23. The Commissioner does not consider that this evidences that the requests can fairly be termed as *"tendentious and/or haranguing"* or that they 'emphasise' the relationship between the two ex-officers. It may well evidence that the named party may be known by two different names, but the Information Commissioner does not consider that making such a reference on two occasions could fairly be seen as vexatious.

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

24. The public authority advised the Information Commissioner that it believed the request had this effect as it demonstrates: *"an unreasonable fixation on an individual member of staff"*. It further advised:

"In this case it is clear that [the complainant] has developed an unreasonable fixation with certain ex members of staff i.e. Ms Lockwood and Mr Stephenson. Requests have been made for information about both of these officers directly or indirectly, the relationship between the two has been emphasised in every request in relation to Ms Lockwood and reference has been made to Mr Stephenson in correspondence with the Information Commissioners Office in relation to a request for information in relation to yet another officer of the Council (the current Chief Executive)".

25. The Information Commissioner does not consider that three requests concerning either a retired CEO and / or his wife, and also a retired high ranking officer, could be seen as an "unreasonable fixation". The fact that the complainant has since made a request about the current CEO, and a generic request about *"all officers whose gross emoluments exceed £100,000 per annum"*, also adds to the argument that he is not fixated by either former member of staff – although this request may necessarily include both Ms Lockwood and her husband. Furthermore, even were there to be an unreasonable fixation, the Commissioner does not accept that this would bear on the question of whether the public authority was actually harassed; it would be more pertinent to the issue of whether the complainant was obsessive.

Can the requests otherwise fairly be characterised as obsessive or manifestly unreasonable?

26. The public authority has provided the following arguments to support its view that the requests are obsessive:

"The request made by [the complainant] is one of a number that have been made in relation to Ms Lockwood and Mr Stephenson that, the Council would submit, show an obsessive attitude in seeking information in relation to Ms Lockwood and her family. The request in context therefore can be seen as likely to harass the authority or cause distress. [The complainant] has made a number of requests to the Council in relation to Ms Lockwood/Mr Stephenson most of which have been dealt with by the Commissioners Office."

"The context in this case is the numerous requests that have been made that have targeted directly (or indirectly) Ms Lockwood or members of her family i.e. her husband."

"It is clear that from the nature of [the complainant]'s requests that he has an obsessive attitude towards Mr Stephenson and Ms Lockwood and the remuneration paid to them."

27. The Information Commissioner notes that the public authority has relied on three previous requests that directly relate to either Ms Lockwood or her husband, and one which may indirectly relate to them and others. All of the requests concern their 'professional' life as they relate to their previous employment with the public authority. Whilst the parties do appear to be married, the requests centre on their circumstances as previous employees rather than on their relationship. The Information Commissioner therefore concludes that their marital status has little, if any, bearing on the requests.

28. The public authority also brought to the Information Commissioner's notice some issues concerning the complainant having raised further queries as a result of information provided to him (see annex). The Information Commissioner notes that the complainant has stated that he wished to have this particular correspondence dealt with 'outside' the FOIA, therefore the Information Commissioner has no jurisdiction to comment on such correspondence. However, the Information Commissioner does note that a response to a request under FOIA often leads to more requests seeking further information; he considers this to be the natural consequence of being provided with information of interest, which may then encourage further enquiry. This is by no means contrary to the ethos behind FOIA legislation. Having

considered the public authority's arguments in this regard, the Commissioner does not believe that it has demonstrated that the complainant's requests in this case were obsessive.

Do the requests have any serious purpose or value?

29. As the public authority has made no representations on this factor, this has not been taken into account here.

Conclusion

30. Based on the representations provided by the public authority, it is apparent that the main evidence provided by the public authority to support its view that this request is vexatious is that the complainant has an 'obsession' with its ex-officer. The Information Commissioner accepts that where an individual makes an unreasonably large number of requests, or continues to pursue requests with the same public authority for information on a similar theme, that such requests may on occasion be 'obsessive'. However, the Commissioner does not consider four requests (including this one) for information made about two of its senior ex-officers, over a period of more than a year, to be obsessive.
31. Consequently, the Information Commissioner does not believe that the point has yet been reached where the request should be considered as vexatious. Therefore, his conclusion is that this request was not vexatious and so should not have been refused under section 14(1). Accordingly, the public authority should now either provide the requested information to the complainant or issue him with a valid refusal notice explaining why the information is exempt from disclosure.

Right of appeal

32. 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

33. 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.
34. 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 12th day of October 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
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