

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2013

Public Authority: The Common Council of the City of London
Address: PO Box 270
Guildhall
London
EC2P 2EJ

Decision (including any steps ordered)

1. The complainant has requested information relating to the rights and employment status of Barbican Centre stewards/hosts.
2. The City of London ('the CoL') refused to respond to the request on the grounds that it is vexatious, and applied section 14 FOIA.
3. The Commissioner's decision is that the CoL has correctly applied section 14 FOIA and that the request is vexatious.
4. The Commissioner therefore does not require the public authority to take any further action in this case.

Request and response

5. On 30 April 2012, the complainant wrote to CoL and requested information in the following terms:

"1) This letter constitutes application under Freedom of Information legislation to have certain Corporation of London/Barbican Centre papers disclosed to me as described below:-

Application 1:

Subject: Discussion/consideration from 2006 onwards of employment status of all Barbican Centre stewards/customer service assistants/hosts.

Items required: All minutes of meetings, notes, letters etc both internally within the Barbican Centre and within the Corporation of London and between the Barbican Centre and the Corporation of London and vice versa by Human Resources Departments and any others, such as the office of the Managing Director of the Barbican centre and consultants, including requests for legal opinions sought and received from anybody else consulted on this issue.

To include both paper documents and those held on electronic media such as emails etc.

Application 2:

Subject: Discussion/consideration from 2006 onwards of entitlement of all Barbican Centre stewards/customer service assistants/hosts to receive awards under the Corporation of London long service employee awards scheme.

*Items required: As under **Application 1** above"*

6. The CoL responded on 29 May 2012. It applied sections 12 and section 14 FOIA as grounds for refusing to respond to the request.
7. Following the complainant's request for internal review the CoL wrote to the complainant on 23 July 2012. It stated that it could not add to its previous comments and that it now considers this matter closed unless contacted by the Information Commissioner.
8. The complainant has also complained to the Commissioner about a second but related information request dated 5 July 2012. This request was for substantively similar information but also clarified specifically that the complainant is requesting the following:

"...the single note of whichever meeting or letter of advice supposedly clinched the decision on the status of long-serving hosts."
9. The CoL responded on 5 July 2012 saying that it does not hold this information but that if it did, the information would be exempt under section 42 (Legal Professional Privilege) of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 15 October 2012 to complain about the way his requests for information had been handled.

11. The Commissioner considers that the scope of this case is to consider whether or not the CoL has correctly applied section 14 FOIA to the request and to determine whether or not the CoL was right when it said that the request is vexatious.
12. The Commissioner notes that if he finds that the first request dated 30 April 2012 is vexatious, then there is no need to consider the CoL's application of section 12 FOIA to this request or to consider the CoL's application of section 42 FOIA to the related request dated 5 July 2012. The Commissioner will only consider these applications if he finds that the request is not vexatious.

Background to the case

13. The background to this case is that the complainant was employed at the Barbican Centre as a steward/host from between 1982 and 2008.
14. The CoL explained that in August 2007, when Hosts were issued with a Terms of Engagement document to clarify their casual status, correspondences between the complainant and the CoL about employment status began.
15. The initial correspondence was between the complainant and his direct managers and also Human Resources. The complainant subsequently also corresponded with the Managing Director of the Barbican Centre on numerous occasions about matters relating to employment status.
16. In early 2008 the complainant raised a complaint against one of his managers. The CoL explained that the process and procedure for dealing with this complaint was tied up with the question of casual status, as management maintained the employee complaints procedure did not apply because the complainant was not an employee.
17. The CoL explained that mediation and grievance meetings were offered to the complainant but he declined to take part and continued to raise the issue of casual status in his letters. Following a hearing about this, the CoL ceased to employ the complainant.
18. The complainant was offered the right to appeal the decision. The CoL said that he raised his objections in writing and an appeal hearing was arranged to hear the appeal but the complainant declined to attend.
19. In January 2010 the complainant sent individual letters to 8 members of staff all of whom were involved in the grievance and disciplinary process about issues of casual status of workers. The CoL said that the

language in the letters caused offence and all the staff found them threatening.

20. In July 2011 the complainant wrote to the CoL's managing Director raising all the same issues again. There was further correspondence between the complainant and the CoL over the following months which culminated in the complainant's FOI request of April 2012.
21. The Commissioner notes that this background is relevant to this case, because the complainant has been asking the CoL about issues of work status. It is the Commissioner's view that the content of the request is substantively related to these other correspondences. The Commissioner therefore deems it appropriate to take these matters into account when making his assessment of this case.

