

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2012

Public Authority: Bury Council
Address: Town Hall
Knowsley Street
Bury
BL9 0SW

Decision

1. The complainant has requested various pieces of information about the public authority's running of the Longfield Suite, an entertainment facility maintained by Bury Council. The request was refused as vexatious by Bury Council.
2. The Commissioner's decision is that Bury Council has correctly applied section 14(1) of the Freedom of Information Act 2000 in refusing the complaint's request as vexatious.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 11 April 2011, the complainant wrote to Bury Council (the council) and requested information in the following terms:
 - "1. A full copy of the existing, 12 month old Longfield Suite Business Plan & Marketing Strategy.*
 - 2. 2010~2011 Audit of accounts for the Longfield Suite including a full set of receipts for all bookings at the venue.*
 - 3. The objectives, strategies, targets and performance measures included in the existing Business Plan. The Suite's role in improving the health and well-being of Bury residents, in line with the national and local agenda on increasing physical activity, and how this contributes directly to achieving Team Bury's corporate ambitions.*

4. *Strategies adopted/implemented to address any areas of unsatisfactory performance against the existing Business Plan.*
 5. *The project team's terms of reference, showing key milestones such as deliverables, deadlines, and dates for reporting progress and the proposed 12-month review by Bury MBC's management board.*
 6. *An organisational chart showing which posts are responsible for implementing the existing Business Plan, including those based at the Suite and elsewhere in EDS.*
 7. *The Suite's previous business plan(s).*
 8. *Progress (if any) against the action plan proposed in the 'Best Value Review of Civic Halls (Bury Venues) Service October 2007'.*
 9. *A breakdown of where the Suite is regularly available but not being used (any time reserved for room preparation, catering and clearing up should be reflected in this).*
 10. *An overview of which types of events offered at the Suite yield the most and the least profit for Bury MBC after all relevant costs have been covered.*
 11. *A breakdown of the Suite's users by category (for example, how many/what kinds of people are using the Suite and for what purposes; how many are residents or visitors; also which sections of the local community are under-represented among users)."*
5. The council responded on 13 May 2011. It refused the request as vexatious, under the provisions of section 14(1) of FOIA.
 6. Following an internal review the council wrote to the complainant on 27 October 2011. It confirmed its view that section 14(1) of FOIA had been appropriately applied in reaching the decision to refuse the request as vexatious.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He initially complained about the council's failure to complete its internal review and, following the Commissioner's intervention and his subsequent receipt of the internal review, he complained about the council's refusal of his request as vexatious.

8. The Commissioner considers that the scope of this case is to examine the council's application of section 14(1) of FOIA to the complainant's request and to determine whether the council has, or has not, correctly refused the request as vexatious.

Reasons for decision

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"

The Commissioner's Approach

9. The Commissioner will consider the context and history of a request to assess whether the request would fall into some or all of the following categories. It is not a requirement for all categories to be relevant to a request; however, where the request falls under only one or two categories or where the arguments sit within a number of categories but are relatively weak, this will affect the weight to be given to the public authority's claim that s.14 is engaged:
 - whether compliance would create a significant burden in terms of expense **and** distraction
 - whether the request is designed to cause disruption or annoyance
 - whether the request has the effect of harassing the public authority or its staff
 - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
 - whether the request has any serious purpose or value
10. The public authority explains that the complainant is a member of a group which is campaigning to retain a local leisure facility 'The Longfield Suite'. Various individuals in this group, including the complainant, use email addresses with the domain name @saveoursuite.com. The complainant confirms his involvement with this group (the SOS group). The Commissioner accepts, in principle, that the

activities of a group can be relevant when considering the refusal of a request, from a member of that group, as vexatious¹.

