

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 01 August 2012

Public Authority: Leicester City Council

Address: New Walk Centre
Welford Place
Leicester
LE1 6ZG

Decision (including any steps ordered)

1. The complainant requested information about whether a named club (the club) had registered a specified event with Leicester City Council (the council) and whether a premises licence was held in respect of the club. The information request was the latest in a longstanding series of correspondence between the complainant and the council on connected matters.
2. The Information Commissioner's decision is that Leicester City Council (the council) incorrectly relied on section 14(1) in this particular case.
3. The Information Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request for information as required by section 1(1) FOIA. The council must either comply with section 1(1) FOIA or issue a valid refusal notice complying with section 17(1) FOIA.
4. The council 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 22 October 2011, the complainant wrote to the council and requested information in the following terms:

"For you to comply with the functions of licensing authorities [as set out at sections 8(1) and 8(4) of the Licensing Act 2003] could you tell me if the above [club] has registered their event with the licensing authority of [the council] ten working days prior to the ... event taking place? Is [the club] in receipt of a premises licence?"

6. The council responded on 28 October 2011. It stated that it had decided to regard the request as vexatious in accordance with section 14(1) FOIA. The council provided a link to a website with instructions on how to view its licensing register online. The council added, and on 20 December 2011 confirmed to the Information Commissioner, that the complainant had now exhausted its internal complaints system in this matter as the council had no more to add; it invited the complainant to write to the Information Commissioner without more ado if he remained dissatisfied.

Scope of the case

7. On 1 November 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He complained that the council had been unable to answer his information requests and added his belief that the council was acting in violation of the Licensing Act 2003 (the 2003 Act).
8. The Information Commissioner has considered the application by the council of the section 14(1) FOIA exemption. While there are recurring themes within much of the correspondence between the complainant and the council, section 14(2) (repeated information requests) is not at issue.
9. Between February 2008 and October 2012, the complainant wrote a total of 150 letters to the council with information requests and complaining about what he saw as the council's failure to enforce the licensing provisions of the 2003 Act at a small number of social clubs within its jurisdiction. The letters were all handwritten and contained no indication of any familiarity on the part of the writer with any branch of information technology. All of the complainant's letters to the Information Commissioner were also handwritten and posted to him.

10. On 23 December 2011 the complainant explained to the Information Commissioner the reason why he was unable to progress matters by telephone.

11. The Licensing Act 2003 says that:

"8 Requirement to keep a register

(1) Each licensing authority must keep a register containing—

(a) a record of each premises licence, club premises certificate and personal licence issued by it,

(b) a record of each temporary event notice received by it,

(c) the matters mentioned in Schedule 3, and

(d) such other information as may be prescribed.

...

(3) Each licensing authority must provide facilities for making the information contained in the entries in its register available for inspection (in a legible form) by any person during office hours and without payment.

(4) If requested to do so by any person, a licensing authority must supply him with a copy of the information contained in any entry in its register in legible form.

(5) A licensing authority may charge such reasonable fee as it may determine in respect of any copy supplied under subsection (4)."

12. For the avoidance of doubt the Information Commissioner makes clear that his jurisdiction does not extend to matters covered by the 2003 Act but that in determining this matter he had regard to the provisions of that Act.

13. The council explained to the Information Commissioner that the public register it uses to record the relevant licences is held in electronic form. All licence applications are scanned into that register and there is no paper register to inspect. The council said that the online register can be viewed on any public computer in any Council customer service centre or library free of charge, and that help would always be provided to a requester in using the computer and licence database if he requests it.

14. On 1 March 2012 the council told the Information Commissioner that it does not hold a paper register any more. It said that it now only made the information it was required to maintain under section 8 of the 2003

Act available online. It said that the complainant had attempted to access this information with the aid of an assistant at a public library, who had asked the council for assistance in using it. The council told the Information Commissioner that the information requested might also be exempt under section 21 FOIA (information reasonably accessible to the applicant by other means) but did not pursue this line of argument in subsequent correspondence and the Information Commissioner has not considered that aspect further.

15. The absence of a paper register was a particular issue in this matter as the complainant corresponded with both the council and the Information Commissioner exclusively by means of handwritten letters. His correspondence showed no evidence of any facility with information technology.
16. The Commissioner considered the application of section 14(1) FOIA to the facts of this matter.

Reasons for decision

17. 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”.

