Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **31 January 2012**

Public Authority: **City West Homes**
Address: **21 Grosvenor Place**
London
SW1X 7EA

Decision (including any steps ordered)

1. The complainant requested information from City West Homes ("CWH") concerning works being carried out to ensure that residents of the property where the complainant lives can continue to receive a television signal following the digital switchover. CWH refused to respond to the requests on the basis that they were vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA").

2. The Commissioner's decision is that CWH did not correctly rely on section 14(1) in this particular case.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

   - Respond to the complainant's requests for information

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 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.

Request and response

5. On 25 August 2011, the complainant requested the following information:

   "I would like answers to the following questions:

   1. Are we are [sic] or are we not receiving TV signals from crystal palace?

To be as blunt as possible: is the signal received by the aerials on the roof of each block blocked by the Paribas building?...For the avoidance of doubt I am not asking you what you have been told: I am asking for facts you have checked…

2. *Will a digital TV signal be transmitted from crystal palace when the analogue signal is switched off?*
3. *Why did you not tell us, in the communication requesting 240 pounds, that the system you propose/impose may be replaced by something else for which you are already in negotiation?*
4. *How did you arrive at the cost of 240 pounds? Please bring copies of the cost calculations, showing who signed them off, for what you describe simply as 'access' to a dish. Please provide copies of internal correspondence discussing the cost.*
5. *What is the cost of the project? How much is this per flat? Please bring a copy of the contract/quote from the supplier.*

6. Later the same day, the complainant made another request in the following terms:

1. *Is there a functioning digital aerial on the roof of Farnham House?*
2. *Will this digital signal be in any way affected by the switching off of the analogue signal?*
3. *How much did the installation of this aerial cost? How much did you charge residents to connect to it?*
4. *How much would it cost to provide a exactly similar aerial on the other blocks?*
5. *Did CWh imply infer or suggest to Farnham residents that they may loose their TV signal? Will they?*
6. *How many residents currently in receipt of a digital signal via aerial have signed up to receive a digital signal via satellite?*
7. *how many residents currently receiving a digital signal via aerial to pay 240 pounds to receive a digital signal via a satellite dish which you are already negotiating to replace?*

7. The next day, the complainant made another request in the following terms:

"Thank you for joining residents and giving some information about the TV reception project. Please could you confirm or correct or provide the following information.

1. *The contract for Blanford is "with lawyers" and has not been signed as of 8pm 25th August 2011.*
2. *This contract differs from other estates in that you propose a dish not an aerial*
3. *The reason you have given for this is that the signal from Crystal*

Palace is 'blocked'

4. *When CWH prepared this contract they believed that the signal from Crystal Palace was blocked.*
5. *CWH became aware that the signal was not blocked before the contract has been signed*
6. *Did CWH request or receive any professional advice about the possibility of receiving a digital signal by aerial on the Blanford estate? Please provide copies".*

8. CWH replied on 13 October 2011 and said that it considered that the above requests were vexatious and it drew the complainant's attention to a refusal notice it had already issued on 6 June 2011 in response to earlier requests (not about the aerial). CWH subsequently explained to the Commissioner that it considered that it was entitled to rely on section 17(6) in this case which provides that it did not have to issue another vexatious refusal if it would be unreasonable for it to do so in the circumstances.

Scope of the case

9. The complainant asked the Commissioner to consider whether the council had correctly refused to respond to his requests using section 14(1) of the FOIA.

Background

10. CWH is an Arms Length Management Organisation (ALMO) which is owned solely by Westminster City Council ("the council"). CWH was established in 2002 and manages the council's housing stock. It is a public authority in its own right for the purposes of the FOIA in accordance with section 6(2)(b).

11. The complainant is a tenant of a property managed by CWH on behalf of the council on the Blanford Estate. The estate currently benefits from a television aerial service from Virgin Media. CWH have been carrying out a programme of works to ensure that all residents are not affected by the digital switchover in April 2012. The estate was identified as requiring these works as CWH was made aware that Virgin Media planned to withdraw their analogue services from Westminster in January 2012, i.e. in advance of the scheduled digital switchover in April 2012. This would leave the tenants without a TV signal. The works being undertaken form the subject of the complainant's requests.

12. CWH said that the complainant had raised a number of questions about the works but it summarised the main concerns for the Commissioner as follows:

- The complainant believes that the works are based upon a mistaken notion that the current signal is blocked.

- The complainant has raised concerns that the planned works would have a limited shelf life because he believes that a new system called IPTV will be installed at a later date. CWH informed the Commissioner that it is true that it is in the very early stages of investigating IPTV which, if it goes ahead, will enable digital, satellite, cable and internet services in all CWH properties. CWH stressed that it had only made preliminary investigations and no decision had been taken to go ahead with this alternative system. Because of this, CWH considered that they had to make a decision to carry out the digital works in question to ensure that residents were not left without a TV signal in January 2012. CWH said that if it does implement the IPTV system, leaseholders will not face additional charges.

Reasons for decision

13. 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".

14. Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website 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/FOIPolicySectionsRegs.htm

15. As explained in the guidance, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to 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?

