

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 January 2013

Public Authority: Westminster City Council
Address: Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Decision (including any steps ordered)

1. The complainant has requested various pieces of financial information concerning Westminster City Council's ("the council's") budgets for 2011/12 and 2012/13. The council refused the requests under section 14 of the Act, arguing them both to be vexatious. In addition, the complainant raised concerns that the information should have been routinely published under the council's publication scheme. The Commissioner's decision is that the council has met its obligations under section 19 of the Act, but has incorrectly deemed the request vexatious under section 14.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - Provide the complainant with a response to the request which complies with the requirements of section 1(1) of the Act or issue a valid refusal notice complying with section 17(1) of the Act.
3. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 23 March 2012, the complainant wrote to the council and requested information in the following terms:

"For 2011/12 the budget for Corporate Financing is highlighted at £20.5m:

... could [you] give me a breakdown of what this comprises of?

The Year to Date income and expenditure in relation to the broken down items for 2011/12?

The Full Year expected/forecast for income and expenditure against the broken down items for 2011/12?

For 2012/13 the budgets is highlighted as £18.7m:

... could [you] give me a breakdown of what this comprises of?

What the expected/forecast income and expenditure position is against the broken down items for 2012/13?

The budget for 2011/12 is £18.2m and for 2012/13 £18.2m which are different from the funding envelopes that appears on the 2012-13 budget page. Can an explanation be offered for this?"

5. The complainant then submitted a further request on 28 March 2012 for:

"an extract of all Budget Virements carried out in 2010/11 and 2011/12 on your Finance Ledger."

6. The council responded on 21 May 2012, advising the complainant that it would not be processing the requests on the basis that it considered them to be vexatious.
7. On 28 May 2012, the complaint requested an internal review to which the council responded on 26 June 2012. The council maintained its position that it would not be processing the requests on the grounds that it considered them vexatious, and rejected the complainant's argument that the information should fall within its publication scheme.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the council to consider whether his requests are vexatious and whether the council should have disclosed the information under its publication scheme.

Reasons for decision

Section 19

9. Section 19(1) of the Act provides that a public authority must adopt and maintain a scheme which relates to the publication of information and is approved by the Commissioner. Section 19(1)(b) places an obligation on public authorities to “publish information in accordance with its publication scheme”. Section 19(2) provides that a publication scheme must specify classes of information which a public authority is going to either publish or intends to publish. The Commissioner considers that the relevant “class of information” referred to in the council’s [publication scheme](#), in this instance, is “*Financial information related to projected and actual income and expenditure, tendering, procurement and contracts*”.
10. The council has explained that in late February/early March it annually publishes full budget information explaining how the council’s budget is set. Audited accounts are published on the council’s website in September annually. The Annual Accounts contain the council’s three primary financial statements: Income and Expenditure Statement, the Balance Sheet and the Cash Flow Statement. Each of these are supported by disclosure reports as required by the Audit Commission.
11. The council has argued that the Budget and Council Tax Report along with the Annual Accounts provide detailed financial information which explains how the budgets are derived, compares this against how money is actually spent and provides projections for future years. The council has also explained that part of the Audit Commission’s requirements when auditing the Accounts is that the disclosure notes must be written in such a way as to allow a lay person, without accounting knowledge, to understand how the council’s financial operate.
12. Having considered the council’s representations on the above points, the Commissioner is satisfied that the council’s has met its obligation under section 19(1)(b).