18. 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>

19. Under section 14(1), a public authority does not have to comply with a request for information if the request is vexatious; there is no public interest test. The term “vexatious” is not defined in the Act. The Information Commissioner notes, however, that it is the request rather than the requestor which must be vexatious.
20. In determining whether or not a request is vexatious, the Information Commissioner has regard for the context and history of the request and assesses how far the request fell into the relevant criteria. Not all of the criteria may be relevant to a request; however, where the request falls under only one or two of the categories, or where the arguments sit within a number of categories but are relatively weak, the Information Commissioner may give less weight to a claim that section 14 is

engaged. The key criteria when determining if a request is vexatious, are that the request:

- a) would impose a significant burden on the public authority in terms of expense or distraction;
- b) clearly does not have any serious purpose or value;
- c) is designed to cause disruption or annoyance;
- d) has the effect of harassing the public authority;
- e) can fairly be characterised as obsessive or manifestly unreasonable.

a. would impose a significant burden on the public authority in terms of expense or distraction

- 21. The council asked the Information Commissioner to have regard to its view that its correspondence with the complainant appeared to stem from his unhappiness at an incident which, the council said, took place early in 2008 at one of the clubs it regulated and which was the subject of the earliest correspondence between them.
- 22. The council provided the Information Commissioner with copies of some 150 pieces of correspondence to it from the complainant, many of them information requests, dated between February 2008 and the information request made on 22 October 2011. The correspondence and information requests all related to the 2003 Act. The council said that it was reluctant to have to continue to answer request after request by the complainant in what it characterised as a campaign against the council. It said that its licensing manager was regularly diverted from her normal work to deal with the complainant's queries, complaints and requests for information which was available on the electronic public register.
- 23. The council said that in its view it met the legal requirement to provide access to its public register, as the 2003 Act required, which it did through an online facility. It noted that the complainant had used this, albeit with some expert help, in a public library.
- 24. The Information Commissioner has concluded that the requests for information and related correspondence related directly to the council's implementation of the 2003 Act and were integral to the day-to-day business of its licensing staff. The answers to the complainant's information requests and to the other questions he raised were readily available to the council's staff as a result of their everyday business activities so that responding to the information requests did not involve them in additional research or effort beyond that required to draft and

send the replies which, the council said, now numbered 57 (since February 2008). He did not accept therefore that the information requests amounted to a significant diversion of the efforts of the relevant staff or imposed a significant additional burden upon the council in terms of distraction or expense.

b. clearly does not have any serious purpose or value

25. The council told the Information Commissioner that in its view the 22 October 2011 information request and others like it were of very uncertain purpose and dubious value. It said, and asked the Information Commissioner to consider, that the complainant's original claim to be carrying out research was doubtful as he continued to ask the same questions about successive events at the same clubs repeatedly. The council said that there was evidence that what it described as the "*catalyst for his campaign*" had been the complainant's unhappiness with an event involving him at one of the clubs concerned.
26. The council drew the Information Commissioner's attention to the decision of the First-tier Tribunal in a recent *IPCC* case (*Independent Police Complaints Commission v Information Commissioner EA/2011/0222*). The Information Commissioner noted that in the *IPCC* case the series of information requests at issue focussed on no particular topic but appeared to range widely, even indiscriminately, over the whole spectrum of complaints that the IPCC investigated. The issue in this case differs substantially from that case and is readily distinguished from it because the complainant's requests were all focussed on matters arising from application of narrow aspects of the 2003 Act to six or so specific premises for specific named events.
27. The complainant told the Information Commissioner that he was an external reference user at a university library with a research interest in the administration of the 2003 Act and what he interpreted as violations of it within the council's jurisdiction. In his correspondence with the council and the Information Commissioner, he consistently referred to his study purpose.
28. The Information Commissioner accepts that the complainant had concerns about the council's administration of licensing matters which he wished to explore in more depth. The Information Commissioner has concluded that this was a serious purpose underlying the information requests.

c. is designed to cause disruption or annoyance

29. The council suggested to the Information Commissioner, without supporting evidence, that the information requests were clearly

motivated merely by a desire to cause a nuisance to it and could therefore be judged vexatious.