Reasons for decision

22. Section 14 of the FOIA provides that a public authority is not obliged to comply with an information request that is vexatious. The task for the Commissioner here is to consider whether the CoL accurately characterised the above request as vexatious. An important point about section 14 is that it must be the *request* that is vexatious, not the requester.
23. 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/guide/refusing_a_request.aspx

<http://www.ico.gov.uk/foikb/FOIPolicySectionsRegs.htm>
24. As explained in the guidance, the Commissioner's general approach is to consider the arguments and evidence that the public authority is able to provide in response to the following questions:
 - i. Whether compliance would create a significant burden in terms of expense and distraction.
 - ii. Whether the request is designed to cause disruption or annoyance.
 - iii. Whether the request has the effect of harassing the public authority or its staff.
 - iv. Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable.
 - v. Whether the request has any serious purpose or value.

25. The CoL argued that the request fulfils all of the above criteria.
26. The complainant argued his request is not vexatious and is made for the legitimate reason of uncovering wrongdoing on the part of CoL.
27. The Commissioner has considered the facts of this case and has considered the arguments supplied by both parties in respect of the five criteria outlined above.

Whether compliance with the request would create a significant burden in terms of expense and distraction

28. In its refusal notice the CoL claimed that the request would impose a significant burden.
29. The CoL argued that to respond to the request dated 30 April 2012 alone would engage section 12 FOIA as doing so would exceed the appropriate cost limit set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The CoL explained that because the request is so wide ranging in time-scale and in scope, a large number of employees would be likely to hold information that falls within the scope of the request. The CoL said that to identify all and any information dating from 2006 which it holds, searches would have to be undertaken in the paper and electronic records of a number of staff members as well as through electronic and paper record archives. The CoL consequently estimated that it would take one member of staff at least one week to locate and retrieve the information that falls within the scope of the request dated 30 April 2012.
30. The Commissioner has not made a full assessment of the CoL's application of section 12 FOIA as he considers that if the request is found to be vexatious this is sufficient for the CoL to refuse to respond to it. The Commissioner further notes that it appears likely that the cost limit would be exceeded, for the following reasons.
31. The CoL pointed out that the request is very wide ranging (being for "*any information, however it is held, whoever it is held by, since 2006*"). The CoL also said that there are a large number of employees, both at the Barbican Centre and in other CoL departments, who would be likely to hold information on the subject of the Barbican Hosts. The CoL argued that consequently extensive searches in a number of records management systems would need to be conducted in order to respond to the request.
32. Specifically, the CoL argued that to identify all and any information dating from 2006 which may be held, searches would have to be undertaken in the paper and electronic records of a number of people,

together with any information which has been archived, both manually and electronically. The CoL estimated that this would take one member of staff at least one week to locate and retrieve the information alone.

33. The complainant argued that the CoL must hold one file or filing system which would contain all of the information that he is requesting and that therefore it should be easy and simple to respond to the request.
34. The CoL explained to the Commissioner that this is not the case, and that it does not have one filing system dedicated to the complainant's requests or one file about the status of workers. The Commissioner accepts this explanation.
35. The Commissioner also notes that the content of this request is substantively related to a large number of other FOI requests submitted to CoL by the complainant. The CoL explained to the Commissioner that responding to these related requests and correspondences has already created a great deal of expense and distraction for CoL and its staff. The CoL said that responding to these previous requests lead to more requests being submitted by the complainant, thereby increasing the burden on the CoL and its staff.
36. In support of this argument the CoL confirmed that since August 2007 the complainant has sent 50 separate letters to the CoL, including where the same letter has been copied to various members of staff. The CoL sent the Commissioner a log of the relevant correspondence, as well as examples of some of them.
37. The CoL confirmed that all of this correspondence concern, or includes a reference to, the complainant's time working as a Barbican Centre Host for the CoL, or his employment status. The Commissioner therefore considers that these are substantively related to the request and are relevant to this case.
38. The CoL explained in its letter to the Commissioner dated 18 March 2013 that it had considered his guidance when making this decision to apply section 14 FOIA and that it had considered past decisions in relation to the application of section 14 FOIA which support the CoL's view that this request is vexatious. An example of one of these is as follows:

39. **1) ICO Decision Notice FS50470827**

The CoL pointed out that the public authorities application of section 14(1) was upheld by the ICO in this case after acknowledging recent Information Tribunal decisions and, in addition to the ICO's published guidance on vexatious requests, also considered "*...the context and history between the complainant and the DfID...*".