Section 14

13. Section 14 of the FOIA states that:

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

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not

obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

14. The Commissioner had issued guidance to assist in the consideration of what constitutes a vexatious request: ['When can a request be considered vexatious or repeated?'](#) This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and the history of the request, as well as the strengths and weaknesses of both parties' representations.
15. The Commissioner will consider arguments put forward in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a public authority could refuse to comply with the requests on the grounds that they are vexatious:
 - Whether the request has the effect of harassing the public authority or its staff;
 - Whether compliance would create a significant burden in terms of expense and distraction;
 - Whether the request is designed to cause disruption or annoyance;
 - Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable;
 - Whether the request has any serious purpose or value.
16. The Commissioner agrees with the Tribunal that the bar need not be set too high in determining whether to deem a request vexatious. He also agrees with the Tribunal that the term 'vexatious' should be given its ordinary meaning, which is that it 'vexes' (causes irritation or annoyance; in relation to section 14(1), the annoyance must be caused by the process of complying with the request).
17. It is not necessary for all five factors to be engaged, however these are elements which are commonly encountered and the balance of these factors can be helpful in illustrating the reason for any decision. Where the request falls under only one or two categories, or where the arguments sit within a number of categories but are relatively weak, this will affect the weight to be given to the public authority's claim that section 14 is engaged.
18. The Commissioner wrote to the council on 10 October 2012 asking it to provide its arguments as to why it felt the request met all or any of the criteria listed above.

19. The council provided the following arguments which the Commissioner has considered.

Does the request have the effect of harassing the public authority or its staff?

20. The council's main argument appears to be that the requests form part of a "*continuous and unrelenting campaign of harassment against [council] officers since [the complainant] was informed that his contract was being terminated*".
21. In support of this, the council has prepared a chronology of the correspondence between it and the complainant. The chronology begins on 30 December 2011 with a whistleblowing statement being submitted by the complainant alleging victimisation and disregard for the council's policies. The complainant forwarded his whistleblowing statement to the council's Chief Executive on 13 February 2012 and a response was sent by the Head of Legal on 16 February 2012. The complainant responded to this on 17 February 2012. The complainant's contract with the council was terminated on 29 February 2012. The complainant then raised a 'dignity at work grievance' with the council's HR department and the Chief Operating Officer. On 2 and 9 March 2012, the complainant sent further correspondence regarding his grievance to the Head of HR, Head of Legal, Chief Executive and Senior HR Advisor. On 14 March 2012, the complainant distributed correspondence regarding his whistleblowing statement to 93 finance staff, including some who had left the council's employment. On 16 and 17 March 2012, the complainant forwarded further statements to the Chief Executive, Head of Legal, the Leader of the Council, the Leader of the Opposition and the Mayor of London. On 20 March 2012, the complainant sent a further email to the Chief Executive and Leader of the Council regarding his whistleblowing statement. This was then sent to the Leader of the Opposition, Head of Legal, Head of HR and the Chief Operating Officer on 23 March 2012. The complainant next contacted the council to submit the information requests outlined in paragraphs 4 and 5 of this notice.
22. A particular piece of correspondence which the council has drawn the Commissioner's attention to is the email, referred to above, of 14 March 2012 to 93 present/former financial officers employed by the council inviting the recipients to support the issues raised in his Whistleblowing statement. The email contains the following statements:

"For those of you who know me, I am a bit more tenacious than that and although I have stepped on a few toes along the way in the last 3 and a half years I have always had everyone's best interests at heart (even if that has not been apparent) and of course why wouldn't I want to make our working lives easier.

[...] I send this to offer an alternative, I am not pleading with anyone to put them in an uncomfortable position that they are already in, but if you would like to raise concerns in a different way either to verify what I have highlighted or to bring new matters to the table. [A named individual] and [a named individual] (or I if you are more comfortable with that) would be happy to receive any evidence or concerns that you may have in confidence..."

