

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2013

Public Authority: City of Wakefield Metropolitan District Council

Address: County Hall
Wakefield
WF1 2QW

Decision (including any steps ordered)

1. The complainant has requested information relating to the Pontefract Community Governance Review. The Commissioner's decision is that the City of Wakefield Metropolitan District Council has correctly applied the exemption for repeated requests at section 14(2) of the FOIA. The Commissioner does not require any steps to be taken.

Background

2. The complainant explained that the information requested is with regards to returns to two Community Governance reviews ('CGR') carried out in Pontefract, the first in September/October 2009 and the second in March 2010. He explained that on 29 May 2009 the council stated that the CGRs are public consultations and in the interests of openness and transparency, it will make available for public inspection full copies of all representations received. Following the first CGR all the representations received were published in the council's official minute book of 20 January 2010. Following the second CGR, the complainant alleges that the same records of returns from the first CGR were published in the council's minute book dated 21 April 2010 and no record of the representations received from the second CGR have been published.
3. The council explained that the terms of reference and methodology of the Pontefract CGR is well documented in council meeting reports of January and April 2010 and the Walker Morris Solicitors report into the Review dated 2012, which was commissioned by the Chief Executive in response to the number of information requests received on the issue. It

stated that it is important to stress that there was no statutory requirement to consult businesses and community groups as part of the CGR and to hold records of their responses separately. The information leaflets about the review and the responses slips (with the names of the respondents being optional) were circulated to a number of businesses and community groups in the area. The council maintain there is no clear record held as to what businesses and community groups were consulted as the consultation within the local area was carried out by various means, ie door to door, distribution of leaflets, drop-in sessions in the local library and museum and by post. Some of the completed reply slips returned contained the names of the respondents, some did not, and as a result it was not always possible to identify whether the respondent was a private individual or whether he / she responded on behalf of a business/group or in their individual capacity. It was not possible therefore to produce a definitive list of all businesses and community groups within the area who took part in the consultation and to provide a breakdown of their individual replies.

4. The council also explained that all the responses received from the consultation were anonymised and summarised in the Appendix C to the 21 April 2010 Council report and that Sir William was informed of this. He was also advised of the dates on which the letters concerning the review were delivered by hand to businesses. He was advised that no comprehensive list of businesses existed but that the leaflets were delivered to businesses located on specific streets, the names of which were provided to the complainant along with the names of businesses to which the letters were delivered where the council did have a record.
5. The council stated that between February 2010 and July 2012 there have been 203 emails 'recorded just in the email box' of the Service Director (Legal and Governance) from the complainant concerning the review and it estimates that many of these emails cover the same ground as the request that is the subject of this complaint.
6. The council provided the Commissioner with a summary of some of the requests for information and of copies of some of the correspondence on the issue. The Commissioner notes that in a letter to the complainant on 21 October 2010 the council stated the following;

"...the Council considered all the comments it received during the consultation period before it made its decision and that all those comments were made publically available through the Council agenda and reports published for its meeting on the 21st April 2010. Copies of the documents were made available in local libraries. This information is still available on the Council's website."

On 18 October 2011 the council provided the complainant with a link to the council meeting report of 21 April 2010, available on the council's website. On 17 November 2011, the complainant attended the council offices to inspect the background papers to the council meeting report of 21 April 2010 including the information about the businesses and the groups consulted and the responses received. The Commissioner considers that the council provided the requested information on these occasions.

Request and response

7. On 18 January 2012 the complainant wrote to the council and requested information in the following terms:

"Would you please supply details of the business and community groups in Pontefract who received and replied to the letter delivered by [named individual] in March 2010 in accordance with the Pontefract Community Governance Review (PCGR), as reported to Council in April 2010 Appendix 'C' minute book number 1."

Within the same letter, the complainant also asked for explanations, justifications, comments and confirmations of various information contained in reports and council minutes.

8. The council provided a response on 14 March 2012. It stated that the matters referred to have been the subject of previous correspondence and that comprehensive replies have been provided on the PCGR over many months. It stated that much of the letter of 18 January 2012 does not contain legitimate requests for information under the FOIA and those that do are repeated and under section 14(2) of the FOIA the council is not obliged to deal with them.
9. The complainant requested an internal review on 2 July 2012. He requested that the council supply copies of the alleged replies given if it insists that the information requested has been given in previous responses.
10. On 12 July 2012, the council provided its internal review response. It maintained that in relation to the first part of the request, namely, '...details of the business and community groups in Pontefract who received and replied to the letter delivered in March 2012...' the council had previously issued the complainant with all the information it holds. It also provided details of reports the complainant and his colleagues had been issued with and inspected in person. With regards to the remainder of the information which asks for explanations, clarification, comments and confirmation of the way the review was conducted and

the analysis of the outcome of the review, the council maintained that this does not constitute a valid request for information as it would mean giving an opinion or judgement that is not already recorded.

