

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2013

Public Authority: Royal Borough of Kensington and Chelsea
Address: The Town Hall
Hornton Street
W8 7NX

Decision (including any steps ordered)

1. The complainant, having received correspondence from the Council on 2 March 2012 asked a question in relation to this letter regarding the academic and medical qualifications of staff working in its Adult Care Services Department. The Council refused the request on the grounds that it was vexatious citing section 14(1) of the Act.
2. The Commissioner's decision is that the Royal Borough of Kensington and Chelsea ('the Council' has correctly relied on section 14(1) of the Act and therefore requires no steps.

Request and response

3. On 2 March 2012, the complainant received a letter from the Council in respect of its decision to discontinue its payment of his allowance under the Fair Access to Care Services (FACS) which stated:

"If your situation changes materially and this can be supported by up-to-date medical information, we will of course, consider the information and decide whether a new assessment is appropriate."

4. On 15 March 2012 the complainant contacted the Council to ask:

*"Who are the 'we' in the Adult Care Services Department, who are adequately academically, medically qualified, possessing specialist neurological experience to be able to **consider** [complainant's emphasis] complex reports and test results, enabling them to **decide** [complainant's emphasis] whether I should undergo a new assessment..."*

...And what qualifications do they possess, enabling them to do so?"

5. The Council responded on 16 April 2012. It informed the complainant that:

"Under section 14(1) of the FOIA, the Council has a right to refuse a request if it judges the request to be vexatious. Considering the wider context and history of your relationship with the Council, we have decided that this request is vexatious."

6. The Council has confirmed that the complainant did not submit a request for an internal review but complained directly to the Commissioner. Having previously informed the complainant that the Council would not correspond on this matter any further, the Council subsequently confirmed that it was happy for the Commissioner to proceed with his investigation of the complaint.

Scope of the case

7. The complainant contacted the Commissioner on 24 May 2012 to complain about the way his request for information had been handled. He explained that he submitted the request because in early 2011 he was informed by the Council that the members of the assessment panel, who consider the assessment needs of individuals, have no medical qualifications of any kind. They were Social Workers, possessing the required qualifications for their role.
8. The Commissioner considers that the Council correctly relied on section 14(1) of the Act in relation to this request and that it is not therefore required to provide the information.

Reasons for decision

9. Section 14(1) of the Act does not oblige a public authority to comply with a request for information if the request is vexatious. The Commissioner's published guidance explains that the term 'vexatious' is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants). Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. In line with the

Commissioner's guidance,¹ when assessing whether a request is vexatious, the Commissioner considers 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?
- Is the request designed to cause annoyance and disruption?
- Does the request lack any serious purpose of value?

10. It is not necessary for all of the above criteria to be met however, in general, the more criteria that apply, the stronger the case for arguing that a request is vexatious. It is also the case that some arguments will naturally fall under more than one heading.

Could the requests fairly be seen as obsessive?

11. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the request as obsessive? In answering this question, the Commissioner's view is that the wider context and history of a request is important as it is unlikely that a one-off request could be obsessive.

12. The Commissioner's published guidance states:

"A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious."

13. The Council has outlined the context and history of its decision to declare the request vexatious. The Council has explained that the complainant had been receiving funding via direct payments from the Council towards the cost of his home care package. However, following a reassessment of his needs the Council wrote to the complainant on 13 December 2010 informing him that the panel had found his needs to be 'low' and as such he did not meet the Council's eligibility criteria under the FACS scheme.

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http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

14. The Council has alleged that following this decision, there has been significant correspondence between the complainant and the Council regarding this matter, including six FOI requests and letters to the Council's CEO with the complainant sometimes copying in local councillors. The complaint also escalated his concerns to the Local Government Ombudsman ('the LGO') in March 2011 which concluded in the Council's favour in January 2012.
15. Although the outcome was communicated to both parties, the complainant continued to correspond with the Council regarding this matter prompting the Council to write to the complainant on 2 March 2012 to inform him that it would not be corresponding with him any further regarding this issue.
16. On 15 March 2012 however, the complainant submitted the request for information subject to paragraph 4 of this notice. The Council has informed the Commissioner that it felt it had no option but to refuse the request as vexatious and therefore cited section 14(1) of the Act.
17. The Council has provided the Commissioner with copies of the various correspondence, including a copy of the LGO final report which included a summary of the background of the complaint and details of its findings. The report confirmed that the FACS assessment document used by the Council to assess the complainant is a nationally recognised and accredited tool for people over the age of 65. It also explained that the FACS bandings are based on the eligibility framework and not the medical diagnosis of the person.
18. The LGO investigation concluded that the assessment process was to determine social care needs not a medical assessment. The LGO further concluded that:

"Having carefully considered the way in which the Council has carried out this review I have not identified any administrative fault in the review process..."

19. The LGO report also confirmed that the complainant had been given the opportunity to provide further supporting information at the time of the assessment and that the Council has on a number of occasions since its original letter invited the complainant to provide further information if he wishes to challenge the outcome of the assessment. Indeed, at the time of writing the report, the offer remained open to the complainant therefore the author of the LGO report concluded that:

"The opportunity to appeal or complain has not been lost and so I do not consider that there has been any injustice to [the complainant] in relation to this point of his complaint."

20. The LGO's final concluding comments included:

"As I have not identified any fault I cannot see any grounds to ask the Council to backdate and reinstate the funding."

21. However, as pointed out in paragraph 15 of this notice, the complainant continued to correspond with the Council on this matter after the LGO's ruling. The Commissioner believes that there is some similarity with the case of *Betts v ICO EA/2007/0109 (19 May 2008)* which concluded that an unwillingness to accept contrary evidence is an indication of someone obsessed with his particular viewpoint.
22. The Commissioner also notes that even after the Council informed the complainant that it would no longer correspond with him on this matter, that the complainant sent the Council six emails in the period between its letter of 2 March 2012 and the complainant's request for information subject to this complaint (15 March 2012).
23. For example, an email dated 11 March 2012 to the author of the Council's letter stated that before he even considered obtaining specialist reports, he wanted to know who are the 'we' that can interpret and decide specialist neurological reports. He added that should she wish to see an example of a recent, relatively simple neurological report, she should refer to the Chief Executive who was sent one on 2 January 2012.
24. The Commissioner considers that it is evident from these messages that the complainant intended to continue corresponding with the Council regarding this matter despite being told by the Council that it was not prepared to do so.
25. The Commissioner notes the complainant has also made six requests for information under the Act in the period between being notified of the outcome of his reassessment (December 2010) to his request for information subject to this notice (March 2012). The Commissioner notes that the subject matter of his requests all relate to the reassessment process with two of them specifically focused on the individual social worker responsible for making the actual decision regarding his continued funding. It is also worth noting that three of these requests were during the period when the LGO was investigating his concerns, whilst one was submitted after the LGO had communicated the outcome of its investigation to both parties. The Commissioner would refer to his comments in paragraph 21 of this notice in relation to the complainant's refusal to accept evidence contrary to his view.
26. Having considered the context and history of this request including the arguments of the Council and the comments by the complainant, the

Commissioner believes that a reasonable person would consider the request as indicative of 'obsessive' behaviour.

Is the request harassing the public authority or causing distress to its staff?

27. The Commissioner is mindful that the focus when considering this factor should be the likely effect of the request, as opposed to the requestor's intention. Again, the benchmark for this factor is that a reasonable person must be likely to regard the request as harassing or distressing.
28. The Commissioner notes that the continued efforts of the complainant to pursue this matter despite having exhausted the Council's internal complaints procedure and the LGO, is likely to be seen as harassing the Council and causing distress to its staff, particularly those in the Adult Social Care Department and specifically the complainant's designated social worker responsible for the reassessment of his needs in 2010.
29. The Commissioner also notes that the tone of some of the correspondence could be perceived as harassing, provocative and hostile. For example, an email dated 9 March 2012 to the author of the 2 March letter states:

"It illustrates how low you can sink to issue such a nasty, arrogant, intimidating, factually incorrect bullying attempt to stifle the process of complaint."
30. The Commissioner is therefore satisfied that a reasonable person would view the request as harassing and causing distress.

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

31. The Council has confirmed that it does not view the request in itself as burdensome in terms of expense or distraction. However, it has pointed out that considerable time and resources have already been spent attempting to address the complainant's concerns. The Council has also pointed out that much of its correspondence to the complainant generates further requests for information which is itself likely to perpetuate the continued correspondence, therefore it must draw the line somewhere.

Is the request designed to cause annoyance and disruption?

32. The Commissioner is mindful that as this factor relates to the requester's intention, it can be very difficult to prove and cases where there is a strong argument are very rare.

33. Additionally, the Council accepts that it cannot say what the complainant's intentions were when making the request. However, it also believes that he is asking for information that he already knew and therefore considers that he was just trying to make a point.
34. Whilst the Commissioner understands the Council's position, he does not wish to speculate on the intentions of the requestor therefore has not considered this point any further.

Does the request lack any serious purpose or value?

35. The Commissioner notes that if a request lacks any serious purpose or value, it may help an argument that the request is vexatious when taken together with other factors. However, the Commissioner would point out that an apparent lack of serious purpose or value is not enough on its own to make a request vexatious. On the other hand, if a request does have a serious purpose or value, this may be enough to prevent it from being vexatious. If the request forms part of a wider campaign or pattern of requests, the serious and proper purpose must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken.
36. The complainant has stated to the Commissioner that he submitted the request because he was informed in early 2011 by the Council that the members of the assessment panel responsible for considering the needs assessments have no medical qualifications of any kind.
37. During the course of the Commissioner's investigation, the complainant has confirmed to the Commissioner that the aim of his request was to establish whether the Council understood the implications of confidentiality and consent. He has stated that the Council has requested current medical reports to determine whether he merits a re-assessment of his needs and confirmed that he was aware of the fact that neither the Social Workers involved in his assessment nor any other individual at the Council possessed any medical qualifications to enable them to review complex neurological reports.
38. He added that if the Council do not have a suitable employee to consider the reports on its premises, they should require an explicit consent to submit his confidential personal medical reports to a third party for scrutiny.
39. The Council considers that the request was in relation to the adequacy and qualifications of its staff and has argued that it has already investigated and responded to the complainant's concerns in relation to its qualifications to undertake social care assessments, having informed

the complainant that the Social Workers do not hold medical qualifications.

40. The Council has also pointed out that it co-operated with the LGO investigation instigated by the complainant regarding these concerns and is of the view that since the complainant clearly believes his care assessment was inadequate, no amount of evidence otherwise will change his mind. The Council is therefore of the opinion that the request lacks any serious purpose or value.
41. Having considered the complainant's explanation for his request the Commissioner is mindful of the fact that the complainant (as indeed with all applicants for information) considers that his request does have a serious purpose and value. However, he notes that even if the Council had provided the information subject to his request, it would not have told him anything about the Council's understanding of the implications of confidentiality and consent as it is difficult to see how the request as it is worded could be interpreted as requesting such information.
42. On the other hand the Commissioner considers that the Council's arguments that it has already informed the complainant that the social workers do not possess medical qualifications holds some merit since the complainant has indeed confirmed to the Commissioner that he is aware that they do not possess any medical qualifications.

Conclusion

43. The Commissioner has considered the five criteria above and whilst he notes that the Council has acknowledged that complying with the request would not create a significant burden on the Council and he has not made a judgement in relation to whether the request was designed to cause disruption and annoyance; he believes that the persistence of the complainant in the face of findings by an external investigation could fairly be viewed as obsessive by a reasonable individual. He also believes that in the light of his focus on one particular department and individual social worker, combined with his sometimes hostile and provocative language, that a reasonable individual would view the request as harassing and distressing. Additionally, the complainant's confirmation that he is already aware that the social workers do not possess medical qualification gives some weight to the Council's view that the request lacks a serious purpose or value. The Commissioner has therefore concluded that the weight of evidence makes the request vexatious and that the Council were justified in citing section 14(1) of the Act.

Right of appeal

44. 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

45. 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.
46. 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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