23. The Commissioner notes that the test as to whether the request would have the effect of harassing the public authority or its staff is an objective one – a reasonable person must be likely to find the request distressing or harassing. Whilst the language above in the correspondence related to the request is robust, the Commissioner does not consider that a reasonable person would find it, in itself, harassing or distressing.
24. However, the Commissioner has noted that three attachments were included with this email. These contained the complaints whistleblowing statement and two emails raising various grievances. Much of these grievances concern senior members of council staff or staff in public facing roles. These are the sort of council staff who might therefore expect to receive a degree of robust comment, questioning or criticism. Accordingly, the Commissioner does not consider that the allegations made against these staff can be used to suggest that the requests would cause harassment to the council.
25. Also in an attachment to this email, the complainant identified various council officers as having being witnesses/victims of harassment. Predominately, the correspondence does this in a list format as follows: "*[Named individual] – witness to and victim of acts of harassment; [Named individual] – witness to and victim of acts of harassment... etc*". In respect of some individuals, the complainant detailed specific instances of victimisation relating to particular events. The council has stated that none of these individuals came forward to support the complaint and that some wrote to the HR Director and CEO refuting the complainant's claims and refusing to have any involvement with the matter.
26. Clearly, the Commissioner cannot be drawn into any wider dispute between the complainant and the council. Nevertheless, he would note that detailing specific instances of mistreatment allegedly experienced by individuals, and then circulating that information without those individuals' consent, appears to have been an inappropriate way for the complainant to conduct his grievances with the council. Consequently,

the Commissioner can understand why those individuals would feel aggrieved by the complainant's conduct prior to submitting his requests.

27. Turning to the baring these emails have on whether the requests can be deemed vexatious, the Commissioner can see why the more junior members of staff identified, having being drawn into a dispute by the complainant, they may then feel a degree of harassment by the subsequent requests. The complainant himself appears to have acknowledged this risk in the initial email, noting: "*I apologies to anyone I have indicated maybe a potential witness, victim of inappropriate behaviour or mistreatment that did not wish to be disclosed of feel they have nothing to add. (sic)*" This is perhaps exacerbated by that fact that these more junior staff are more likely to be directly involved in processing the requests than the more senior staff referred to in paragraph 24. However, the council has not specifically made this point to the Commissioner which does reduce the weight which the he is willing to place upon it. Nevertheless, the Commissioner can see that processing of the requests may lead to certain council employees feeling harassed by the requests.
28. However, these comments were not included in the request itself but in an email sent some ten days earlier. Undoubtedly, the email provides context for the request, but the Commissioner considers that the absence of any harassing language in the request itself does mitigate the argument that processing the request could be considered harassing.
29. The council has also provided evidence of things done, subsequent to the request being made, to illustrate its view that the request would harass the council and its officers. The Commissioner would reiterate that it is the council's refusal to process the request which is being considered in this notice. Events subsequent to the requests being made cannot be used retrospectively to justify a decision to process a request on the grounds that it is vexatious. Accordingly, the Commissioner has not taken this evidence into account in making his decision.
30. Having considered all of the above, the Commissioner considers the requests may, to some extent, have the effect of harassing certain members of the public authority's staff.

Would compliance create a significant burden in terms of expense and distraction?

31. The council has noted that a significant amount of time would be taken to compile, validate and verify the financial information necessary to comprehensively respond to the questions raised. This time is said to be increased by the fact that the requests span a period of 2 – 3 years.

32. Whilst the Commissioner can see that the requests may take some time to respond to, he does not consider that this should automatically render a request vexatious. If this is the only concern, a public authority should rely on section 12 instead. The Commissioner's guidance, ['When can a request be considered vexatious or repeated?'](#), makes clear that the key issue in respect of this criterion is not so much on the time it would take to respond, but "*whether responding would divert or distract staff from their usual work*".
33. The council has noted that the requests were submitted prior to the closure of it accounts for the year 2011/12 at the end of March. The council has suggested that the complainant, as a former employee, would have known that this was a period of heightened activity for its Corporate Finance department. Its argument, therefore, is that it is the timing of the request which would divert staff away from their usual work at that time of the year.
34. In the circumstances, the Commissioner can see that this would not have been the most convenient time for the Corporate Finance department to receive a voluminous information request. However, the reality is that many departments within a public authority will have particular periods of the year where they are busier than others. Nevertheless, this does not exempt those departments from responding to requests for information during those times.
35. Moreover, the Commissioner does not consider that there is any clear evidence that the request was deliberately timed so as to be received at a particularly difficult time for the council. The council has presented evidence that the complainant has contracted the council frequently, often vociferously, regarding various grievances (see paragraph 21 above). At this point, the Commissioner would reiterate the fundamental point that it is the request, and not the requestor, which must be considered vexatious. The Commissioner has therefore considered whether had the council received the same request, at the same time, but from a different individual, it would have deemed the request as being vexatious. As the council has objected to the requests' timing on the basis that this particular complainant would have known the end of March was a busy time for the department, the Commissioner does not consider that the council would have objected to the request on this basis had it been received from another individual. Perhaps even more significantly, the Commissioner cannot indicate that departments within public authorities could be exempt from responding to information requests at busy times of the year.
36. The Commissioner also considers this argument to be weak in light of section 10(1) of the Act which provides public authorities with 20 working days to respond to a request. The council has stated that its