Scope of the case

11. The complainant contacted the Commissioner by letter dated 8 May 2012 to complain about the way his request for information had been handled. He stated that he had made the same request to the council on more than 25 occasions over a period of two years but on each occasion no cooperation was forthcoming.
12. The Commissioner informed the complainant that as the council does not have to answer questions if this would mean creating new information or giving an opinion or judgement that is not already recorded, he would only address the part of the request to which the council applied section 14(2).
13. By letters dated 1 August 2012, 21 February 2013 and 2 March 2013, the complainant explained to the Commissioner that the procedure for recording the results of the second CGR was different to the procedure applied to the first CGR and asked the Commissioner to obtain an explanation for this difference. The Commissioner has not considered this as part of the complaint as it is not a complaint about this information request and therefore not within the remit of this decision notice. He has explained to the complainant that the way in which the second CGR was conducted in comparison to the first CGR are procedural council matters that are beyond the remit of the FOIA.
14. The complainant clarified that it is the information containing the responses from the 300 business and 900 community groups that he is requesting information about.

Reasons for decision

15. Section 14(2) of FOIA states that:

“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.”

16. The Commissioner's approach to section 14(2) can be found in his guidance on 'When can a request be considered vexatious or repeated'¹ which states that a request can be refused as a repeated request if:

- it is made by the same person as a previous request;
- it is identical or substantially similar to the previous request; and
- no reasonable interval has elapsed since the previous request."

17. The Commissioner has therefore considered each of these aspects in turn.

Are the requests made by the same person?

18. The Commissioner notes that some of the requests for information supplied to him by the council were not made by the complainant himself. Although the Commissioner appreciates the council's opinion that the other individuals who submitted requests have been working alongside the complainant, to be repeated, the requests must have been submitted by the same person.

19. However, the Commissioner has seen evidence of requests for the same information submitted by the same complainant prior to the request of 18 January 2012, for example, by letters dated 10 July 2010, 10 August 2011 and 19 November 2011. Therefore, he is satisfied that the request was made by the same person as a previous request.

Is the request identical or substantially similar to the previous requests?

20. The Commissioner considers that a request will be substantially similar to a previous request if a public authority would need to disclose substantially similar information to respond to both requests, even if the wording of the request is not identical.

21. In this case, the wording of the previous requests detailed in paragraph 20 is as follows:

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/vexatious_and_repeated_requests.ashx

- 10 July 2010 – ‘...will the council make available under F o I act 2000 all the returns including petitions, letters, notes and voting papers submitted to the council arising out of the 2nd CGR...’
 - 10 August 2011 – ‘Would you please allow members of the PTCP the correct responses by Pontefract Businesses to the 2nd CGR carried out in March 2010...’
 - 19 November 2011 – ‘...we request the opportunity to examine the documentation, returns and comments on the 2nd CGR...’
22. Each of the above requests were made in letters which contain a mixture of requests, questions and comments relating to the CGR. Although not necessarily evident from the quotations above, in each case it is clear from the context of the letter that the requests relate to the responses from business and community groups.
23. The Commissioner appreciates that the wording of the above requests is not identical but understands that the information the council holds within the scope of the requests is exactly the same in each instance, namely, appendix C of the council report of 21 April 2010 which contains all the comments received from local businesses and community organisations. Therefore, the Commissioner is satisfied that the request is identical or substantially similar to the previous requests.

Has a reasonable interval elapsed since the previous request?

24. What constitutes a reasonable interval will depend on the circumstances of the case including how likely the information is to change, how often records are updated and any advice previously given to the requestor.
25. In this case, one of the previous requests was made only two months prior to this request and, as the information is a historical record, the Commissioner considers that no reasonable interval has elapsed since the previous request.

Conclusion

26. Taking into consideration of the above, the Commissioner considers that the council correctly applied the exemption for repeated requests at section 14(2) of the FOIA.

Other matters

27. The Commissioner understands, from the complainant’s letter to the council dated 19 November 2011, that the complainant alleges that no

business and community groups were ever contacted and therefore the report to council of businesses and community groups being contacted was misleading and false. He also understands, from the complainant's letter to the council of 26 May 2011, that the complainant does not believe that all the comments received from businesses were recorded in the council report dated 21 April 2010. The Commissioner would like to draw attention to the fact that the FOIA is concerned with recorded information that is actually held by a public authority, not the accuracy of that information.

Right of appeal

28. 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

29. 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.
30. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF