

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 April 2013

Public Authority: Conwy County Borough Council
Address: Bodlondeb
Conwy
LL32 8DU

Decision (including any steps ordered)

1. The complainant made a number of requests for information about Council Reserves. Conwy County Borough Council ('the Council') applied section 14(1) and 14(2) to the latest request as it considered it to be both repeated and vexatious. The Commissioner's decision is that the Council correctly refused the request on the grounds that it is vexatious and as such section 14(1) applies. The Commissioner does not require any steps to be taken.

Request and response

2. The complainant initially wrote to the Council on 6 March 2012 and requested various information concerning Council reserves. The Council responded on 19 March 2012 and provided the information requested.
3. There followed a series of correspondence exchanges between the complainant and the Council about the issue of Council reserves, including further requests for information from the complainant.
4. On 26 October 2012, the Council responded to another request for information dated 4 October 2012 and advised the complainant that any future requests on the same and/or similar subject as Council reserves or Council finances would be considered as vexatious and/or repeated requests in accordance with section 14 of the FOIA.
5. The complainant wrote another letter to the Council on 31 October 2012 requesting further information and clarification of previous responses on the issue of Council reserves. The requests were contained within the

body of a letter making observations and comments about the subject matter and previous responses from the Council, but essentially, the complainant requested information in the following terms:

"In my letter of the 3rd instant I requested confirmation that a figure in the region of £10m was available to the Cabinet for consideration under the terms of the 'Usable Reserves' but in your letter of the 26th instant you have merely stated that all reserves available to be released to revenue were included in presumably the Section 151 Officer's report. This is ambiguous and quite unacceptable and I reiterate my request for a specific amount to be named. In a letter dated the 18th May this year you indicated that a net sum of 29564m [£29.564m] was the figure to be considered by Cabinet but then in 4.12 of an Agenda Item that 18101m [£18.101m] could not be released. This still left some 11m.

Kindly confirm that the Cabinet accepted the Section 151 Officer's report supplemented by the Cabinet Member at the time that the only amount to be released was 214k from 'Specific reserves' but to be ring fenced".

6. The Council issued a refusal notice on 2 November 2012 stating that it was refusing the request on the basis of section 14 of the FOIA as the request was considered to be vexatious and repeated.
7. The complainant wrote again to the Council on 6 November 2012 advising that he had referred the matter to the Commissioner. He also stated that the Council had "rejected my request for details of the net amount that was available to the Cabinet for consideration".
8. The Council wrote to the complainant on 13 November 2012. The Council confirmed that it had provided the complainant with all of the information which was placed before Cabinet for consideration in relation to the issue of Council reserves. The Council stated that the most recent request was being refused as it was regarded as vexatious and repeated. The Council also advised that it was treating the complaint as persistent and vexatious and was following section 4.9 of its policy for Dealing with Persistent and Vexatious Customers. During the course of the Commissioner's investigation, the Council confirmed that this communication was the outcome of its internal review.
9. On 14 November 2012 the complainant wrote to the Council re-iterating that it had not supplied him with the net amount that was available to the Cabinet towards a reduction of local taxation.
10. The Council responded to the complainant on 22 November 2012 again confirming that it had provided him with the same information that Cabinet had at its disposal when it deliberated on the matter in

September 2012. The Council advised that it would not respond to any further letters about Council reserves.

Scope of the case

11. The complainant contacted the Commissioner on 14 November 2012 to complain about the way his request for information had been handled.
12. The Commissioner considers the scope of this case is to consider the Council's use of sections 14(1) and 14(2) to refuse the request of 31 October 2012.

Reasons for decision

Section 14 vexatious requests

13. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
14. The term vexatious is not defined in the FOIA, but the Commissioner's published guidance¹ explains that the term is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (e.g. vexatious litigants). The Upper Tribunal recently considered the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield². The Tribunal commented that the Commissioner's guidance that consideration of whether the request is likely to cause distress, disruption or irritation, "without any proper or justified cause"

"...provides a useful starting point, so long as the emphasis is on the issue of justification (or not)".
15. In the Commissioner's view, section 14 of FOIA is intended to protect public authorities from those who might abuse the right to request information. He considers that the key questions for public authorities to consider when determining if a request is vexatious are:

¹

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

² GIA/3037/2011

- (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.
16. In considering the circumstances of this case in relation to the five questions set out above, the Commissioner acknowledges that, to a greater or lesser extent, the questions overlap and that the weight accorded to each will depend on the circumstances.
17. In his view, it is not necessary for all five factors to be engaged, but the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.