accounts would have been closed on 31 March 2012. This means that in respect of the request dated 23 March 2012, the council would have had 15 working days to process the request following the closure of its accounts. In respect of the request dated 28 March 2012, the council would have had 18 of the 20 working days afforded to it by section 10(1). The Commissioner is of the view that this further weakens the council's argument that the timing of the requests would impose a significant burden in terms of distracting its staff from their usual duties.

37. The Tribunal in [Betts v Information Commissioner](#) suggested that even if it would not create a significant burden to respond to the material request, it may still be reasonable for a public authority to conclude that compliance would result in a significant burden if in answering that request was:

"34. ... extremely likely to lead to further correspondence, further requests and in all likelihood, complaints against individual officers..."

This appears to be a further argument advanced by the council in this case which has characterised the complainant's correspondence as a "*campaign of harassment against Council officers over the course of 2012*" with the requests acting "*as a vehicle to continue this campaign*".

38. However, the Commissioner's view is that, before a public authority could use this argument in support of deeming a request to be vexatious, it must be supported by a history of the public authority responding to requests which the complainant utilises to generate further requests. As far as the Commissioner is aware, these are the first information requests which the complainant has submitted to the council. With this in mind, even though the complainant has corresponded extensively with the council, the Commissioner does not consider that the council is able to classify the requests as likely to cause a significant burden on the basis that they may generate more correspondence.
39. Having considered the council's submissions, the Commissioner does not feel that there is evidence to suggest that the requests would cause a significant burden, within the meaning of section 14, to the council.

Is the request is designed to cause disruption or annoyance?

40. The council's main argument in this respect appears to be that that the request was submitted at a particularly busy time for the finance department. This factor relates to the requestors intention which is often difficult to establish. However, the Commissioner does not consider that he has been presented with evidence that the timing of the requests

establishes that they were designed so as to cause disruption and annoyance.

Can the request otherwise fairly be characterised as obsessive or manifestly unreasonable?

41. The council is of the view that the request is obsessive and manifestly unreasonable on the basis that they form part of a continuing campaign by the complainant against the council.
42. The Commissioner accepts that at times there is a fine line between obsession and persistence. Although, each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. The council has noted that the allegations the complainant has raised *"had been found to be unsubstantiated before he submitted his FOI requests"*.
43. On this point, the Commissioner has had regard to the Tribunal's decision in [Welsh v Information Commissioner](#) where it noted:

"...Mr Welsh simply ignores the results of 3 separate clinical investigations into his allegation. He advances no medical evidence of his own to challenge their findings....that unwillingness to accept or engage with contrary evidence is an indicator of someone obsessed with his particular viewpoint, to the exclusion of any other...it is the persistence of Mr Welsh's complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious..." (paras 24 & 25).

44. The Commissioner considers that there is a clear and crucial distinguishing factor between the case considered in this notice and [Welsh](#). Namely, the complainant is not seeking information on a matter which has already been determined or one where he is in possession of independent evidence. Before explaining this point further, the Commissioner would emphasise that it is not his role to comment on the dispute between the complainant and the council; and he does not do so.
45. In the case of [Welsh](#), the complainant submitted a request to find out whether a doctor had received training on face cancer recognition. Prior to this, the complainant had attended his GP with a swollen lip. A month later, he saw a different doctor who diagnosed skin cancer. Mr Welsh made various complaints about the first doctor, alleging that they should have diagnosed his skin cancer. Three separate, independent,

investigations were completed by the GMC, Primary Care Trust and Healthcare Commission respectively. The investigations considered the competency of the first doctor, finding no blame, which was clearly the specific focus of the request. Accordingly, the Tribunal deemed the request to be vexatious.

