

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2012

Public Authority: Southwark Council
Address: PO Box 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant requested information from Southwark Council (the council) about the outcome of a review into the methodology for an increase in court costs and an explanation of any difference in methodology. The public authority refused to provide the information on the grounds that the request was vexatious.
2. The Information Commissioner's (the Commissioner's) decision is that the council was correct to find the request vexatious.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 20 June 2011, the complainant wrote to the council and requested information in the following terms:

"Follow up requests to requests #128625

Your letter of 07.04 stated inter alia that "the council is currently reviewing the methodology for any increase in court costs. It is anticipated that this review will be complete (sic) within May and any increase approved by June". I now request (a) the outcome of such review, or, if it has been completed, the expected date of completion, and (b) an explanation of any difference in methodology from that followed for the benefits costs benchmarking exercise."

5. The council responded on 23 June 2011, refusing to provide the requested information and citing section 14(1) – vexatious or repeated requests.
6. On 8 July 2011, the complainant complained to the council about this response. Following an internal review on 19 July 2011, the council upheld the application of section 14(1).

Scope of the case

7. On 24 July 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. There appears to have been correspondence between the parties subsequent to the request which, as far as the complainant is concerned, has a bearing on the substance of this request. Nonetheless, the Commissioner can only focus on the application of section 14 to this request and consider the arguments relevant to it.
9. On 15 December 2011, the Commissioner explained to the complainant that he considered the application of section 14(1) to be the focus of this complaint.
10. The council wrote to the Commissioner on 13 December 2011 with its arguments and supporting documents.
11. On 19 December 2011, the complainant wrote to the Commissioner to refute the application of section 14(1) to his request.

Reasons for decision

Section 14(1)

12. Section 14(1) of the FOIA provides that a public authority is not obliged to deal with a request for information if the request is vexatious.
13. When considering whether a request is vexatious or not the Commissioner will look at the circumstances of the case but will bear in mind guidelines under certain broad headings to enable him to reach his decision. These are the following:
 - a) Whether compliance would create a significant burden in terms of expense and distraction.
 - b) Whether the request is designed to cause disruption or annoyance.

- c) Whether the request has the effect of harassing the public authority or its staff.
 - d) Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
 - e) Whether the request has any serious purpose or value.
14. Not all of these factors need to be present in order for the Commissioner to find that the request is vexatious. The Commissioner has considered these in the order set out above.
15. The complainant wrote to the Commissioner to point out that the council had not asserted that the first, second or fifth criteria applied to this request. He also claimed that the third criterion did not apply as the council had been unable to support evidence of harassment in its correspondence with him. The complainant queried whether the request showed any evidence of obsessive or manifestly unreasonable behaviour.

Whether compliance would create a significant burden in terms of expense and distraction

16. The Commissioner's Awareness Guidance on the subject of vexatious and repeated requests states that:
- "You need to consider more than just the cost of compliance. You will also need to consider whether responding would divert or distract staff from their usual work."*
17. Although the council does not consider that compliance would create a significant burden in terms of expense and distraction, the Commissioner notes that the cost and time itemised in paragraph 28 could support the view that responding to the complainant's requests has been a significant burden in terms of expense and distraction.

Whether the request is designed to cause disruption or annoyance

18. The council has not offered any argument under this heading therefore the Commissioner has not considered it further.

Whether the request has the effect of harassing the public authority or its staff

19. The Commissioner states in his Awareness Guidance on the subject of vexatious and repeated requests that:
- "The focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a*

reasonable person must be likely to regard the request as harassing or distressing. Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints".

20. The council has put forward the argument that the volume and frequency of requests is causing distress to staff. It characterises the complainant's requests in the following way:

"i. Factual requests for information.

ii. Requests for comments based on given scenarios by [the complainant]

iii. Further and better particulars when information has already been provided.

iv. Asking why certain actions were taken or not taken (as the case may be).

v. Requesting information of the correctness of information previously provided; and

vi. On one occasion an offer of assistance with the 2011/12 range computation."