11. He considers that in the context of the present case it would be artificial to consider the complainant's dealings with the council in isolation from those of the SOS group as a whole. This is partly because the request is clearly submitted by the complainant as a member of the SOS group, and therefore on behalf of the group. It is also because the council has argued, below, that the burden on its resources stems partly from the fact that the group does not always act as a coherent body. Its members contact the council individually, but apparently on the group's behalf. This has led to some duplication of effort on the part of council staff, a claim which is supported by the evidence available to the Commissioner, some of which has been provided by the complainant.
12. The council explains that the SOS group has submitted several requests, similar to the request under consideration in this notice. It says that various members of the group have, on nine² occasions since March 2010, directly or indirectly requested a copy of the council's business plan for the Longfield Suite. The council has made it clear to the requesters, on a number of occasions, that the business plan is considered to be exempt under section 43 of FOIA, which relates to information whose disclosure would, or would be likely to prejudice commercial interests.
13. The Council's submissions have not expressly addressed the five categories listed at paragraph 10, above, but have sought to assist the Commissioner in understanding the unsatisfactory nature of its contact with the complainant and the SOS group. The Commissioner understands its overall position to be that the level and degree of contact with the group is substantial and burdensome to it; the repeated requests are obsessive or manifestly unreasonable, and there is

¹ For example

http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50304283.ashx

² The complainant says that one of these requests does not originate from members of the SOS group. The council describes it as originating from a person who described themselves as 'advising the Save the Longfield Suite Group'. The name of the complainant's campaigning group is the 'Save Our Suite Group'. The Commissioner will disregard the specific request which is disputed by the complainant. Two of the requests post-date the request in this complaint, but are understood to have been received by the council before it issued its refusal on the grounds of s14. He therefore takes into account eight occasions in the council's claim that the information about the business plan has been requested in the space of about one year from March 2010 to the date of the response to the request in May 2011.

insufficient serious purpose to the requests. It also argues that some correspondence is directed at specific individuals and should be seen as harassing those individuals, and that one element is designed to cause disruption or annoyance. For convenience the Commissioner will deal with the council's points under the categories, insofar as the council's arguments most closely fit those categories.

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

14. The council cites 11 requests for information received from (or on behalf of) the SOS group, eight of which included a request for the business plan for the Longfield Suite. (The Commissioner notes that these eight were not all FOI requests, some were submitted as questions to public meetings of the council). It also refers to 25 examples of queries, questions and complaints from members of the SOS group to the council in the same period. These examples include submitting public questions at council meetings, letters and emails to council staff, councillors and the local Member of Parliament (who subsequently enquired about the business plan on the group's behalf. Those enquiries are included in the eight requests considered above). The council has also provided evidence of further contact from members of the group, also associated with the campaign but less directly connected to the present request, and enquiries which necessitated the involvement of its auditors, KPMG, in dealing with the SOS group's questions.
15. The council points to what it describes as the group's 'scattergun' approach to its campaigning. It explains that members of the group contact different members of staff and various councillors with the same question, often without allowing sufficient time for the initial recipient to respond. It also highlights the group's habit of chasing up responses to FOI requests before the statutory deadline has elapsed, reminding the council of the impending deadline. This practice of submitting the same request to multiple recipients results in duplication of effort in responding. The council also refers to the group's tendency to ask similar questions at successive council meetings despite, in the council's view, the question having been answered the first time it was put.
16. The SOS group's contact also includes a complaint initiated by two members of the group to the council's auditors, KPMG, about matters relating to the council's management of the Longfield Suite. KPMG contacted the council in May 2010, to inform it that it had been contacted directly (by a member of the SOS group) with a complaint. Having received further correspondence from the SOS group over the following months, KPMG informed the council that it was unable to deal with this correspondence without undertaking a significant amount of work. This culminated in a meeting between KPMG, the council, and

members of the SOS group, and subsequently gave rise to an invoice from KPMG to the council for £7280 for 'fees in respect of elector questions regarding the Longfield Suite'.