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

18. The Council's position is that since March 2012 it has responded to a significant volume of correspondence from the complainant relating to the issue of Council reserves. The complainant's requests are contained within the main body of lengthy letters in which he also makes general observations and comments. As a result, the Council contends that it requires a significant effort to identify the exact information requested by the complainant. Then, due to the volume of correspondence the complainant has submitted on the subject matter, the Council has to determine whether the request(s) contained within each item of correspondence constitutes a request for new information or substantially similar information that has already been provided.
19. The Council's position is that, as well as providing significant recorded information held in response to requests, it has provided explanations in lay terms on the issue of Council reserves. However, the complainant has continued to raise further queries and comments on the subject matter.
20. The complainant contends that his request is not vexatious as he only resurrected correspondence on the issue of Council reserves in March 2012, some two and a half years after his previous exchanges with the

Council on the subject in 2009. He also argues that he only resurrected the issue following provision of the Council's statement of accounts for 2010-2011 which were provided to him by the Council's Auditors in December 2011, following correspondence he had sent to them. The complainant considers that, as a Council tax payer, he is entitled to know the net amount of reserves that was available to the Cabinet for consideration.

21. The Council provided the Commissioner with a summary of the requests it had extracted and responded to from correspondence received since 2012 and earlier correspondence in 2009, which is detailed in the Annex attached to this notice. The Commissioner notes that between March and October 2012 the complainant submitted 8 items of correspondence, including the request which is the subject of this notice. As a result of the way the complainant's letters are formulated, the Commissioner accepts that it is difficult to identify what are requests for recorded information, what could be regarded as 'business as usual' requests, and what are simply the complainant's observations and comments on the issue of Council reserves and information provided by the Council about the subject matter. For example, in a request dated 6 March 2012, the complainant requested "the amount of interest earned upon reserve funds that has been allocated towards a reduction in Council tax liability". However, in the same letter the complainant asked the Council to clarify aspects of previous correspondence in 2009, in the following terms:

"Your refer to General Reserves in your letter of 6 August 2009 but please confirm that you were in fact referring to the Council Fund balance of £3005m and also what you meant when in the second paragraph of your letter of 20th May 2009 when you stated that the advice of the Auditor General 'came very late in the day'".

In its response to this correspondence, the Council confirmed that interest of £217,695 had been paid into the general fund as interest earned. It also explained that the 'Council Fund Balance' is by its nature a General Reserve and as it is in many local authorities the only general reserve the terms are used interchangeably. The Council also explained that its reference to the auditor general's report in 2009 as being 'late in the day' referred to the fact that the issue of how to calculate a prudent balance and the size of local authorities' General Fund Balance had been debated for 30 years.

22. The above pattern is mirrored in many of the correspondence exchanges between the complainant and the Council inasmuch as requests for recorded information are intermingled with requests for clarification and explanations. The Commissioner accepts that the issue of local government finance and Council reserves is a complex issue. However

having considered the correspondence between the parties, the Commissioner considers that as well as providing the complainant with the recorded information he has specifically requested the Council has also provided commentary and explanations, over and above what is required under the FOIA to assist the complainant in understanding the issue of Council reserves.

23. The Commissioner has considered the request in detail and specifically within its context and history. He is of the view that the context and history of the request is relevant to a consideration of the burden that complying with the request would impose on the Council. The Commissioner notes that the Council has repeatedly confirmed that it has provided the complainant with all recorded information which was available to the Cabinet when it considered the issue of Council reserves.
24. Although the Council has not claimed that compliance with the current request alone would create an unreasonable burden, the Commissioner is mindful of the Upper Tribunal's recent comments in the Dransfield case, where the Tribunal commented on the importance of considering a request in the context of previous correspondence:

"...a long history of requests e.g. over several years may make what would otherwise be taken in isolation, an entirely reasonable request, wholly unreasonable in light of the anticipated present and future burden on the public authority."

25. The Commissioner considers that complying with the requests and correspondence to date would already have caused a significant burden in terms of both costs and diverting staff away from their core functions. The Commissioner also considers it likely that complying with the request would result in further requests of a similar nature from the complainant. He therefore considers that complying with the request would impose a not insignificant burden on the Council.

Whether the request is designed to cause disruption or annoyance

26. The Council considers that the complainant's language and tone is acceptable and there is no evidence to suggest that his intention is to cause disruption and/or annoyance.

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

27. The Council advised that, as all of the correspondence and requests relate to the same issue of Council reserves, they can only be properly responded to by a limited number of qualified senior members of staff. The correspondence from the complainant also challenges the Council's

financial position and decision making processes in relation to its reserve holdings, and requests further clarification of the information already provided, together with requests for substantially similar information. Taking these factors into account, the Council believes the effect of the requests can be fairly deemed as causing harassment.

