

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 February 2012

**Public Authority:** Waveney District Council  
**Address:** Town Hall  
High Street  
Lowestoft  
Suffolk  
NR32 1HS

#### Decision (including any steps ordered)

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1. The complainant has variously requested from Waveney District Council (the "Council"); evidence of training sessions attended by a named councillor (councillor x); the number of complaints about councillor x which have been referred to the monitoring officer; and a list of training given to all councillors serving at the council.
2. The Commissioner's decision is that the Council has correctly claimed the requests were vexatious for the purposes of section 14(1) of FOIA.
3. The Commissioner does not require the Council to take any steps as a result of this notice.

#### Request and response

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4. The Commissioner has decided it appropriate in the circumstances to address collectively three requests made by the complainant, which were the subject of three separate complaints. This is because the Council's position with respect to each of the requests is effectively the same or hinges on the same substantive issues.
5. The three requests asked for information in the following terms –
  - 18 July 2011 (FS50413391)
    1. "...evidence of all training sessions [councillor x] has ever attended since he has been a Councillor with the signed attendance sheets as proof."

- 18 July 2011 (FS50413396)

2. *"Can I under the Freedom of Information Act be told how many complaints regarding [councillor x]'s behaviour have been referred to the Monitoring Officer.*

*Also under the Freedom of Information could you advise how many times have such complaints been referred for investigation and provide details and dates."*

- 18 August 2011 (FS50419019)

3. *"...I request a list of all training given to current serving WDC Councillors to date, including but not limited to [named person]..."*

6. The Council responded to requests 1 and 2 on 25 July 2011 and request 3 on 22 August 2011. It stated that all the requests were vexatious for the purposes of section 14(1) of FOIA.
7. Following confirmation of the complainant's dissatisfaction with the response to requests 1 and 2, the Council wrote to the complainant again on 18 August 2011. This, in effect, represented its internal review although it clarified that normally it did not have a second-stage mechanism by which the Council's handling of a request would be reviewed. Having reconsidered this matter, the Council upheld its original decision to refuse the requests under section 14(1).
8. In relation to request 3, the Council informed the complainant in its letter of 9 September 2011 that its procedures did not allow for a right of appeal.

## **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the way his requests for information had been handled.
10. During the course of the investigation, the Council informed the complainant that it does not hold all the information requested in the form specified and it also directed the complainant to relevant information falling within the scope of the request that was already publicly accessible. However, the Council has nevertheless insisted that section 14(1) was correctly applied to the requested information. As section 14(1) removes the requirements to confirm or deny if the information is held under section 1(1)(b), the Commissioner has not considered if the information is held but has limited his investigation to considering if the Council were correct to rely on section 14(1).

## Reasons for decision

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11. Section 14(1) of FOIA states that a public authority is not obliged to deal with a request for information if the request is vexatious. As a general principle, the Commissioner considers that the exclusion provided by section 14(1) is designed to protect public authorities from those persons who may abuse the right to seek information.
12. The Council has argued in this case that the requests should be seen as continuation of a campaign against its decision to dispose of North Denes Caravan site (North Denes). This decision was made as a result of a review of the Council's holdings carried out in 2002, although a number of ensuing problems have led to a delay in the site's disposal.
13. For the Council's arguments to be persuasive, the Commissioner has considered that two conditions must be satisfied: (1) that it can be shown that the requests form part of, or have developed from, the protest against the plans involving North Denes and, if so (2) in the context of the dispute, the requests were not a reasonable way to obtain information otherwise unavailable.
14. On the surface, the requests appear to have little or no association with North Denes. However, the Commissioner is prepared to accept the Council's claim that they arise from the same principal issue. In making this finding, the Commissioner believes the requests reflect the increasingly strained relationship between the Council and the complainant that is largely, although not only, due to its plans for North Denes.
15. The subject of requests 1 and 2, namely councillor x, was an important and public-facing member of the decision-making process regarding North Denes, occupying the position of portfolio holder. It is no secret that the complainant has questioned the legitimacy of the plans and the competency of those involved at the Council. Bearing in mind the circumstances in which they were made, the Commissioner considers it reasonable to conclude that the requests were an extension of the complainant's protests in that they focus on the credibility and credentials of the portfolio holder.
16. Once this view is established for requests 1 and 2, the Commissioner believes it is a logical step to group request 3 with the other requests. This is because ultimately the request will cover the same information, if only in part.
17. Having satisfied himself that condition (1) is met, the Commissioner has gone on to consider condition (2). To reach his decision, the Commissioner has considered the context and history of the requests, as well as taking into account the strengths and weaknesses of both

parties' arguments for their respective positions. Although not necessarily limited to these, the Commissioner has found it instructive to follow the approach adopted in previous cases in which arguments were tested against the questions set out below –