21. The council points out that it considers that only item one is strictly within the FOIA. However, what it describes as "substantial time" is spent by council officers analysing requests for information and determining what type of information is required for the purposes of answering the complainant's requests in accordance with the FOIA.

22. One officer of the council spends "*significant*" amounts of time emailing relevant officers for information, meeting, assessing and collating information in order to be able to respond to the complainant's requests. The council also considers some of the language used as distressing and it lists "*contumelious*", "*untrue*" and "*disobliging*".

23. The council argues that the level of "*successive requests*" has the cumulative effect of harassing the authority and causing distress to its staff.

24. The Commissioner accepts the council's contention in respect of the volume and frequency of requests, however, he does not consider the complainant's use of language, though robust at times, to be distressing.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

25. In his Awareness Guidance on the subject of vexatious and repeated requests the Commissioner recognises that obsessive requests are usually a very strong indication of vexatiousness. The guidance states that:

"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."

26. The council contends that the volume and frequency of the complainant's correspondence and his tendency to reopen issues indicate that the request is part of an obsessive pattern. The council has had 29 separate communications. Several requests are often contained within these communications and the council calculates that there are 55 separate sub-requests within them (3 other requests made at the time of the section 14(1) refusal), some of them complex. Whilst acknowledging the complainant's right to utilise the FOIA the council considers the decision to refuse this particular request under section 14 to be reasonable when taken in the context of the history of requests made by the complainant. The council explains that the request forms part of a campaign to expose alleged improper practices in relation to council tax, either by direct or indirect means. In the internal review the council had quoted the complainant's own words that his achievements were based on "*persistent pro-bono efforts*". The Commissioner recognises that there can be a fine line between obsession and persistence.
27. In support of its argument, the council stated that the same or similar issues that formed part of this particular request were considered and addressed by the District Auditor in response to his objections to the council's accounts. The complainant has objected to the council's accounts for the years 2007/08, 2008/09, 2009/10 and 2010/11.
28. The volume of requests has meant that the council has identified specific resources in order to meet its obligations under the FOIA. One officer is charged with being the lead contact in relation to the complainant's requests. This arrangement was made because the complainant had sent his requests to "*numerous*" different people and responses had consequently been delayed. The council estimates that the cost of this officer's time in responding to the complainant's requests has been approximately £11,000. The cost of other members of staff in relation to responses has not been calculated.

29. The Commissioner is mindful of the following Information Tribunal comments in the case of *Harding v The Information Commissioner* in making his decision:

"There has been an enormous level of contact between Mr Harding and the Council over the years on this issue and the Council have devoted considerable resources (which clearly must amount to some thousands of pounds of officer time during this period) to providing him with information, answering his queries and explaining the council's actions ... over the years the Council has provided him with a considerable amount of information and devoted considerable resources to his concerns." 1

30. Primarily for this reason, the Commissioner agrees with the council that this particular request is obsessive and manifestly unreasonable, given the attempts by the council up to that point to provide the complainant with responses to his requests. This request states that it is a follow-up request to a previous request. The substance of the request has been previously answered and the complainant's response to the Commissioner on 9 November 2011 indicates a desire to extend the 20 June 2011 request and provide comment or opinion on areas of disagreement that go beyond the Commissioner's remit.

Whether the request has any serious purpose or value

31. The council does not consider the request to lack serious purpose or value therefore the Commissioner has not considered this further.
32. In establishing which, if any, of the 5 factors apply, the Commissioner has considered 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. Although the complainant (see paragraph 15) stated that the council had been unable to support its application of section 14 under at least 3 of the criteria, the Commissioner has considered the evidence provided by the council and concluded that the request continues an established pattern of obsessive behaviour which, in its volume and frequency, harassed council staff. He is satisfied that the council's previous efforts to comply with section 1 in relation to the complainant's request/s had justifiably shifted to section 14(1) with

¹ *Harding v Information Commissioner EA/2011/0110*

regard to this particular request as it exemplified the complainant's need to revisit matters that had become, by that stage, vexatious.

33. For the reasons set out above, the Commissioner's view is that the exemption provided by section 14(1) is engaged.

Right of appeal

34. 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

35. 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.
36. 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

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