28. The Commissioner appreciates that "harass" is a strong term and emphasises that it is the effect of the requests and not the requester that must be considered. It is an objective test: so a reasonable person must be likely to regard the requests as harassing or distressing. The Commissioner's guidance states that the factors which could make a request have the effect of harassing the public authority or its staff are:
- The volume and frequency of correspondence;
 - The use of hostile, abusive or offensive language;
 - An unreasonable fixation on individual members of staff; and
 - The mingling of requests with accusations and complaints.
29. It is important to note that it is not the intention of the request that is the key point here but the likely effect of the request. The Commissioner has taken into account the fact that the complainant submitted a large volume of correspondence over a short period of time, many of which consisted of multiple requests.
30. The Commissioner considers that when the context and history of the complainant's requests and contacts are taken into account, the effect of the request which is the subject of this notice is likely to have the effect of harassing the Council. While this may not have been the intention of the complainant and there is no evidence that his requests have contained hostile or abusive language, or have been directed at individual members of staff, the Commissioner considers that the volume of requests and the pattern of submitting request after request has the effect of harassing the Council and the members of staff who have to deal with the requests.

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

31. An obsessive request is often a strong indication that the request is vexatious. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been addressed.
32. 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? The Commissioner's published guidance states that although a request in isolation may not be vexatious, if for example

if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.

33. The Commissioner accepts that at times there is a fine line between obsession and persistence and 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. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
34. The Council considers that the request can be deemed unreasonable and obsessive because despite being provided with copies of various documents, reports and minutes of meetings relating to the topic of Council reserves, the complainant has continued to challenge the legitimacy of decisions made by elected members through the democratic process. The Council again referred to the fact that requests for recorded information are contained within the main body of sometimes lengthy letters making general observations and comments.
35. As indicated earlier in this notice, the Commissioner appreciates that the issue of local government finance and Council reserves appears to be a fairly complex one. He considers that, to an extent, this has been a factor in the volume of correspondence submitted by the complainant in seeking explanations and clarification in relation to information the Council has provided. However, he also accepts that the Council has provided explanations and commentary, which is not information held in a recorded form and therefore subject to the FOIA, in an attempt to assist the complainant's understanding of the issue of Council reserves.
36. The request which is the subject of this notice refers specifically to decisions made by the Cabinet when it considered the issue of Council reserves. It is not clear to the Commissioner what outstanding information the complainant believes the Council holds, that has not already been provided. The Commissioner notes that the Council has confirmed on a number of occasions that it has provided the complainant with all the information which was considered by the Cabinet in relation to Council reserves. For example, the report on Council reserves was provided on 20 September 2012, and the relevant minute of the Cabinet Meeting held on 11 September 2012, where the report on Council reserves was considered, was provided on 26 October 2012. The relevant minute clearly states that the Cabinet resolved:
 - "(a) That the statement of reserves and balances as included within the committee report and the Statement of Accounts for 2011/2012 be approved.

- (b) That approval be given to ring fence the balance of £214k released from specific reserves, to support the budget pressures in 2012/13 and if possible to assist with the budget deliberations for 2013/14".

This information provided by the Council is directly relevant to the second part of the complainant's request of 31 October 2012, which is the subject of this notice.

37. In this case, taking into account the context and background to the request, in conjunction with the number of requests and correspondence to the Council relating to the matter of Council reserves, the Commissioner considers that the complainant's persistence in making related requests to the Council has reached the stage where it could reasonably be described as obsessive.

Whether the request has any serious purpose or value

38. The Council acknowledge that the issue of Council reserves is an important one in terms of assisting the public in understanding the workings and administration of local government finance. The complainant considers that, as a Council tax payer, he has a right to know the amount of money (useable reserves) available to Council to be used to fund expenditure of reduce local taxation.
39. The Commissioner considers that the requests do have a serious purpose and value in terms of accountability and transparency relating to local government finance and how the Council's decision making process relating to reserves. However, the Commissioner considers that any serious purpose or value in these requests does not in itself outweigh the other vexatious elements which he considers to be present.

Conclusion

40. In reaching a view on this case the Commissioner has been assisted in his considerations by the Upper Tribunal's comments in the case of *Wise v Information Commissioner*³:

"Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request and the time and other resources that would be needed to provide it."

³ GIA/1871/2011

41. In light of all the above the Commissioner finds that there is sufficient evidence to support the Council's claim that the request of 31 October 2012 was vexatious. The Commissioner is not satisfied that the complainant had any material justification for continuing to make requests for information he had already largely received. Adding further requests and rewording previous requests created a cumulative burden which the Commissioner considers disproportionate.
42. The Commissioner considers that the request is vexatious when set against the history of correspondence between the complainant and the Council. He considers that in this case there is evidence to demonstrate that the request can fairly be characterised as obsessive, the volume of requests has had the effect of harassing the Council and that complying with the request would impose a significant burden. Taking these into account, and despite the serious purpose or value of the request, he has concluded that the Council was correct to apply section 14(1) to the request.
43. As the Commissioner has found that section 14(1) applies to the requests he has not considered it necessary to make a decision in relation to the Council's application of section 14(2).

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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Chronology of requests from March 2012 to present.

FOI Reference	Questions below extracted from correspondence	Response date
2611-12 Received 7/3/12	Please confirm that when setting its budget the matter of usable reserves was fully considered? Please clarify 'councils fund balance'? What do you mean the Auditors advice was very late in the day? Please specify amount of interest earned on investments?	19/3/2012 all answered.
2652-12 ⁴ Received 30/3/12	Copy of cabinet minutes 11/10/11. Balance of usable reserve. Auditor Generals advice	30/4/2012 all answered
2737-12 Letter dated 11/5/12	Clarify discrepancy of £10m? Copy of minute 182. How is balance arrived at?	18/5/2012 All answered.
Not Numbered	You refer to usable reserves of £9918m which cannot be used and actual usable reserves of	9/7/2012 All

⁴ Within 2652-12 supplementary letter comment from the complainant

'It is inconceivable that in a democracy to accept that a situation whereby a limited number of persons' i.e. the cabinet advised by a single individual in the employ of the council can impose a reserve figure of £39m.....'

<p>Letter dated 30/6/12</p>	<p>£29564m. How can the former be regarded as 'usable?'</p> <p>Please clarify what is meant by 'defined by regulation?'</p> <p>Kindly confirm that £369,000 has been put aside?</p> <p>Has statement for 2011/12 been completed?</p>	<p>answered</p>
<p>2881-12</p> <p>Letter dated 20/7/12</p>	<p>When will report to cabinet be presented?</p>	<p>26/7/2012</p> <p>answered</p>
<p>3037-12</p> <p>Received 4/10/12</p>	<p>Copy of minute 162c.</p> <p>Evidence of appointment of S151 Officer.</p> <p>Copy of CIPFA guidance.</p> <p>Copy of minutes relative to Cabinet meeting.</p> <p>Where has the 369k been released to?</p> <p>Confirmation be given that all available reserves were considered for release to revenue?</p> <p>Amounts withheld in relation to Colwyn Bay pier and overspend on home to school transport.</p>	<p>26/10/2012</p> <p>All answered.</p> <p>S14 warning issued re possible future requests.</p>
<p>3083-12</p> <p>Received 1/11/12</p>	<p>I reiterate request for specific amount to be released?</p> <p>Kindly confirm that Cabinet accepted S151 Officers report.</p>	<p>2/11/2012</p> <p>Refusal notice issued</p> <p>S14 FOIA applied</p>

Correspondence from 2009.

<p>651-09</p> <p>Received 23/2/09</p>	<p>Please confirm net amount of interest earned?</p> <p>That reserve is around 5% of councils total annual expenditure.</p> <p>Whether the council has resorted to utilise part of that reserve.</p> <p>What major capital projects are envisaged that necessitates the retention of what appears to be a considerable amount of reserves.</p>	<p>All answered 11/3/2009.</p>
<p>Supplementary Questions received 1/4/2009.</p>	<p>The interest is noted. Please confirm that this was utilised to reduce the council tax.</p> <p>Who determines the extent of the monies to be held in reserve.</p>	<p>All answered 15/4/2009</p>
<p>Supplementary Questions received 5/5/2009</p>	<p>Please confirm the figure of £3m is invested in a specially designated account.</p> <p>I would be pleased if you could specify the detail.....and what the remaining £40m is earmarked for.</p>	<p>All answered 20/5/2009.</p>
<p>Supplementary Questions received 29/7/2009</p>	<p>Please confirm that the council have investigated fully the level of reserves.....</p>	<p>Answered 6/8/2009.</p>
<p>Supplementary Questions received 12/8/2009</p>	<p>Reference to a letter complainant had received from his Assembly Member dated 22/7/2009 – please confirm that this has been fully explored.</p>	<p>Answered 14/8/2009</p>

<p>For information</p>	<p>Copy of letter from KPMG to complainant dated 21/12/2011.</p> <p>Copy of letter from KPMG to CCBC dated 21/11/2011.</p> <p>Complainant proceeded to reopen the issue/s again – see 2611-12 Received 7/3/12.</p>	
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