17. The complainant argues that the meeting with KPMG was not called at the SOS group's request, but the group was invited to attend by the council. He also says that it was advised to contact the council's auditors by the Audit Commission, when a member of the group contacted the Audit Commission with its concerns. He queries the council's justification for these charges and argues that the £450 cost limit on FOI requests should prevent such a level of costs being incurred³.
18. The council, for its part, says that the meeting would not have been necessary but for the complaint to, and issues raised with, KPMG by the group. This necessitated the meeting between KPMG and the council to address the matters raised, with the SOS group's participation. It therefore argues that the costs were incurred as a result of the group's activities, and should be taken into consideration alongside the other matters in relation to the burden in terms of cost and distraction.
19. The Commissioner agrees that the invoice from KPMG to the council is a relevant consideration. The enquiries to KPMG are part and parcel of the SOS group's campaign which, by definition, all relates to the same topic, namely the management and future prospects of the Longfield Suite.
20. While the number of requests overall, and the level of related correspondence, is not obviously excessive given the 13 month time period it relates to, the Commissioner accepts that sending the same, or similar, requests to different parts of a public authority at the same time, will clearly create some duplication of effort in preparing responses. The lack of a coherent approach from the SOS group in its campaigning makes it difficult for the council to engage with it efficiently and effectively. This duplication of effort constitutes a burden in terms of unnecessary distraction of staff from their other duties.
21. Furthermore, the Commissioner agrees that the expenditure incurred by the council due to the SOS group's involvement of KPMG is a relevant consideration. The group may have contacted KPMG on advice from elsewhere, but the Commissioner recognises that a firm of commercial auditors will be likely to require payment if it is to undertake additional work, and it is clear that the only reason for the costs incurred is due to

³ The Commissioner notes that the £450 cost limit referred to by the complainant relates to cost for compliance with FOI requests, but that the SOS group's enquiries to KPMG were made, as the complainant explains, under the Audit Commission Act.

the need for KPMG to undertake significant work in dealing with the group's questions.

22. In other words, had the SOS group not contacted KPMG with its concerns and questions, the council would not have received a bill for £7280 (plus VAT). The group professes some business and commercial expertise, and it believes it can assist the council in finding an efficient operational model for the Longfield Suite. As such, it is not unreasonable to expect the group to have been aware that engagement with the council's auditors would have led to costs being billed to the council.
23. Equally, the council would have needed to divert staffing resources into dealing with KPMG's enquiries, which constitutes a burden on it which would not have occurred but for the SOS group's complaint. This is another example of the SOS group's activities requiring the council to engage with its campaigning on a number of different fronts rather than dealing with it as a cohesive body, as in paragraphs 15 and 20, above.
24. While the Commissioner agrees that dealing with the complainant and the SOS group has given rise to a significant burden for the council in terms of expense, he is mindful that the unusual circumstances which led to this particular expense are not likely to be repeated. He does give moderate weight to the council's argument about the burden on the council in terms of distraction of staff. While it is not argued by the council that it is likely that the level of costs associated with KPMG's involvement will be repeated, the Commissioner considers that the group has given no consideration to the financial implications of its actions; he therefore gives some weight to the council's argument in relation to the (historic) financial burden, and a small amount of weight in terms of any anticipated future burden in continuing to deal with the group's requests.

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

25. The council points to the SOS group's numerous and repeated requests for the council's business plan for the Longfield Suite, despite this having been refused on several occasions. The Commissioner regards this as an argument that the request is obsessive or manifestly unreasonable.
26. The complainant disputes the council's position, arguing that, of the eight instances where the council claims the business plan have been requested, four are not requests for a copy of the business plan. Among other things, he makes a distinction between a 'new' business plan, and the 'old' business plan, and argues that these are not requests for the same thing. The Commissioner acknowledges this point of view, but

observes that if the 'old' business plan has previously been refused as commercially sensitive, there is nothing to suggest that a request for a 'new' business plan will be any more successful. In any event, the present request includes a request for the "existing" (ie 'new') business plan, and "the Suite's previous business plan(s)".

