

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2013

Public Authority: London Borough of Barnet
Address: North London Business Park
Oakleigh Road South
London
N11 1NP

Decision (including any steps ordered)

1. The complainant made 23 requests to the London Borough of Barnet (the 'Council'), all of which were refused on the grounds that they were vexatious under section 14(1) of FOIA. The Council reviewed its decision in relation to two of the 23 requests during the investigation and decided that it would be appropriate to provide responses. The Information Commissioner's decision is that the Council properly applied section 14(1) to the remaining 21 requests. He does not require any steps to be taken.

Background

2. The Council advised that the complainant is a "*prolific blogger*" at <http://ibbspending.bogspot.co.uk/> under the alias 'Mr Mustard'. The majority of his posts are directed against the Council, with a particular focus on parking issues and public highways. The Information Commissioner (the 'Commissioner') has examined some of the entries on this site as part of his determination in this case.
3. The Council confirmed that the complainant has made a significant number of requests, identifying 476 individual requests made by him since April 2010, together with 44 requests for internal review. It explained that responses and internal review outcomes have often resulted in follow-up requests and further email correspondence from the complainant.

4. The Council has identified that parking issues and Human Resources matters are two main areas of focus of the complainant's requests, often reflecting the content of his blogs.

Request and response

5. On 12 September 2012 the complainant wrote to the Council and requested information in the following terms:

"Paragraph 15 of the 'contract for the provision of parking enforcement and related services' sets out that monthly meetings will occur between the Council's Representative and the Contract Manager (of NSL).

I would like to see the minutes of those meetings please and all emails in both directions between the specified representative and the Contract Manager since the commencement of the Contract on 1 May 2012."

6. The Council responded on 10 October 2012 refusing the request on the grounds that it was vexatious in accordance with section 14(1) of FOIA.
7. The complainant requested an internal review on 16 October 2012. The Council wrote to the complainant on 15 November 2012. It maintained that the request was vexatious.
8. From 18 September 2012 to 5 November 2012 the complainant submitted a further 22 requests; summary details of those which have been considered as part of this notice are listed in Annex A. The Council deemed each of these requests to be vexatious.

Scope of the case

9. The complainant contacted the Commissioner on 9 January 2013 to complain about the way his 23 requests for information had been handled. He contended that the Council had not been 'applicant blind' in its handling of his requests as is required by FOIA, for the following three reasons.
 - In an internal email acquired by making a subject access request under the Data Protection Act 1998, the complainant was referred to as having been declared vexatious.
 - A question asked in one of his requests had been deemed vexatious; however, the same question was asked by another applicant and was not deemed vexatious.

- If he were to make a request using a pseudonym, it would not be deemed vexatious.
10. During the investigation, however, the Council reconsidered its application to two of the 23 requests in light of both the recent *Dransfield* decision by the First-tier Tribunal (Information Rights) (see 'Reasons for decision' section for further details) and the Commissioner's updated guidance for handling vexatious requests. The Council provided a fresh response to those two requests and the Commissioner has therefore not covered them in this notice.

Reasons for decision

Section 14 – Vexatious Requests

11. Section 14 (1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
12. The term "vexatious" is not defined within FOIA. However, it has been considered in the recent case of *The Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011)*¹ which concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of a formal procedure".
13. The *Dransfield* case identified four factors that are likely to be present in vexatious requests, although it did note that this list is not intended to be exhaustive or a formulaic checklist:
- the burden imposed by the request (on the public authority and its staff)
 - the motive of the requester
 - harassment or distress caused to staff
 - the value or serious purpose of the request
14. The Tribunal urged that anyone considering whether a request could be considered vexatious should take a broad "holistic" approach to consider any other factors that are relevant to the request. It also confirmed that

¹ <http://www.osspsc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

a single factor could be appropriate to refuse a request if the weight of evidence for it was sufficient.

15. In its submissions to the Commissioner the Council applied the factors listed above in order to illustrate why it felt it was correct to refuse the requests as vexatious. It provided a lever arch file of evidence in support of its arguments containing summaries of the requests received, copies of its responses to the requests and associated internal reviews, examples of the complainant's blogs and confidential statements from staff members who have felt intimidated and harassed by the complainant.

Burden imposed by request

16. The Commissioner's guidance states that:

"a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden."