- Could the request fairly be seen as obsessive?
  - Is the request harassing the authority or distressing 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?
18. In accordance with the comments of the Tribunal in *Coggins*<sup>1</sup>, the Commissioner recognises that deciding whether a request is vexatious is essentially a balancing exercise.

#### **Could the request fairly be seen as obsessive?**

19. An obsessive request is often a strong indication of vexatiousness. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been considered.
20. The Council has pointed to the amount of correspondence received from the complainant over a sustained period of a number of years as evidence of obsessiveness. Although it has not sought to categorise this information, the Council has informed the Commissioner that in its legal library it has stored 29 lever arch files of correspondence from the complainant, representing approximately 14,000 pieces of paper. These files do not contain all the emails and faxes held electronically and the Council does not discount the prospect of other files of information being held by officials in connection with North Denes and the complainant.
21. The Commissioner has not had sight of all the information referred to by the Council and so is not aware of the precise contents of the files. As a consequence he can not rule out the possibility, for example, that the sum of the documents only represents a limited number of detailed, legal submissions which challenge the basis of the disposal of North

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<sup>1</sup> <http://www.informationtribunal.gov.uk/DBFiles/Decision/i119/Coggins.pdf> (para 20)

Denes. If this were the case, it is less likely that the amount of documents held would be indicative of obsessiveness than if the papers consisted of a series of distinct, albeit related, letters on the one subject.

22. It is nevertheless beyond doubt that the contact between the Council and the complainant about North Denes has been extensive, stretching back to 2004 if not earlier. However, in the absence of a schedule of documents produced by the Council, the Commissioner has not been in a position to decide that the request can be deemed obsessive based solely on the amount of correspondence received by the Council.
23. The Commissioner has therefore gone on to consider the Council's claim that the intention behind the requests is to dwell on an issue that has already been dealt with, namely the disposal of North Denes, or one that could be pursued through alternative channels.
24. The proposals put forward by the Council concerning North Denes, as well as the steps taken to act on these proposals, have been mired in controversy. The difficulties associated with the project have been reflected in a number of reports, which include –
  - The Council's Scrutiny Committee report 'Camping and Caravan Sites Inquiry' – June 2005
  - The Audit Commission's 'Review of Performance and Capacity within the Council' which featured as part of its Annual Audit and Inspection Letter – March 2007. This review was carried out to ensure that the Council had taken appropriate action in response to the findings of the Scrutiny Committee.
  - The Audit Commission's 'Review of Legal Costs for Disposal of Caravan Sites' – July 2009
25. Each of these reports found serious defects in the way that the Council had proceeded with its plans to dispose of the North Denes site. Among other points, the Scrutiny Committee recommended that the Council carry out meaningful consultation with the public on all significant projects in the future and improve its system of communications in light of weaknesses that had been uncovered in these areas.
26. As a vocal critic of the project, it is clear that the complainant has made a meaningful contribution by exposing flaws associated with the Council's pursuit of its plans relating to North Denes, particularly at the beginning of the process. This was supported by the findings of the Local Government Ombudsman (LGO) in 2006.
27. The LGO decided that the complainant had suffered some injustice as a result of the time and expense he had been put to in dealing with the

Council's decision to dispose of the land in 2004. According to the LGO, the Council had accepted that there had been failings in its procedures following the complainant's intervention; issues that the LGO considered might not otherwise have been addressed if the complainant had not taken any action.