27. In respect of those requests which the complainant claims are not requests for the business plan, the complainant argues that requests in which a group member asked:

"When can we expect to see any evidence of a new business plan?"

and

"The Longfield Suite SOS group, of which I am a member have tried since last March to have sight of the Longfield Suite's business plan [...] Can you confirm that it does indeed exist and direct me to where I can view it [...]"

are not a requests for a copy of the business plan itself. Furthermore, he argues that a request for a copy of the business plan from one member of the group, should not be used as evidence to satisfy the criteria for a vexatious request from another member of that group. The Commissioner rejects that argument, for reasons explained in paragraphs 10-11, above.

28. It is clear, from the context, that the various requesters are expressing a strong interest in the business plan and, either overtly or by implication, in obtaining a copy. The Commissioner dismisses the complainant's argument that the group has not requested the business plan in these two examples, because this is not supported by any reasonably objective reading of the requests.
29. The other examples the complainant disputes are requests in which the business plan is mentioned and where, even if a copy is not explicitly asked for, it is clearly implied that the group wishes to assess and comment on the business plan.
30. The Commissioner notes also that the group argues repeatedly that such business plans should be routinely published in the council's FOI publication scheme. It cites the publication scheme document⁴ as stating that "all business plans should be available for public scrutiny". The council's response is that the publication scheme refers to Departmental and Divisional Service Plans and it makes a distinction

⁴ <http://www.bury.gov.uk/CHttpHandler.ashx?id=4624&p=0>

between these and commercially sensitive and individual business plans for the council's trading services.

31. The relevant section can be found on page 9 of the document, in section 3:

“Strategies and business plans for services provided by the Council

Strategies, business and service plan for directorates, departments and services including

The Council Plan and the Capital Strategy and Asset Management Plan.”

This is consistent with the Commissioner's guidance and model publication scheme, which also acknowledges that information which would be exempt under FOI need not be published in a publication scheme. The council has argued that the business plan is commercially sensitive, and previously refused it under section 43 of the Act. The Commissioner has not made any finding as to the application of section 43 to this specific information, but recognises that the publication scheme would not require the publication of a business plan if it was indeed information which would be exempt from disclosure under FOI.

32. The complainant does not appear to dispute that the information relating to the business plan has, at some point, been refused under section 43 (commercial interests) of FOIA. Indeed, he appears to be aware of this because he argues, in his request for the information, that this exemption does not apply. He cites a previous decision by the Information Commissioner in which the Commissioner upheld a complaint by another member of the SOS group, that a request for information had been refused under s43 of FOIA⁵.
33. The Commissioner observes that in that case, FS50286978, he actually found that the exemption at section 43 was engaged, ie disclosure would be likely to prejudice the commercial interests claimed by the council, but his decision was that the public interest in disclosure nevertheless outweighed the public interest in withholding the information.
34. Furthermore, the information requested in that case was not the council's business plan for the Longfield Suite, but other commercially sensitive information. The complainant's inference that section 43 of FOIA does not apply to the business plan is not a valid assumption based, as it is, on the facts of a different case.

⁵ http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fs_50286978.ashx

35. It may be, therefore, that the group believes that the business plan is being improperly withheld from it, hence its numerous and repeated requests for the information. The Commissioner has not made any findings as to whether the business plan could be withheld under section 43 and the group has no firm basis for its position. Nor, to the Commissioner's knowledge, has it brought a complaint to his office in relation to any refusal of the information under section 43 of FOIA.

36. The group also appears to have drawn other mistaken inferences from the Commissioner's decision notice. In an email to a councillor on 20 November 2010 a member of the group refers to the decision notice as

"a damning in depth report criticising the secrecy of the council saying among other things that 'insider dealing' was a possible consequence of the way that they conducted their affairs." [sic]

37. The Commissioner has reviewed the decision notice, and believes that this comment may relate to his observations at paragraph 50, that:

"The Commissioner also considers that the disclosure of such information acts as a protection to allegations of fraud, or insider trading at an authority. With the disclosure of the losses, profits and likely future prospects of particular sites there can be no claim that particular organisations or individuals purchased sites with knowledge that was not available to others. Such claims can undermine democracy within a particular community, decreasing trust in authority decision making and honesty. An open disclosure of the true value of each site and an open discussion about the options available ensures that such claims cannot be made and believed so easily. This increases trust in government and in public authority decision making."