17. The guidance also states that a requester's past pattern of behaviour may also be a relevant consideration. For instance, if an authority's experience of dealing with his previous requests suggests that he is unlikely to be satisfied with any response and will submit further follow-up correspondence, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority. The Commissioner has weighed the evidence put forward by the Council in this case against his guidance.
18. The Council argued that the complainant has sent in large numbers of letters and that it considers them to be a severe burden on resources. As outlined earlier, it cited that it had received 476 individual requests and 44 requests for review from the complainant since April 2010. Of the 23 requests originally in scope of this complaint, 19 were about parking matters. Seventeen of these requests were received between the date that the first request was received, 12 September 2012, and the date this request was refused as vexatious, 10 October 2012. This very nearly represents the equivalent of one new request received every working day during this period.
19. Whilst acknowledging the complainant's right to be interested in this subject area, the Council said it feels that the complainant's *"continued and escalating use of FOIA in order to receive information in this regard shows a lack of any reasonable proportionality and has contributed to a*

significant and unreasonable burden on Council resources and staff".

The Council contended that this, in the words of the *Dransfield* ruling, constituted a manifestly unjustified, inappropriate and improper use of a formal procedure.

20. The Council acknowledged it has a duty to demonstrate a commitment to transparency and has responded to all the complainant's requests until it received his request of 12 September 2012, which it described as the "*tipping point*". The Council said that at this point the burden upon it became too onerous.
21. Prior to this, the Council explained that it had received 45 individual requests from the complainant on the subject of parking and highways, from 20 April 2010 to the end of the 2011/12 financial year, all of which it had responded to. It explained that between 1 April 2012 and 10 October 2012, when it refused the complainant's request of 12 September 2012 as vexatious, the Council had received 53 requests on this subject from him, showing a significant increase from around two requests per month to 9 requests per month. It pointed out that responding to these requests often led to follow-up emails and, directly or indirectly, to further requests for information.
22. The Council examined the examples detailed in the Commissioner's guidance² where context and history can sometimes weaken a public authority's argument that a complaint is vexatious and advised the Commissioner as follows:

Previous responses were unclear and requestor required clarification – there is no evidence that this has happened at a significant level, especially considering the volume of requests the complainant has submitted, nor can this be said to apply to any of the requests covered by this complaint where s14(1) was invoked.

Responses to previous requests contained contradictory or inconsistent information, raising further questions – again, whilst there may be a small number of these historically, there is no evidence that this is the case with the cases currently under review.

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

Serious failings at the authority have been widely publicised, giving the requester genuine cause for concern – With reference to parking, the fact that the complainant is opposed to the Council's parking policies does not constitute a 'serious failure' on the part of the Council. This also applies to his concerns with Council spending in general. His use of FOIA has not served to move his argument beyond merely disagreeing with Council policy.

23. Bearing in mind the above points, the Council stated it is firmly of the opinion that the context and history of this particular case fully supports, rather than weakens its stance regarding section 14(1). It accepts that whilst on their own each individual request would not necessarily be regarded as vexatious, the relevant context is the burden that the increasing volume of requests was having on the Council and in particular, the parking team, both historically and at the time. The Council submitted an email dated 19 September 2012 from a member of its parking team that sets out the disproportionate levels of disruption and distress caused by the time and resources needed to answer the complainant's requests. The statement also makes it clear that the parking service is experiencing a significant burden in terms of officer time and diversion away from other work.
24. Whilst only one of the requests in scope was about jobs and employees, the Council explained that between 20 April 2010 and the end of the financial year 2011/12, it had recorded 85 individual requests from the complainant on this topic and it provided the Commissioner with a summary.
25. From 1 April 2012 to 10 October 2012, when the first request was refused under section 14(1), the Council said it received 34 requests on the subject of jobs and employees which it had responded to. Again, in the Council's view, none of the factors in the Commissioner's guidance apply here.
26. Although only one of the requests in scope of this complaint is about employee-based issues, when looked at in the wider historical context, this forms part of an escalating pattern of requests that the Council said "*constitutes an unreasonable burden on service areas and individual officers and is therefore, in the Council's view, a misuse of the Act*".
27. The Council has argued that due to the volume of requests it receives from the complainant, it spends a disproportionate amount of time and resources upon matters that are not in the wider public interest.
28. The Commissioner considers that, even if there were no other arguments the sheer number of requests alone would warrant the requests being vexatious. His view is that the Council's arguments are

reasonable, that the number of requests made was vastly excessive and that taken as a whole the complainant's correspondence can be viewed as an unjustified burden.