46. The council has argued that the complainant's *"allegations raised in the Whistleblowing and grievances had been found to be unsubstantiated before he submitted his FOI requests"*. However, based on the evidence submitted to the Commissioner, it does not appear that a formal investigation has been conducted into the complainant's concerns. (The Commissioner does not have a view on whether an investigation should take, or should have taken, place; and simply notes the lack of an investigation for the purpose of considering whether the request can be considered obsessive.) Instead, the council has noted that the complainant has not been able to produce sufficient evidence *"before an investigation could commence"*. The Commissioner considers that this situation is very different from the one in [Welsh](#), where the complainant was in possession of three independent determinations on the matter prior to making his information request.
47. Moreover, the request in [Welsh](#) clearly related to the subject that has been the focus of the three investigations. It was therefore clear that the request was seeking to reopen something which had already been clearly determined on numerous occasions. Even if the complainant's whistleblowing and grievances had been fully investigated on three separate occasions, the Commissioner does not consider that, in contrast to [Welsh](#), the requests can be said to have the intention to reopen the dispute.
48. Having put the requests into this context, the Commissioner does not therefore consider that the requests can be deemed obsessive or manifestly unreasonable.

Whether the request has any serious purpose or value?

49. In this respect, the council has argued that *"whilst [it] accepts that publication of the council's finances is important and aids in the transparency of decision making processes, these requests serve no serious purpose or value..."*
50. The Commissioner is of the view that this factor should be treated with the utmost care. The Act is not generally concerned by the motives of a requestor but instead with transparency for its own sake. The Commissioner's guidance, ['When can a request be considered vexatious or repeated?'](#), makes clear that:

"... if a request does have a serious purpose of value, this may be enough to prevent it being vexatious, even if it imposes a significant burden and is harassing or distressing staff. If the request forms part of a wider campaign or patten 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."

51. The request relates to the council's budget and how that money is allocated. The Commissioner considers the public interest in knowing how public money is spent to be extremely high. Arguably this public interest is increased where financial information does not fall within an authority's publication scheme.
52. Had the council been able to demonstrate that the complaint was requesting information which he was already in possession of, or information whose only purpose could be to advance an already resolved dispute, the Commissioner's view may have been different.
53. In the circumstances, the Commissioner considers that the request does have a serious purpose/value and that this is lends considerable weight to be view that the request is not vexatious.

The Commissioner's conclusion

54. Having considered the arguments presented by the council in respect of the five factors outlined at paragraph 15, along with the context of the requests, the Commissioner has concluded that it has not demonstrated sufficient grounds to deem the requests to be vexatious.
55. The question of when a request should be refused as vexatious is a question of balance. It is clear that the threshold for refusal should not be set too high, so that a public authority would need to go to extraordinary lengths in dealing with a difficult applicant. By the same token, the bar so should be set too low with the effect that legitimate enquiries might be unfairly refused.
56. The Commissioner is not satisfied by the council's arguments that the requests would pose a significant burden for the council or that they are designed to cause disruption or annoyance. Neither does he consider that the requests can fairly be characterised as obsessive or manifestly unreasonable.
57. The Commissioner does consider that the request may have the effect of harassing the public authority. However, the Commissioner would note that the weight he has been able to place on this has been reduced by the lack of a clear link explained between the processing of the request and the harassment which would be felt. The weight attached to this

factor is also reduced slightly by the fact that the request itself does not contain sentiment likely to lead to feelings of harassment by the authority's staff.

58. The Commissioner also considers that the request cannot be said to lack serious purpose or value. This is a particularly serious consideration which may have the effect of outweighing other considerations.
59. The Commissioner therefore finds that, on balance, the complainant's requests were unfairly refused as vexatious.

Right of appeal

60. 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

61. 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.

62. 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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