38. For the avoidance of doubt, therefore, the Commissioner is not saying that 'insider dealing' was a possible consequence of the way Bury Council conducted its affairs, but that transparency protects an organisation against *allegations of* activities such as insider trading. This was considered to be one of the various public interest factors in favour of disclosure of the withheld information in that case.

39. The Commissioner considers that the SOS group's repeated requests for the business plan, in light of the council's repeated refusal of it, may be seen as obsessive or manifestly unreasonable. However, he also considers it quite likely that the group believes that the council's withholding the business plan is in breach of its duties under FOIA. That might arguably make its efforts to obtain the business plan persistent, rather than obsessive. The group has not appealed the council's refusal of the business plan to the Commissioner however, which would be the

most obvious and reasonable course of action in the circumstances. The Commissioner therefore gives some weight to the council's argument that the request is obsessive or manifestly unreasonable, but not its full weight as the group may be acting under a genuine misunderstanding.

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

40. The council points to various letters and communications from the SOS group to the council which question the professionalism of its staff and, in some cases are overtly critical of staff at the Longfield Suite. However, as the Information Tribunal in the case of *Jacobs v IC* (EA/2010/0041)⁶ says, at paragraph 27:

"Public authorities and the individuals representing them must expect to be exposed to an element of robust and persistent questioning, sometimes articulated in fairly critical tones. And the test of when a dialogue develops to the stage where it may be said to have become vexatious will be an objective one, not based on the particular sensitivities of the individual or individuals dealing with the person making the request. This particular factor will carry weight in the overall assessment only if distress or irritation would be caused to a reasonably calm, professional and resilient officer of a public authority"

41. The Commissioner does not consider that the examples cited by the council fall outside the acceptable limits of *"robust and persistent questioning, sometimes articulated in fairly critical tones"*. He therefore gives no weight to this part of the council's argument.

Whether the request is designed to cause disruption or annoyance

42. The council argues that part 2 of the request:

"2010~2011 Audit of accounts for the Longfield Suite including a full set of receipts for all bookings at the venue."

is designed to cause disruption or annoyance because, at the time of requesting, the complainant was aware that the 2010-2011 audit was not yet available. Therefore, in requesting it, his request was designed to cause disruption and annoyance.

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Decision%20&%20PTA%20(w).pdf)

43. The complainant, for his part, accepts that he knew the audited accounts would not be available at the time he requested them, but explains that the request was not for the completed, audited accounts, but for the audit of accounts which should be made available for inspection, on request, within the Audit Commission Act inspection window, which he explains would be from 30 June 2011 to 29 July 2011.
44. The Commissioner notes that the request was submitted on 11 April, and expressly states that the request is being submitted under the Freedom of Information Act. Requests submitted under FOIA must be dealt with within 20 working days, which would take the council to early May 2011, not late June 2011. There is nothing in the request which suggests that part 2 of the request fell to be considered under the Audit Commission Act and should therefore be considered as an advance request for inspection of the accounts at the material time. On the contrary, everything in the request indicates that disclosure is expected under FOIA, which would require it within the next 20 working days.
45. The Commissioner finds the complainant's argument to be inconsistent with the facts of the case, specifically, the disclosure regime explicitly specified by the complainant in the request is FOIA, not the Audit Commission Act, and the timeframe in which the request takes place is considerably outside the window for inspection under the Audit Commission Act in any event. Furthermore, as a public sector body, the council's financial year closes at the end of March, so a request for an audit of that year's figures in early April is clearly unrealistic.
46. The Commissioner finds sufficient grounds to the council's position to give some weight to its argument that part 2 of the complainant's request was designed to cause disruption and annoyance.