16. 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 when determining whether a request is vexatious. It will often be the case that a request for information only reveals its vexatious quality when put into context.

17. The council said that the complainant is well-known to CWH because he has made numerous requests for information both to CWH and the council in the past. CWH said the requests began after the complainant had lodged a formal complaint in October 2008 against CWH in connection with an insurance issue. CWH said that for many months it and the council endeavoured to comply with the requests, constant questions and complaints from the complainant but it observed that compliance only ever resulted in provoking voluminous and frequent further requests for information and complaints, often against individual staff members. CWH said that it believed that the requests had over time degenerated into a vexatious campaign against CWH and the council.

18. CWH said that it had previously relied on section 14(1) in relation to requests for information made by the complainant dating back to 2008. The application of section 14(1) was supported by the Commissioner on that occasion as a result of a previous investigation under case reference FS50368324. The council asked the Commissioner to take these previous findings into account as evidence of an obsessive and harassing campaign. For ease of reference, the details of the decision can be found here:

http://www.ico.gov.uk/~/media/documents/decisionnotices/2011/fs_50368324.ashx

19. Following the above decision notice, CWH said that it applied section 14(1) on 6 June 2011 to further requests for information sent by the complainant.

20. The Commissioner understands that the previous requests for information largely concern complaints made by the complainant about health and safety issues at the estate where he lives, which developed into complaints about several individual staff members. CWH told the Commissioner that it considered that it had fully investigated the concerns but no safety issues were found. It said that the complainant had also referred the matter to the Health and Safety Executive who had similarly found no cause for concern. However, the complainant continued to express dissatisfaction and attempt to reopen the issue. CWH said that the complainant has consistently demonstrated an unwillingness to accept any opinion that differs from his own.

21. CWH said that it accepts that the requests that form the subject of this complaint relate to a “fresh issue” i.e. the TV aerial, and in that sense

do not continue the "theme" of previous vexatious communications but it said that it considered that the current requests formed part of the same campaign against CWH. CWH said that it had decided that the requests were vexatious when seen in the context of the previous experience as described above.

22. CWH said that its previous experience led it to consider that compliance with the requests about the aerial would undoubtedly provoke further correspondence, requests and complaints from the complainant, all of which would be likely to be voluminous, frequent and lengthy. It said that from previous experience it had noted that the complainant often makes requests to multiple recipients for information in quick succession, without allowing the addressee an appropriate opportunity to consider one item of correspondence before the complainant makes further contact. It said that the present correspondence displays signs of this characteristic behaviour which led the authority to conclude that engaging with the complainant would only have led to the same vexatious behaviour that it had previously witnessed.

23. CWH also told the Commissioner that the complainant had been openly hostile at a residents' meeting set up to discuss the aerial as part of the consultation process on 25 August 2011. It said the complainant sometimes suggests that his concerns are shared by other residents but CWH told the Commissioner that at the meeting it had the impression that this was not generally the case and that some other residents had found the complainant's behaviour irritating. CWH said the complainant was openly hostile to one of the councillors at the meeting, telling him to "shut up".

24. CWH said that the current requests clearly indicate that the complainant is raising the issue of possible impropriety once again and this is part of a continuing attempt to discredit CWH.

25. CWH said that it considered that the complainant's concerns had all been aired and dealt with as part of the general consultation process that had taken place and in particular, at the residents meeting held on 25 August 2011. CWH told the Commissioner that it had received questions about the works from other residents but these had all been dealt with as "business as usual". It said that the complainant was the only resident who had decided to make formal FOI requests. CWH said that as a result of the questions raised, it had entered into further negotiations with its contractor and had issued a comprehensive question and answer leaflet on 13 September 2011 which incorporated the queries raised at the meeting.

26. CWH said that although it had only received the quoted requests above directly from the complainant, it had received forwarded correspondence that the complainant had sent to a councillor and two related requests had been made to the council. CWH made comments about the content of this correspondence, which the Commissioner has disregarded because it took place more than 20 working days after the date of the requests that are the subject of this complaint which is beyond the statutory time for compliance.

27. CWH said that the current requests, when seen as part of an ongoing campaign, have imposed a significant financial and distracting burden on CWH which has been designed to cause annoyance over a long period of time.

28. For clarity, CWH said that although it questioned the relevance of a particular point made by the complainant, it did not wish to argue that the current requests lacked serious purpose or value at the time they were made, although it did question the value of the current complaint to the Commissioner given the information that it had since made available about the project.

Were the requests vexatious in the Commissioner's view?

29. The Commissioner carefully considered the rationale provided by CWH and he decided that on this particular occasion, he had not been persuaded that the requests were vexatious at the time they were made.

30. It is a well-established principle that when considering the application of section 14(1), the consideration should always only be on whether the particular *requests* in question were vexatious rather than the requester. While it is appropriate to consider the context of the requests that have been made, an authority must ensure that it does not cross the line into relying too much on the identity of the requester and its previous knowledge of their behaviour in relation to a different issue. Determining whether that line has been crossed is not always a straight-forward judgement.

