

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2012

Public Authority: Gateshead Metropolitan Borough Council
Address: Civic Centre
Regent Street
Gateshead
Tyne and Wear
NE8 1HH

Decision (including any steps ordered)

1. The complainant requested photographs taken of speed camera sites from Gateshead Metropolitan Borough Council ("the council"). The council said that the request was vexatious.
2. The Commissioner's decision is that the council correctly refused to respond to the request because it was vexatious. He does not require the council to take any steps.

Request and response

3. On 8 September 2011 the complainant requested information from the council in the following terms:
"I now make a request under the FOIA 2000 for photographs taken of camera sites in the partnership area between the dates of 30/6/06 – 31/3/07".
4. When the complainant did not receive a response, he wrote to the council on 18 September 2011 to ask for an explanation.
5. The council replied the next day and told the complainant that it had already advised him that it would not respond to any more requests relating to the Safety Camera Partnership as it considers that the requests are vexatious.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council had correctly refused to respond to his request.

Reasons for decision

7. Section 1(1) provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.

8. Guidance on vexatious requests is available on the Commissioner’s website at www.ico.gov.uk and for ease of reference, at the following links:

http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx

<http://www.ico.gov.uk/foikb/SectionsRegulations/FOIPolicySection14.htm>

9. As explained in the guidance, when considering if a request for information is vexatious, the Commissioner will consider the argument and evidence that the complainant and the public authority is able to provide. The Commissioner’s analysis will generally focus on 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 in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

10. It will not be necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious request will be. The Commissioner is able to take into account the history and context of the request.

Could the request fairly be seen as obsessive?

11. When a request for information is refused as vexatious, it is often the case that an examination of the background will reveal a long and difficult relationship between the parties that has arisen as a result of an original dispute. This is clearly the case here.
12. The council explained to the Commissioner that the complainant became involved in a dispute with Northumbria Safety Camera Partnership ("NSCP") of which Gateshead was the "lead authority" after receiving a fixed penalty notice in 2007. The penalty charge was challenged unsuccessfully in the Magistrates Court. Following this, the complainant then made a series of requests for information to NSCP. He also sent a number of related emails.
13. The NSCP was formed in 2002 and consists of a number of different public authorities including Gateshead Metropolitan Borough Council, Sunderland City Council, Newcastle City Council, North Tyneside Metropolitan Borough Council, South Tyneside Metropolitan Borough Council, Northumberland County Council, the Crown Prosecution Service, Newcastle University, the Highways Agency, Northumbria Healthcare trust, Northumbria Police, Northumbria Magistrates, and the police. The council said that it had supplied the Commissioner with a number of requests dealt with by a particular individual at NSCP. The council said that it considered that NSCP was acting on behalf of the members of the partnership when it responded to the complainant's requests under the FOIA and it said that the particular individual who responded to the requests at NSCP was employed by the council. The Commissioner decided that it would be right in the circumstances to take this correspondence into account when deciding whether the request that was made directly to the council in this case was vexatious.
14. The council said that the complainant had made numerous requests and complaints to NSCP and it supplied a bundle of correspondence to the Commissioner as evidence of this. It said that each response to a request does not satisfy the complainant but only serves to generate further correspondence from the complainant. The council said that it had noted that some of the requests made are repetitious or relate to issues that it had already addressed. It said that when the complainant is advised that no information is held, he does not accept that is the case.
15. The council said that the complainant had previously been informed by NSCP on more than one occasion that the requests were considered to be vexatious and NSCP was no longer prepared to respond. NSCP provided contact details for the Information Commissioner. However,

this had not stopped the complainant from sending in more requests and emails.