Whether the request has any serious purpose or value

47. The request in this complaint is wider in scope than just a request for the business plan itself for the Longfield Suite, albeit the letter containing the request is headed "*FOI Request for the Longfield Suite Prestwich Business Plan*".
48. It is clear that the complainant, and the SOS group, are pursuing a campaign in support of a cause which is important to them. Such campaigning is part and parcel of the process of local democracy, and it would be unfair to refuse a request as vexatious purely on the grounds that it was associated with a campaign. Moreover, FOIA is intended to increase transparency and accountability of the public sector and can be a useful and valid tool for campaigning purposes. To the extent that the campaign makes use of FOI requests, the question for the Commissioner

is, broadly, whether in the specific circumstances of this case the burden on the council is disproportionate to the importance of the campaign.

49. Public authorities have to manage their budgets efficiently and, inevitably, some decisions will be taken which are unpopular with some affected parties. It is reasonable that, in such cases, those affected may choose to campaign to protect their own interests. This is recognised as a legitimate purpose, particularly where those interests are shared by a wider community than just the campaigners themselves. The Commissioner therefore acknowledges that the SOS group may have a reasonable objective in campaigning, but expects that, to the extent that its campaigning involves the use of FOIA, that use will be proportionate.
50. The Commissioner is aware, from a copy of a press release issued by the council, that it initially welcomed the participation of the SOS group as 'critical friends' who could help identify problem areas and devise solutions for the future of the Longfield Suite. To this end, it is clear that the SOS group anticipated gaining access to the business plan for the suite, in order to apply its expertise. The council says that, having been denied access to this information, the SOS group's approach became less collaborative.
51. This does not, in itself, diminish the serious purpose of the group, but it does point to deterioration in the relationship between the SOS group and the council. To the extent that the group's methods and tactics applied in its use of FOI as a campaigning tool are found to fit the criteria considered above, whether or not this is found to be vexatious may depend on the degree to which the group's purpose can be seen to be sufficiently serious.
52. In this case, the serious purpose is to retain a local leisure facility which is faced with a review of its viability and, consequently, possible closure. The facility is an entertainment suite, available to hire for public or private functions. It is one of several within the Bury Council area which were subject to a review in the face of constraints to the council budget. It is not suggested that all the facilities of this nature operated by the council will be closed, or that there are no alternative (perhaps privately operated) function rooms within reasonable reach. Therefore, the Commissioner cannot conclude that the closure of the suite (if that were to happen) would remove a vital resource from the local community, albeit he notes that the SOS group considers the Longfield Suite to be of particularly high calibre and therefore worth retaining.

53. The Commissioner is guided by the findings of the Information Tribunal in the case of *Coggins v IC* (EA/2007/0130⁷) which said:

"the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed vexatious" (paragraph20).

While the Commissioner does not wish to disparage the complainant or his group, he considers that the sort of serious purpose envisaged by the tribunal in the case of *Coggins*, would be likely to relate to matters such as bias, injustice, corruption or serious mismanagement, or other weighty matters affecting the public authority as a whole, or impacting on a significant proportion of the public who are served by the authority. It is not clear to him that the, possible, closure of a function suite, particularly when other suites may still be accessible, would amount to a sufficiently serious purpose to outweigh the other factors already identified in this notice.