Harassment or distress to staff

29. To demonstrate that the complainant has caused distress to members of its staff the Council provided the Commissioner with 73 A4 size pages of entries from the complainant's blog.
30. When considering whether a request or piece of correspondence is vexatious the Commissioner takes into account the tone used, as well as the use of abusive, provocative language or personal accusations made towards an individual.
31. The Council told the Commissioner that it has clear evidence of its staff experiencing distress when in the course of handling the complainant's requests, which it said is understandable when considered in the context of his blog, where the complainant has repeatedly written about individual members of staff in both their personal and professional capacities.
32. The Commissioner has examined the content of the blog entries provided by the Council. One such entry about one of its officers states: *"Was [name redacted] on overtime or has he learnt how to set a date and time on an email to make it look like you are grafting away at 07:26 when in fact you are snoring your head off?".* Another says: *"Mr S is an OK person but you get too much of my money Mr S so you will have to take a bashing; it's not personal. It's the job not you I am attacking. Anyway, back to normal. As you are writing to Mr Mustard and not answering the question you will now have to be known as the External Misinformation Officer".*
33. The Council said that any individual member of its staff would be aware that any direct contact with the complainant in the course of their work may result in them being mentioned on this blog in an intrusive manner.
34. It is clear to the Commissioner that the complainant has 'googled' some of the Council's staff, compiled information about them and then used it to tie in with their professional lives and, in some cases, subjected it to public ridicule via his blog. Staff members then have no way to refute or correct the position. As a result the Council has said that at least one of its employees have taken avoidance steps such as resetting all their preferences on social networking sites to a more secure option, opting out of the electoral roll and making their telephone number ex-directory.
35. The Council also advised that one member of staff was so distressed with handling the complainant's requests that they were prepared to

resign if they had to continue dealing with him in the course of their duties.

36. The Commissioner has also viewed a number of confidential statements from the Council's staff members which set out that they have felt intimidated and harassed by the complainant.
37. The Council has provided clear evidence that the complainant has harassed members of staff, and indeed it appears that this may have been his aim. The content of some of the complainant's previous correspondence via his blog has been unreasonable and caused distress to members of the Council's staff. The Commissioner's view is that this behaviour by the complainant has been entirely inappropriate and that this criterion is clearly satisfied.

Value or serious purpose of request

38. In its submissions to the Commissioner the Council stated that its intention is not to declare that all the complainant's requests lack serious purpose and value when looked at in isolation. It highlighted that in his original blog, the complainant had stated his intention to highlight Council spending, initially expressed in relation to parking. It said, however, that in submitting the volume of requests which resulted in a section 14(1) response, the complainant's actions are now *"disproportionate to any serious purpose he may have, or any value he, or the general public, may gain from this information"*.
39. The Council's opinion is that the complainant is using FOIA to restate his grievances and opinions, especially with regard to parking issues. It is the Council's view that this is not an appropriate use of FOIA, as the sheer volume of information he has now requested and been provided with has not served to move this issue on, nor opened up any new avenues of debate.
40. The Council said that a degree of a lack of serious purpose and value inherent in this pattern of requests can be seen in the fact that the complainant has, on occasion, suggested to staff that he has experienced difficulties in keeping track of the requests he has made due to their large number. In addition, the Council advised that the complainant has been known to request internal reviews several months after receiving responses suggesting that he has little interest in the information at the point of receipt.
41. The Council stated that the complainant has many other ways in which to interact with, and receive information from the Council. These include but are not limited to attending and speaking at committee, using the petitions process, attending resident forums and using the Audit

Commission Act to inspect the Council's accounts, all of which he makes use of on a regular basis.