16. The council said that the complainant's behaviour should also be seen in a wider context because he had also been making related requests and complaints to the other members of the NSCP. As well as this, he has made complaints to the Independent Police Complaints Commission and the Local Government Ombudsman as well as to the Information Commissioner. The complainant had also contacted the media. The council said that it was of the view that the complainant was conducting an obsessive campaign.
17. As regards the involvement of the Commissioner, the Commissioner notes that in September 2010 he previously found that a series of requests submitted by the complainant to Sunderland City Council relating to speed camera issues were vexatious (case reference FS50281665). An appeal to the Information Tribunal was subsequently struck out. The Commissioner has taken into account his previous findings in relation to this decision notice as he considers that it is fair to characterise the request to Gateshead Council as a continuation of this previous behaviour. For ease of reference, the formal Decision Notice can be found here:

http://www.ico.gov.uk/~//media/documents/decisionnotices/2010/FS_5_0281665.ashx

The Commissioner also notes that he has recently issued a second Decision Notice (FS50378357) relating to similar issues, once again determining that the complainant's request was a continuation of a vexatious campaign against Sunderland City Council. In that decision, the Commissioner considered that it was appropriate to warn the complainant that the Commissioner may in the future consider invoking his right under section 50(2) to refuse to consider a complaint to his office on the basis that the complaint itself is vexatious.

18. The council supplied the Commissioner with a bundle of evidence showing the details of correspondence with the complainant, mainly between the complainant and NSCP. The Commissioner noted that there had been a significant amount of communication over a period from 2007 up until the date of the request and beyond (For clarity, the Commissioner has only taken account of correspondence up until the date of the request). The Commissioner noted that the complainant often wrote more than once within the same month, making requests for information, enquiries or complaints. The evidence shows that the complainant was generally never satisfied with any amount of information or explanation that he received and refused to modify his behaviour when concerns about the vexatious nature of the requests were put to him.

19. It is clear to the Commissioner that the complainant believes that he is uncovering a conspiracy, fraud or criminal act. It is not the Commissioner's role to consider whether there is any merit in the allegations made by the complainant. The Commissioner would observe however that other organisations are able to consider allegations such as these. No evidence was provided to the Commissioner to show that an allegation made by the complainant had been independently upheld.
20. Taking all the evidence into account, the Commissioner was satisfied that it would be fair to characterise the request made to the council as a continuation of a vexatious pattern of behaviour that has been quite wide in its scope over a number of years since the original speeding fine was issued.

Did the request have the effect of harassing the council?

21. The Commissioner would like to highlight that this element of the criteria is concerned with the effect of the request on any reasonable public authority, rather than what the complainant's intention was. It is not uncommon in relation to vexatious requests for the requester to have a genuine conviction that the request was a reasonable one.
22. The Commissioner has noted that the complainant has questioned the honesty and integrity of various individuals in the NSCP. His tone is often suspicious and accusatory. Some of the text is written in capital letters or with excessive exclamation marks. The complainant believes that the council has been involved in a conspiracy, fraud and criminal behaviour. He made very serious allegations relating to the matter, singling out individual officers. He has refused to modify his behaviour when notified of the authority's concerns that the requests had reached a point where it would be fair to characterise them as vexatious.
23. The Commissioner considers that it would be reasonable for the council's staff to regard further requests and correspondence on the same topic from the complainant as harassing when there was every indication that responding would only lead to further requests, enquiries and complaints given the nature of previous engagement. The Commissioner also considered that the complainant's general tone and manner had contributed to the harassing effect of the correspondence in this case.

Would the request impose a significant burden?

24. The Commissioner considers that compliance with the request would impose a significant burden when its complete context is taken into account, that being the campaign that the complainant has been pursuing ever since he was issued with the speeding ticket. It is clear to the Commissioner that the complainant's request and

correspondence since 2007 would have imposed a substantial burden on the public resources of NSCP and the council.

Is the request designed to cause disruption or annoyance?

25. The Commissioner considers that this part of the vexatious criteria is difficult to prove because it requires objective evidence that it was the complainant's intention to cause disruption or annoyance. The Commissioner did not consider that the council provided sufficiently strong evidence to show that this was the case. It is clear to the Commissioner that the complainant genuinely believes that he is acting in the public interest.

Was the request vexatious overall?

26. Taking into account all the circumstances of the case, the Commissioner considers that a strong case and body of evidence had been presented to the Commissioner to demonstrate that the request was vexatious. While the Commissioner considers that the complainant may have begun seeking information for a serious purpose, there comes a point when the action being taken and the associated burden being imposed on the authority is disproportionate to whatever objective the complainant is attempting to achieve. That point has been reached in this case.

Right of appeal

27. 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
28. 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.
29. 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
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