31. It is the Commissioner's view that the line was crossed in this case. It is clear that CWH had previously experienced vexatious behaviour and requests from this particular complainant in relation to a different issue and that there was a possibility that the current interest in the aerial would develop in the same fashion. The Commissioner accepts that there were some signs of characteristic behaviour in the present circumstances that had *developed* into vexatious behaviour in a previous situation. The Commissioner notes that examples of this are the extent and frequency of the questioning, addressing the concerns

to multiple recipients without waiting for a response to the first set of enquiries, and the general accusatory tone and impatience. However, the Commissioner was not satisfied that in relation to the present issue, the behaviour demonstrated had developed to the extent that it should be deemed to be a continuation of the vexatious campaign that had previously been highlighted. The First-Tier Tribunal (Information Rights) has stressed in a number of cases that it is important that the bar for deeming a request vexatious should not be set too high, but it is equally important that it should not be set too low.

32. It is clear to the Commissioner that in taking the steps that it did, CWH was attempting to protect its resources by anticipating the behaviour that could have followed from attempting to engage with the complainant on this new issue. While this is understandable based on its previous experience of this requester, in the Commissioner's view, that position was more about the perception that the complainant was vexatious as an individual than about these particular requests. The Commissioner was not satisfied that CWH had made a strong enough case for suggesting that the current requests were linked to the previous ones to the extent that they should also be deemed vexatious automatically, without a specific written response even though the issue raised is a fresh concern.

33. Obsessive behaviour often comes about as a result of a complainant's unwillingness to accept any point of view that differs from their own, and a desire to go over the same ground even when they have exhausted the authority's attempts to help them. It was not apparent to the Commissioner that these circumstances were relevant to this case. The Commissioner notes that CWH has argued that the concerns raised by the complainant have been addressed and this supported its stance that the requests had been vexatious but the Commissioner was concerned about this argument for a number of reasons.

34. The Commissioner notes that two of the requests in question had been made on the same day of the residents' meeting. The complainant indicates that he is setting out the issues that he would like to be addressed in the residents meeting, although he would also like a written response for his own purposes which in the Commissioner's view, was not unreasonable considering that CWH has not supplied the Commissioner with any evidence that it had at that time addressed any concerns raised by the complainant on this issue in writing. It is arguable that the requests were made by the complainant to ensure that CWH understood what questions he wanted to be addressed at the meeting and that he would receive a full written reply that he could use for his own reference, rather than to harass CWH unreasonably at a time when the authority was already undertaking a general

consultation process. The further request made appears to be an attempt to check the facts relayed at the meeting. The Commissioner also notes that at the time when the requests were sent, the questions and answer leaflet referred to by CWH had not been issued.

35. The Commissioner considers that it is significant that the requests have not simply "come out of the blue". They appear to be a direct response by the complainant to a consultation process, hence the reason they were made in close proximity to the meeting in question. The Commissioner has also attached significant weight to the fact that at the time when these requests were made, CWH had not addressed any of the concerns in writing on a previous occasion and they had not previously formed the subject of a complaint. The Commissioner did not consider that the requests in question were part of an obsessive campaign to reopen issues that had already been adequately dealt with or clearly demonstrated unwillingness on the part of the complainant to accept the responses given to him.

36. CWH told the Commissioner that the complainant had also contacted a councillor making some requests shortly after the requests that form the subject of this complaint. It supplied the Commissioner with copies of the correspondence to the councillor which also included references to the two duplicate requests made by the complainant to the council. The Commissioner had to disregard the majority of this correspondence from his considerations however because he is not permitted to take into account events that happened more than 20 working days after the requests in question. What was left could not, in the Commissioner's view, be characterised as part of a vexatious campaign as it merely comprised a request for the assistance of an elected representative.

37. The Commissioner understands the reasons why CWH perceived that the requests were accusatory in tone however the Commissioner would not go as far as to say it was harassing the authority's staff or likely to cause them distress. Public officials should be reasonably robust to withstand criticism of this nature. The Commissioner also notes that unlike the previous behaviour witnessed, the complainant does not single out individual staff members.

38. The Commissioner also did not consider that any strong objective evidence was provided to support CWH's argument that the requests were *designed* to cause annoyance or disruption. It accepts, and the Commissioner agrees, that the requests had a serious purpose and value at the time, and in the Commissioner's view there is no compelling evidence to suggest that it was the complainant's intention to cause annoyance or disruption when he made these particular

requests. The Commissioner disagrees with CWH that it was appropriate to take into account all of the complainant's previous behaviour.

39. The Commissioner accepts that in general, this particular complainant has imposed a significant burden on the public authority in terms of expense and distraction however he does not accept that these particular requests in isolation would have caused a significant burden. He disagrees with CWH that it is appropriate in this case to take into account the wider context of the burden caused by all of the previous requests.

40. Overall, the Commissioner was not satisfied that the public authority had been able to demonstrate, persuasively, that any of the Commissioner's criteria had been met in this particular case. He therefore does not support CWH's conclusion, on this occasion, that the requests were vexatious.

Right of appeal

41. 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

42. 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.

43. 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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