30. The Information Commissioner saw no evidence within the 150 letters he has been shown that the complainant intended mischief beyond seeking information, much of which the council said it did not hold. He is not persuaded that the complainant intended to cause disruption or annoyance.

d. has the effect of harassing the public authority

31. The council said that the effect of the complainant's information requests and related correspondence had been to harass the council and be burdensome to it and its licensing staff; the council expressed to the Information Commissioner its view that the complainant would never be happy with its responses.
32. The council also said that staff had been subjected to abuse by the complainant in his letters. It said that it would not accept unwarranted racial abuse and that the use of racist language towards its staff was never acceptable.
33. The Information Commissioner noted, within the 150 letters he has been shown, seven instances of comments that were capable of being read as conveying some personal offence. These all stemmed from the complainant's dissatisfaction and frustration with the replies he had received from the council.
34. The Information Commissioner saw no remarks within the letters he has been shown that could reasonably be interpreted as racially offensive.
35. The Information Commissioner saw, within correspondence from the complainant, evidence that the complainant was deeply dissatisfied with being directed to obtain information from a "*computer website*". He made clear that he wished to receive licensing register information in hard copy form, something the council resolutely refused to provide.
36. The Information Commissioner understood why the council perceived that some of the remarks in the seven relevant replies were derogatory in tone. However, the Information Commissioner would not go as far as to say that this amounted to harassing the council's staff or was likely to cause them significant distress. Public officials should be reasonably robust in the face of criticism of this nature. The Commissioner also noted that the complainant did not appear to have been hostile to individual staff members.

e. can fairly be characterised as obsessive or manifestly unreasonable

37. The council said that the information requests, when taken together, formed evidence of a pattern of obsessive correspondence and information requests to the point that it might reasonably regard the most recent as vexatious.
38. The council drew attention to the Information Commissioner's attention to the case of *Betts (Betts v Information Commissioner EA/2007/0109)* and said that, set in that context, the latest request formed part of a wider pattern of behaviour that made it vexatious. The council added that the requests by the complainant all related to the same specific line of enquiry.
39. The council said that there had been a very lengthy and obsessive pattern of behaviour in which the complainant repeatedly asked whether temporary event notices had been issued for successive events held at one or other of six clubs regulated by the council, asking for copies of these notices for which he offered payment. The council acknowledged that the information requests were for each of six clubs and related to a succession of different events held at each of those clubs but said that there was a theme to the requests that justified its view that he was vexatious. The council said that the complainant had additionally corresponded with other public authorities, with council members as well as with officers, and with the clubs themselves.
40. The complainant told the council in his correspondence with it: *"I have a dedicated interest in the administration of clubs ... "*. He also told the Information Commissioner that he had not lodged a complaint against the council but had just asked questions with no replies being issued.
41. The complainant made clear to the Information Commissioner that he has a keen interest in the extent to which the council is complying with its duties under the Licensing Act 2003 and that his information requests were intended to elicit information about those matters (which are not for the Information Commissioner to consider).
42. 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 a public authority's attempts to help them. It is not apparent to the Information Commissioner that these circumstances apply to this matter. The Information Commissioner notes that the requests related to different events at different clubs over a period of time. The council is at risk of misleading itself in regarding the complainant as vexatious and going on to conclude that therefore his information requests are

vexatious. The Information Commissioner follows the reasoning of the First-tier Tribunal in *Thackeray (Thackeray v Information Commissioner EA/2011/0082 and 0083)* that the complainant's dogged pursuit of a line of enquiry should not be lightly characterised as an obsessive campaign of harassment. The information request at issue was not so similar to preceding requests that section 14(2) FOIA could be invoked, as each relevant information request related to a fresh event and could not fairly be characterised as the simple re-writing of earlier requests.

43. The requests in question were not part of an obsessive campaign to reopen issues that had already been adequately dealt with.
44. In summary the Information Commissioner does not consider the requests to be part of a pattern of obsessive behaviour to the point that it could fairly be said to be manifestly unreasonable.
45. It is a well-established principle that, when considering the application of section 14(1) FOIA, the consideration should always be on whether the particular *request* in question was vexatious rather than the requester. While it is appropriate to consider the context of the requests that have been made, the council must ensure that it does not cross the line into relying too much on the identity of the requester and its previous knowledge of his behaviour in relation to different issues. Determining whether that line has been crossed is not always a straight-forward judgement, but it is the Commissioner's decision that the line was crossed in this case and that the information request of 22 October 2011 was not vexatious.
46. The Information Commissioner requires the council to either comply with section 1(1) FOIA and disclose the requested information if it is held or issue a refusal notice complying with section 17(1) FOIA.

Other matters

47. The Information Commissioner's staff sought to resolve the matter informally by inviting the council to engage with the complainant with a view to finding a more effective way of meeting his information needs, something which the council declined to do.

Right of appeal

48. 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

49. 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.
50. 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

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**