Summary and conclusions

54. The council has demonstrated to the Commissioner's satisfaction that the SOS group's use of FOI in requesting the business plan and associated information for the Longfield Suite constitutes a burden on its resources, both financially and also as a distraction of its staff from their regular duties. Aside from one particular financial element which is unlikely to be repeated, the burden is not particularly onerous however. The Commissioner has given this element a small amount of weight.
55. The Commissioner also agrees with the council that the group's persistent attempts to obtain copies of various business plans for the Longfield Suite are, at least to some degree in the circumstances, obsessive or manifestly unreasonable. This is because the council has previously refused this information as commercially sensitive and the group has not sought to appeal that refusal but has instead continued to press for its disclosure.
56. The Commissioner notes that there is some evidence to suggest that the complainant believes that the information is not exempt under section 43 of the Act, which makes his persistence in trying to obtain copies understandable, but he also claims that the group has not requested the information as often as the council suggests. That claim is difficult to sustain in the particular context. The Commissioner gives some weight to the council's arguments for this particular category, and considers

⁷ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i119/Coggins.pdf>

that the complainant's attempts to refute this point are, themselves, not entirely reasonable which lends a small amount of additional support to the council's view that the request is manifestly unreasonable. He does not give this factor its full weight, however, due to the possibility that the complainant genuinely believes that the information is being wrongfully withheld.

57. It is perhaps unfortunate that the group, rather than challenging the council's refusal of the information under section 43 at the time, elected to continue to request it rather than submit a complaint about that refusal to the Information Commissioner. Consequently, the group does not have any ruling from the Commissioner as to whether or not this information was correctly withheld (and the Commissioner is therefore now only concerned with the council's subsequent refusal of the request as vexatious). A complaint about a refusal of the business plan under section 43 would have been an obvious and reasonable course of action, which the group neglected to pursue. The group's chosen course of action is not the most reasonable one open to it at the time.
58. The Commissioner also finds some evidence to support the council's argument that one element of the request is designed to cause disruption or annoyance, namely the request for the 2010-2011 audit of accounts. Again, the complainant's explanation for this element of the request is not consistent with the facts as they are presented, and the Commissioner accordingly gives some weight to the council's arguments for this category.
59. The council's claim that the request has the effect of harassing the public authority or its staff is not proven and the Commissioner gives no weight to this factor.
60. Finally, the Commissioner recognises that the request does not lack legitimate purpose and acknowledges the valid cause behind the complainant's, and the SOS group's, campaign. He has considered whether this purpose is sufficiently serious to outweigh the effect of the other factors the council has brought to his attention.
61. The Commissioner also considers that it is reasonable to give only qualified recognition to the complainant's arguments about the number of times the information has been requested, and the intention behind his request for the audit of accounts, where those explanations appear, on closer examination, somewhat contradictory.
62. Accordingly he finds that the council has provided relevant evidence in support of its view that the complainant's dealings with it constitute a burden on its financial and staff resources, and finds the complainant's counter-arguments unsatisfactory. Similarly, the complainant's

explanation of his reason for requesting the audit of accounts is not supported by the facts. The Commissioner therefore gives a reasonable amount of weight to the council's argument that the request constitutes a burden, and is, to some degree, designed to cause disruption and annoyance. The Commissioner recognises that some of the group's actions may be a result of a misunderstanding of a previous decision by the Commissioner, and that this means that he gives only moderate weight to the argument that the request is obsessive or manifestly unreasonable.

63. The cumulative effect of these factors is to give reasonably substantial weight to the council's arguments in support of its refusal of the request as vexatious. Further, the Commissioner considers that the complainant's serious purpose is not sufficiently serious to outweigh the combined weight of the factors which the council has demonstrated apply in the circumstances of this case. The Commissioner accordingly finds that the council has correctly refused the complainant's request as vexatious.

Other Matters

64. The complainant's request was refused on 13 May 2011 and he requested an internal review of that refusal on 16 May 2011. The council's internal review was not completed and communicated to the complainant until 27 October 2011, a period of 117 working days.
65. While there is no statutory timescale under FOIA for the conduct of an internal review, the Commissioner's guidance suggests that it should take no longer than 20 working days or, in exceptional circumstances, no longer than 40 working days. The Commissioner notes with concern that council's internal review took substantially longer than the timescale set out in his guidance.

Right of appeal

66. 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

67. 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.
68. 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

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