42. The Commissioner agrees that there is a public interest in disclosing the requested information. The requests relate to the spending of public money, which carries with it an inherent public interest and certainly cannot be said to contain no value. However, the Commissioner considers that the context in which the requests were made to be significant. The requests appear to be motivated by the complainant's personal interests rather than a public interest in accountability. The Commissioner considers that this diminishes the value of the request and adds further weight to the decision to refuse it as vexatious.
43. The Commissioner has considered the arguments put forward by the complainant, which are set out in the 'Scope' section of this notice. FOIA is generally considered to be applicant blind but this does not mean an authority cannot take into account the wider context in which the request is made and any evidence the requestor volunteers about the purpose behind his or her request. Without having had sight of the complete internal email referred to by the complainant, the Commissioner considers it likely the Council is reporting its position in relation to the complainant's requests. It is important to note that it is not the requestor who is 'vexatious' but his or her request(s).
44. A requestor may make a request, which is identical to that of an applicant whose requests have been refused as vexatious, and secure a response; however, the overall context in which such a request has been made (as outlined in this notice) can be taken into account. The Commissioner is satisfied that different requestors can make the same request and receive differing outcomes in terms of whether the request is vexatious, once the relevant context has been considered for each of those individuals.
45. Requests made using a nom-de-plume or pseudonym are not valid under FOIA and public authorities are not obliged to deal with them. However, it is the Commissioner's position that it would be contrary to the spirit of FOIA to routinely or randomly check a complainant's identity. Where the applicant has used what seems to be an obvious pseudonym, the onus is on the applicant to prove that they are in fact known by that name and thus that they have made a valid request.
46. Where the requestor has used a name other than an obvious pseudonym, the Commissioner will assume that the applicant has provided his/her real name and expects public authorities to do likewise. If, however, a public authority suspects the name given is false and refuses to deal with the request on that basis, it will then be up to the public authority to provide evidence to show that they have good reason

to believe that the name used is a pseudonym and thus is an invalid request. In this case, there is no dispute that the complainant is behind the 'Mr Mustard' blog such that the wider context in which the request was made is relevant despite him having used a pseudonym.

Conclusion

47. After considering the arguments put forward by both the complainant and the Council, together with the context in which the requests were made and the evidence supplied, the Commissioner's decision is that the requests are clearly vexatious. The requests have caused a significant burden upon the Council's resources and caused several staff members distress. It is reasonable for Council to take steps to limit the amount of resources it spends on the complainant's requests. Section 14(1) does, therefore, apply and the Council was not obliged to comply with these requests.

Right of appeal

48. 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

49. 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.
50. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

A brief summary of the requests submitted after the complainant's request of 12 September 2012 follows:

1. 18/09/13 – Request for numbers of Penalty Charge Notices ('PCNs') issued each day from 1 May to 31 July inclusive for both 2011 and 2012.
2. 20/09/12 – Request for 3 invoices which the complainant states he has not seen.
3. 20/09/12 – Request for copies of all invoices raised by NSL in August 2012 and associated information.
4. 20/09/12 – Request asking how many bus lane tickets have been sent to bailiffs to enforce since 1 May 2012.
5. 20/09/12 – Request for the locations of all banned right turns and yellow box junctions in the borough and associated information.
6. 26/09/12 – Request for copies of every verrus invoice from trial start date until 26/09/12.
7. 27/09/12 – Request for NSL pro forma letters.
8. 27/09/12 – Request for appeal stats NSL August 2012.
9. 27/09/12 – (Request for information linked to a previous request which is not part of this list). Questions about the minutes.
10. 01/10/12 – Request asking for the Parking Recovery Plan.
11. 01/10/12 – Request for a copy of the Special Parking Account for the years ending 31 March 2007 to 2012 and associated information.
12. 01/10/12 – Request about a newly appointed AD Commercial Services position and associated information.
13. 02/10/12 – Request for annual report on enforcement for the year ending March 2012.
14. 04/10/12 – Request about PCNs for the month of September 2012.
15. 05/10/12 – Request asking for the steps associated with parking restrictions and linked documentation.

16. 09/10/12 – Request for list of all parking locations reported as defective by NSL during September 2012.
17. 10/10/12 – Request for digital files for the current “TMO for every CPZ except zone C”.
18. 11/10/12 – Request about Woodside Grove (car parking related).
19. 26/10/2012 – Request about numbers of PCNs issued on various dates in March and April 2012.
20. 01/11/12 – Request for copies of invoices raised by NSL in September 2012 and associated information.