The CoL argued that the above decision was made concerning a situation which is strikingly similar to that which the CoL faced, in that "... the complainant has continued his correspondence unabated and has sent in large volumes of emails...", where the requests being considered were "...an extension of the complainant's previous correspondence...".

The decision goes on to state that:

"the Commissioner has made it clear that his assessment...also considers the context in which they [the requests] were made...to gain a more thorough understanding of the relationship between the two parties..."

"...the requests...can be linked to the abundant volume of correspondence sent by the complainant..."

The Commissioner has considered the circumstances of both cases and agrees that they are similar. He considers that the fact that the above case was found to be vexatious bolsters the CoL's argument that this request is vexatious.

40. The Commissioner is therefore satisfied that this request meets the first criterion of a vexatious request, whether viewed as a stand-alone request or viewed in the context of the other requests made by the complainant.

Whether the request is designed to cause disruption or annoyance

41. The CoL argued that the complainant's only reason for submitting this request was to cause disruption and annoyance.
42. The CoL explained that in the past, responding to the complainant has only led to more requests being submitted by him. The CoL argued that this therefore shows that the request is not made in an attempt to gain information, but rather is made in a deliberate attempt to cause disruption and annoyance.
43. The complainant argued that his request has a valid and important purpose. Specifically, he argued that the request was made in pursuit of uncovering wrongdoing on the part of the CoL and its staff. The complainant argued that this request was made in pursuit of the evidence which would demonstrate the behaviour of these staff members.
44. The Commissioner considers that, whether or not this wrong-doing has actually occurred, the complainant has made this request in pursuit of proving it. The Commissioner considers that this shows that the request

is designed to elicit information rather than just to cause disruption and annoyance.

45. It is the Commissioner's view that this request was not designed to cause disruption and annoyance and therefore this request has not met the second criterion of a vexatious request.

Whether the request has the effect of harassing the public authority or its staff

46. The CoL argued that the request is harassing in nature and is likely to cause distress to staff.
47. The CoL argued that the request must be looked at in the wider context of the other related requests and correspondence on this subject from the complainant. The Commissioner accepts this position, especially given that the CoL drew the Commissioner's attention to the Commissioner's own guidance on vexatious requests, as follows:

"...relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints."

The CoL said that it believes that these factors apply in this matter.

48. The Commissioner asked the CoL to expand on this and to provide evidence, which the CoL did. The CoL first argued that the very nature and volume of the complainant's correspondence demonstrate harassment, and further provided evidence of this in the form of a chronology of all correspondence. The CoL argued that his correspondence often contained inappropriate language, accusations and veiled threats. The CoL also provided examples of these, as follows:

"...put up or shut up..." (3 November 2008)

"...you were being wilfully dishonest..." (11 January 2010)

"...your role in all this is no less reprehensible than all the others..." (11 January 2010)

"...the guilty often get their come-uppance in the end (in various ways)..." (11 January 2010)

"...What you did (ie. frame me) borders on the criminal..." (11 January 2010)

"...In your nasty, purely vindictive case..." (11 January 2010)

"...there has been a general conspiracy by HR and senior management to join you in stitching me up come what may..." (11 January 2010)

"...I hope you will use the New Year 201 to turn over a new leaf, become a nicer person and rid yourself of the nastiness, deviousness and dishonesty which are your hallmarks at present..." (11 January 2010)

"...You should be ashamed of yourself..." (11 January 2010)

"...Like Mr Fleming you were foolish and self-serving..." (11 January 2010)

"...people like you, and certain of your colleagues, usually get their come-uppance one way or another in the end..." (11 January 2010)

49. The Commissioner notes that on one occasion (11 January 2010) the complainant sent letters to 13 individual members of staff by name, either directly or as a cc recipient, all of which contained accusations or threats and were unreasonable in tone. On another occasion (13 October 2009) the complainant sent a letter to the home address of the Chief Executive of the Barbican Centre. This letter was 18 pages long, with an additional 22 pages of appendices. The CoL argued that this use of the Chief Executive's home address was wholly inappropriate. The Commissioner accepts this argument and also considers that this was inappropriate.
50. The Commissioner considers that the correspondence from the complainant to CoL staff does have the effect of harassing the CoL and its staff.
51. It is therefore the Commissioner's view that the request meets the third criterion of a vexatious request.

Whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

52. The CoL argued that the request is obsessive when viewed in context of the ongoing dispute between the complainant and the CoL. In its response to the request dated 29 May 2012 the CoL said that it considers that the comprehensive breadth of both parts of the request (all information held, in whatever format and between any party since 2006) indicates an obsessive approach in its own right.
53. The Commissioner does not agree that the fact that the request has a broad scope indicates obsessiveness in and of itself. The Commissioner does however consider that, when viewed in context, the request can be characterised as obsessive in nature.
54. The Commissioner considers that the numerous correspondence from the complainant which are about the same or substantively similar topics as this request show that this request is obsessive.
55. It is the Commissioner's view that given the number of times that the complainant was offered an opportunity to attend meetings about this dispute, and the number of replies about these matters that he has received in writing already, the request is manifestly unreasonable.

56. It is the Commissioner's view that this request has therefore met the fourth criterion of a vexatious request.

Whether the request has any serious purpose or value.

57. The CoL argued that it does not see how the request can have any serious purpose or value, as it does not consider that the information requested would be of any use to anyone.
58. The CoL said that at the time the complainant ceased to work at the Barbican, he was offered the opportunity to appeal this decision, but he declined this offer. The CoL argued that this would have been an appropriate forum for the complainant to discuss any issues that he had concerning his or others employment status. The CoL argued that because he declined this opportunity, and because this took place over four years ago, this demonstrates that the request lacks any serious purpose or value at the time that it was submitted.
59. The complainant argued that the request was made for the serious purpose of uncovering wrongdoing at the CoL and the Barbican Centre.
60. The Commissioner considers that the CoL's argument is too speculative to demonstrative definitively that the request lacks serious purpose or value. The Commissioner therefore considers that the CoL has not shown that the request definitely lacks serious purpose and value.
61. The Commissioner accepts that the request may have serious purpose and value in the eyes of the complainant. The Commissioner further notes however that this purpose and value does not outweigh the other five factors, as it is not sufficient to justify the obsessive nature of the request or the harassing effect that the request has on the CoL and its staff.
62. It is the Commissioner's view that the request has not met the fifth criterion of a vexatious request. However the Commissioner emphasises that he only accepts that the request has serious purpose and value in the eyes of the complainant, and not in the wider public interest. Consequently, the serious purpose and value of the request does not in any way detract from the weight of the three factors which the Commissioner has found are engaged in this case.

Summary of five factors

63. The Commissioner has considered the five criterion of a vexatious request in making his assessment of this case.
64. The Commissioner considers that the request meets three of the five criterion. Namely, the Commissioner is satisfied that compliance with

the request would create a significant burden in terms of expense and distraction, that the request has the effect of harassing the public authority or its staff, and that the request can fairly be characterised as obsessive. However, the Commissioner is not fully satisfied that the request is designed to cause disruption or annoyance, and nor is he satisfied that the request lacks any serious purpose or value to the complainant.

65. The Commissioner notes that in some cases if the fifth criterion is not met, the serious purpose and value of a request can outweigh the other five factors, even if they are all engaged. However, the Commissioner finds that in this case the request lacks serious purpose and value for the wider public, and is only relevant for the complainant himself. Therefore, in this case, that the fifth criterion is not met has no effect on the weight of the other four factors.
66. The Commissioner considers that a sufficient number of the five criterion have been met for this request to be considered vexatious.
67. Overall, the Commissioner finds that in this case the CoL has appropriately applied section 14 FOIA to the request, as he considers that the request is vexatious.

Other matters

68. The Commissioner notes that the CoL applied other exemptions to individual requests made by the complainant. Specifically, the CoL applied section 12 FOIA to the request dated 30 April 2012 and applied section 42 FOIA to a separate request dated 6 June 2012. The Commissioner considered that this request, being substantively similar, would be covered by the application of section 14 FOIA if it was upheld.
69. The Commissioner therefore explained to both parties that he would first assess whether or not section 14 FOIA had correctly been applied. The Commissioner further advised that if he found that the CoL correctly applied section 14 FOIA then none of the other arguments would be assessed. However, if it were found that the request was not vexatious, then the CoL's application of these exemptions would be assessed.
70. As the Commissioner has found that the CoL has correctly applied section 14 in response to this request, The Commissioner considers that it is not necessary to assess its application of these other exemptions.

Right of appeal

71. 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

72. 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.
73. 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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