

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 December 2013

**Public Authority:** Essex County Council

**Address:** County Hall  
Market Road  
Chelmsford  
CM1 1QH

#### Decision (including any steps ordered)

---

1. The complainant has asked how many people that have been banned from two different libraries between specific years. Essex County Council (the council) refused to provide the information relying on section 14(1) of the FOIA, as it deemed the request to be vexatious.
2. The Commissioner's decision is that the council has correctly relied on section 14(1) of the FOIA.
3. The Commissioner does not require the council to take any steps.

#### Request and response

---

4. On 16 April 2013, the complainant wrote to the council and requested information in the following terms:  

*"1. Between 1990-to 2013 How many people have been banned from Harwich Library?*

*2. Between 1990-to 2013 How many people have been banned from Clacton-on-Sea Library?"*
5. The council responded on 25 April 2013. It refused to provide the requested information as it deemed the request to be vexatious, citing section 14(1) of the FOIA.
6. Following an internal review the council wrote to the complainant on 1 May 2013. It maintained its original position.

## Scope of the case

---

7. The complainant contacted the Commissioner on the 7 May 2013 to complain that the council has refused his request.
8. The Commissioner considers that the scope of the case is to determine whether the council is correct to rely on section 14(1) of the FOIA not to provide the information to the complainant.

## Reasons for decision

---

9. 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.
10. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
11. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) the harassment or distress caused to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the;

*"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness,*

---

<sup>1</sup> UKUT 440 (AAC) (28 January 2013)

*irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).*

12. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
13. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

## **Background**

14. The council and complainant have provided the Commissioner with background information for this case.
15. The council has advised the Commissioner that the complainant has been banned from all Essex libraries since November 2012 following a number of instances and that his banned status will remain until he signs a written agreement to abide by the libraries’ byelaws.
16. The complainant has advised the Commissioner that in 2012 he was given permission to display an event poster in both libraries. He saw that the poster had been displayed in the Harwich library but was unsure if the one in Clacton was on display. The Complainant states that the management at the Harwich library took exception to his enquiries and incident reports were produced for harassment and trying to find out staff member names, which the complainant disputes. Subsequently he was banned from the library.

## **The council’s reasons for applying section 14(1)**

17. The council provided the Commissioner with its arguments as to why it maintains that the request is vexatious and section 14(1) of the FOIA applies.

---

2

[http://www.ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

18. The council believes that the request and any future requests on this subject are designed to waste staff time as it considers that they are not genuine attempts to source information, but are attempts to overturn the banning order and maintain the alleged harassment of staff and criticism of its services. The council has advised that from 26 November 2012 to the date of the request, a period of 20 weeks, the council has received a total of 16 letters and numerous telephone calls that are related to the ban.
19. The council has provided the Commissioner with a copy of a letter from the Local Government Ombudsman (LGO) dated 13 November 2012 regarding the complainant's ban. The LGO's decision was not to investigate the case concluding:

*"I have seen no evidence of fault by the Council causing the complainant an injustice which warrants the Ombudsman's involvement."*

20. The council has advised the Commissioner that it has offered a means of resolution stating the ban would be uplifted if the complainant signs an agreement to adhere to the library byelaws. A face to face appeal meeting was held on 27 February 2013, to which, the ban was upheld as it could not be agreed that the complainant would abide by these byelaws.
21. The council states that the incident reports, correspondence and face to face meetings are impacting on its resources. These resources being members of staff, branch management, senior managers in the library service and the head of service in having to manage the ban, respond to subsequent correspondence, and attend face to face meetings with the complainant.
22. The council has provided the Commissioner with copies of two letters that were sent by the complainant to the home addresses of two staff members, one of these letters is dated 13 September 2013, the other has a post date on the envelope as 12 September 2013. The council state that this has placed a significant unjustified stress on the employees involved and has resulted in them having to take leave.
23. The council has advised the Commissioner that it has had to involve the Police due to the complainant's behaviour, to which there is an on-going investigation. The council has provided a file of documentation that was given to the Police, containing correspondence from the complainant and some of his FOIA requests. This also included incident reports from staff. From reading some of the correspondence and incident reports the complainant had to be removed from the library when his ban was in force.

24. The council has provided the Commissioner with a copy of a Harassment Warning which it advises was served on the complainant on 19 September 2013. This warning was regarding the employees that the complainant had sent letters to.

### **The complainant's arguments against section 14(1)**

25. The complainant states that his intentions for the requests are not to cause irritation or try and force the council to remove his library ban.
26. He states that that he wants to clear his name as he considers that there have been unfair and irregular practices at the Harwich library and so by comparing the library's performance with that of Clacton library, all the information will then be used to publish a final report.
27. The complainant has stated that he is not seeking the names of any individual's only basic statistics.

### **Conclusion**

28. The Commissioner has considered the above. He has considered the history of the correspondence between the council, library and the complainant.
29. It is quite clear to the Commissioner that the request has been made as the result of the complainant being banned from Essex libraries.
30. The fact that the council has advised the complainant that the ban may be lifted if he agrees to abide by its byelaws and there has been a face to face meeting to this effect, does demonstrate the council have attempted to resolve the issue with the complainant.
31. The Commissioner is aware that the complainant disputes these incidents and their severity but he has to take into account the fact that the incidents have escalated to the extent that the Police have been involved resulting in a Harassment Warning being served on him.
32. The fact that the complainant has written to two staff members at their addresses with regards to these matters does demonstrate that they are being targeted directly by the complainant and the Commissioner considers that this would be something that could cause unjustified distress.
33. These letters were sent some months after the council applied section 14 to the request, and the Commissioner has to consider evidence prior to the request being deemed vexatious.

34. However, this continued contact has resulted in the staff involved having to take leave. The Commissioner is of the opinion that this carries strong weight in considering his decision as the staff members involved have been part of the Police harassment investigation that was ongoing before the request was made. This, In the Commissioner's view, carries significant weight that there is an unjustified level of distress being caused, when considering the history and context prior to the request being made.
35. This is the same for the police Harassment Warning letter being served after the request was made. The Commissioner is of the opinion that he can consider the Harassment Warning letter with greater weight, as it is part of the Police's original investigation that was underway before the request had been made. It demonstrates the level of action and time the council has had to take in order to shield its employees has created a disproportionate burden on the council resources in having to deal with the situation as a whole.
36. The Commissioner has published guidance on vexatious requests and in assessing the purpose and value of the request, it gives an example of where the value of the request might be limited as:
- "...pursuing a ... highly personalised matter of little if any benefit to the wider public".* <sup>3</sup>(Paragraph 47)
37. The Commissioner is mindful that the complainant has stated he requires this information to clear his name. But the fact that the LGO has considered this not to be a case that warrants investigation of the council's actions, shows that the complainant is not satisfied with an independent bodies view and is seeking to pursue the matter himself. This matter, in the Commissioner's view, appears to be a personal matter which has little if any benefit to the wider public, so does lessen the value and purpose of the request.
38. On considering the above, the Commissioner is satisfied that the council has demonstrated that this request is vexatious when viewed in context with the history between the council, library and the complainant. The Commissioner is also satisfied from the council's argument's that this

---

3

[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

request is a way for the complainant to continue correspondence with the council and library whilst the ban is in place. To reply to this request will only add to the disproportionate impact being placed on the council's resources which, in the Commissioner's view, outweighs any value or purpose of the request. Therefore the Commissioner finds that the council are correct to rely on section 14(1) of the FOIA to refuse the request.

## Right of appeal

---

39. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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 – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**