28. Taking into account the complainant's continuing concerns about the use of the North Denes site and his historically close involvement with the process, the Commissioner has not found it unexpected that the complainant regularly returns to the Council for information relating to this matter. Yet, the Commissioner considers there must be a limit to such enquiries.
29. As stated, the Commissioner recognises that the Council has had to field a number of requests or enquiries made by the complainant over a sustained period about North Denes. In addition to this channel of communication, the Council has investigated complaints brought by the complainant against it or its members, as well as co-operating with bodies such as the Audit Commission that has scrutinised its actions in respect of North Denes.
30. To this extent, the Commissioner believes there are grounds for assuming that the disposal of North Denes has been adequately probed, whether internally by the Council or through external bodies. Furthermore, while there is undoubtedly merit in holding a Council to account for the decisions it makes, the Commissioner does not attach the same merit to these requests which, in essence, seek to open up ways of attacking the credibility of those officials behind the decision. To paraphrase the Information Tribunal in *Rigby*<sup>2</sup>, it is the amount of correspondence, combined with the nature of the requests, which brings section 14(1) into play in this case.
31. Ultimately, it is through legal redress and not FOIA that a challenge to the Council's actions regarding North Denes should be made. Instead, by seeking to draw out the focus on a particular person, or persons, the Commissioner considers there are grounds for finding the request obsessive. On this point, the pattern of correspondence received by the Council instils little confidence that compliance would not simply trigger further enquiries from the complainant; a response that the Commissioner considers to be a hallmark of obsessiveness.

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<sup>2</sup>[http://www.informationtribunal.gov.uk/DBFiles/Decision/i397/Rigby%20v%20IC%20&%20BF&WHNHS%20-%20Determination%2010-06-2010%20\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i397/Rigby%20v%20IC%20&%20BF&WHNHS%20-%20Determination%2010-06-2010%20(w).pdf) (para 44)

### **Is the request harassing to the authority or distressing to staff?**

32. The Commissioner may find that this factor applies where the tone adopted in correspondence by an applicant is tendentious, haranguing and/or can reasonably be expected to have a negative effect on the well-being of the representatives of the public authority. However, a public authority should not be overly sensitive when it receives critical comments and should, as the Information Tribunal in *Jacobs* commented, expect to be exposed to *"an element of robust and persistent questioning, sometimes articulated in fairly critical tones."*<sup>3</sup>
33. The Council has argued that as early as February 2005 the complainant had adopted inappropriate language in his correspondence. This referred to the complainant's letter in which he stated that he would continue to expose a named official's *"lying, deceptive and undemocratic actions"*. At that stage it had been deemed necessary for the Council's solicitors to write to the complainant in March 2005 to ask that he cease making *"defamatory and scurrilous attacks against named individuals"*.
34. To support its claim that the request is both harassing to the authority and distressing to staff, the Council has provided the Commissioner with a selection of letters dating between 2005 and 2011 that it considers demonstrates this point. The Council has also informed the Commissioner that since 2008 the Chief Executive has personally taken charge of all complaints received from the complainant in order to ensure consistency of approach and to protect officers from the "barrage of insults" contained within his correspondence.
35. The Commissioner observes that a recurring theme in the letters of the complainant is the allegations of deception and misconduct by officials of the Council, often copying the letters to a wide audience. The complainant has also accused the Council on more than one occasion of fraud and corruption. The degree of deliberate provocation was expressed by the complainant himself, for example, when he stated –
- "But in order to make sure my letters were not lost and/or ignored as letters from the public still are, I copied my letters widely. I made claims that Officers and Members lie, deceive, cheat...but no action has been taken against me. Why? Because everybody knows that what I say is true!"*

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<sup>3</sup>[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) (para 27)



36. From the evidence provided, the Commissioner believes there are grounds for finding that this factor weighs heavily in favour of the Council. In particular, the language used by the complainant and the repeated claims of misconduct could in the opinion of a reasonable person be found to be harassing.
37. Yet, on the other hand, the Commissioner accepts that the complainant's 'robust' language must be viewed in the light of the accepted flaws in the disposal of North Denes.
38. It is right to say that, at least at the beginning of the process, the Council had failed to properly manage the project which had resulted in considerable costs being incurred. Similarly, the Council had been the subject of criticism by both its own Scrutiny Committee and external bodies about its system of communication and the lack of meaningful consultation with the public. Consequently, the Commissioner has some sympathy with the complainant when he remarked to the Council that *"it takes someone like me with my abrasive cutting style to get something done"*.
39. Yet, the Commissioner feels that a public authority can only be expected to tolerate the acerbic language displayed up to a point. Given the length of time over which the complainant has made allegations against officials at the Council, with particular vehemence reserved for councillor x, the Commissioner has accepted that the effect of the requests would be to harass the public authority.
40. Furthermore, the Commissioner recognises that the requests in question focus specifically on officials at the Council rather than the North Denes site itself. Bearing in mind the circumstances in which the requests were made, and specifically the history leading up to the requests, the Commissioner considers that the receipt of the requests would likely create feelings of anxiety within the Council.

**Would complying with the request impose a significant burden in terms of expense and distraction?**

41. When considering whether this factor applies, the Commissioner would expect a public authority to be able to show that complying with a request would cause a significant burden both in terms of cost and in diverting staff away from their core functions. Even where a request does not impose a significant burden when considered in isolation, it may do so given the context in which it was made.
42. The Commissioner has not been presented with any specific arguments that demonstrate that this factor applies. Nor is there any suggestion that complying with the requests would be problematic or time-consuming. Indeed, the Council has confirmed that it does not hold



some of the information (although this point is disputed) or, alternatively, provided the complainant with relevant information.

43. In all the circumstances, therefore, the Commissioner does not believe this factor can be seen as supporting the application of section 14(1).

**Was the request designed to cause disruption or annoyance?**

44. In the Commissioner's published guidance on section 14<sup>4</sup>, he comments that because the factor relates to the requester's intention, it can be difficult to prove.
45. The Council has argued that the requests have arisen as a result of complaint made by the complainant against councillor x, which had been passed to the Standards Committee for consideration. At the time the requests were made, the complainant had received from the investigating officer a copy of the draft report which, once finalised, he planned to put before the Committee.
46. Having had sight of the draft report, the complainant advised the investigation officer of his serious concerns relating to the findings, although he also noted that he had expected nothing else but a 'whitewash'. The Council contends that the subsequent receipt of the requests provides clear evidence that the complainant was seeking to carry out a parallel investigation to the one being undertaken by the Council, which it feels to be inappropriate.
47. The Commissioner accepts the claim that the requests were made in part to allow the complainant to further his complaint against councillor x. This was in effect confirmed by the complainant when he copied in his letter containing request 1 to the investigating officer. The question that therefore emerges is whether the purpose behind the request indicates that it was designed to cause disruption or annoyance.
48. The Commissioner has allowed that the force driving the requests was understandable, in that the complainant can be seen to be pursuing further evidence in support of this, as well as another, complaint. Yet, the Commissioner has also been reminded that the reason for making a complaint in the first place is to give the Council an opportunity to review the actions of the councillor.

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<sup>4</sup>[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/VEXATIOUS\\_AND\\_REPEATED\\_REQUESTS.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx)

49. At the time of the initial request, the Standards Committee had not published its findings on the complaints. In such a scenario, it is not unreasonable for a public authority to be afforded space in which to reach a settled decision. By making the requests, however, the Commissioner is satisfied that the complainant was seeking to disrupt this process by making his own enquiries on an issue that had yet to be decided.
50. For this reason, the Commissioner has concluded that the factor does carry some weight in favour of supporting the application of section 14(1).

### **Does the request lack any serious purpose or value?**

51. In principle, FOIA is not concerned with the motives of an applicant but in promoting transparency for its own sake. Nevertheless, the arguments for the application of section 14(1) may be strengthened where a public authority can demonstrate that a request has no value or purpose. It is rare, though, that a lack of serious purpose on its own could turn a valid request into a vexatious one.
52. There is little doubt that the substantial amount of correspondence sent to the Council about North Denes is in general reflective of the complainant's desire for the Council to be held to account for the decisions it had made. While taking this into account, though, the Commissioner has felt that an argument could potentially be expounded which says that the serious purpose behind the requests has diminished given the length of time the complainant has been corresponding with the Council on this issue.
53. However, in the absence of any arguments provided by the Council that address this factor, the Commissioner has decided that there is insufficient evidence on which to find that this factor favours upholding the application of section 14(1).

### **Conclusion**

54. In all the circumstances of the case, the Commissioner has determined that a reasonable public authority would find the complainant's requests of 18 July and 18 August 2011 vexatious.
55. In making this finding, the Commissioner is prepared to accept that the complainant has genuine, and to some extent justified, concerns about the transparency and accountability of the Council, particularly with regards to North Denes. The issue of vexatiousness has therefore been in no way clear-cut.
56. However, the Commissioner has decided that the arguments in favour of section 14(1) are of sufficient weight to deem the request vexatious.

**Right of appeal**

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57. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

58. 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.

59. 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 .....**

**Rachael Cragg  
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