

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 9 July 2014

Public Authority: Havant Borough Council
Address: Public Service Plaza
Civic Centre Road
Havant
Hampshire
PO9 2AX

Decision (including any steps ordered)

1. The complainant has requested information from Havant Borough Council ("the Council"). The information sought includes the Council's policy concerning its destruction of information, information relating to the manner in which the Council has dealt with one of his complaints and information associated with the Council's policy for charging for certain types of information.
2. The Commissioner's decision is that Havant Borough Council is entitled to refuse the complainant's request for information in reliance of section 14(1) on the grounds that his request is vexatious.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 18 January 2014, the complainant wrote to the Council and requested information in the following terms:

"1. I requested information on your policy on destruction of information I did not get a response I submitted a complaint but no response. I still require the information requested as set out in the original email dated 13 August 2011.

2. I require any recorded information you hold on the complaint I sent you dated October 31 2011. The type of information I require to include when it was received, the name of the complaints monitoring officer that received it and any other information on the handling of that complaint. And also any correspondence received by Havant Council that relates to the request made October 31 2011.

3. The councils prices book page 38 still contains an initial charge for locating planning documents related to determined applications. I require any recorded information you hold related to that charge. The information to include any reasons why the charge is still being applied.

Form

The form of the requested information to be where appropriate a summary or digest."

5. The Council responded to the information request as follows:

"As with so many of your requests you are again going over old ground. No further responses went to you as you had quite clearly been told that these request and the previous one on the same subject came under section 14 and are deemed vexatious. As with the others you have submitted over the past two weeks this just underlines the assessment that you are harassing the Council. This is backed up by you emailing this to the Address Management Team Manager - Complaints Resolution Team 1. Please either email Customer Services or Lisa Thomas who are both used to dealing with your requests.

The Council will not continue dealing with requests on this subject."

Scope of the case

6. The complainant contacted the Commissioner on 29 January 2014 to complain about the way his request for information had been handled.
7. The Commissioner's investigation of this matter was concerned with the Council's application of section 14 of the FOIA.

Reasons for decision

Section 14(1) – Vexatious requests

8. 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.
9. The term 'vexatious' is not defined in the legislation. In *Information Commissioner v Devon County Council & Dransfield*¹ the Upper 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.
10. 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) harassment or distress of and to staff.
11. 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, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

¹ UKUT 440 (AAC) (28 January 2013)

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. He considers there is in effect a balancing exercise to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.
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 requests². 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 a case will need to be considered in reaching a judgement as to whether a request is vexatious.

The Commissioners findings

14. The complainant has been making information request to the Council since 2009. A feature common of these requests is that they stem from, either wholly or in part, information which the complainant believes the Council holds in respect of the conversion of the loft at his address. The Council has dealt with the complainant's information requests under the following reference numbers: 390980, 389494, 391471, 346407, 346506, 347485, 347846, 347851, 347856, 347857, 378675, 351542, 357018, 357181, 358408, 359424, 360025, 360278 and 363490.
15. The Council has provided the Commissioner with a detailed chronology of the complainant's requests and the way it has dealt with them.
16. Some of the complainant's requests have become the subject of decision notices issued by the Commissioner and some have been the subject to appeals made to the First Tier and Upper Tribunals. The references of these cases are: FER0325433, FS50443748, FER0352028, FER0406336, EA/2011/0155 and GIA/1157/2012.
17. Having reviewed the requests made by the complainant the Commissioner considers that his request of 18 January 2014 should not be considered in isolation to his previous requests.
18. The Commissioner considers that the complainants' request of 18 January 2014 is related to his previous requests for information and to

² http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

the complaints made to the Council in respect of the loft conversion at his address.

The effect on the Council of the complainant's requests

19. Most of the complainant's requests, though not all, have some relation to the issue of the loft conversion at his address. Over time the complainant's requests have developed to include requests for planning information, requests for registers and requests for information concerning the Council's charges for accessing information.
20. The degree of relatedness of the complainant's request is sufficient for the Commissioner to conclude that the complainant is using the provisions of the FOIA and the EIR as a means of continuing his on-going correspondence with the Council.
21. The request of 18 January is the culmination of a sequence of interrelated requests which must be considered as a single body. The history of those requests is therefore relevant to the Commissioner's consideration of section 14(1).
22. An inevitable consequence of the complainant's many requests is the imposition on the Council of a significant and disproportionate burden. This burden comes from the considerable time and resources the Council has needed to devote to the complainant's requests and complaints.
23. The Commissioner considers that any reasonable person would conclude that the burden imposed on the Council by the complainant's requests has reached the point where it must be regarded as being unwarranted and disproportionate.
24. It appears to the Commissioner that complainant is rarely satisfied with the responses made by the Council to his often demanding information requests. There is sufficient evidence for the Commissioner to conclude that no matter how the Council responds to his requests the complainant will continue to make requests under the FOIA and/or the EIR. This pattern of behaviour has now reached the point where the Commissioner is comfortable in concluding that the complainant's request of 18 January 2014 has effectively caused harassment to the Council.
25. The Commissioner notes that the focus of the complainant's requests has shifted over time, from being concerned with Building Control Records and planning matters: The request now concerns information associated with the way in which the Council has dealt with his complaints and to its charging arrangements. What once may have been of wider public value has now become restricted and narrowly focussed on the complainant.

26. The Commissioner must be mindful of the resources available to public authorities for dealing with information requests. In this case, the limited value of the information sought by the complainant is further evidence of why the complainant's request can be considered as being vexatious.
27. On the combined grounds that the complainant's request of 18 January imposes a significant and disproportionate burden on the Council; has the effect of harassing the Council; and is of limited value to the wider public, the Commissioner has decided that the Council is entitled to rely on section 14(1) of the FOIA to refuse the complainant's request.
28. Having decided that the Council is entitled to rely on section 14(1) of the FOIA, he has not gone on to consider whether the Council is also entitled to rely on section 14(2).

Other matters

29. The Commissioner notes that item 2 of the complainant's request refers to a complaint he made on 31 October 2011. In item 2 the complainant appears to seek information which possibly falls for consideration under the subject access provisions of the Data Protection Act 1998. With this in mind the Commissioner considers that the Council should consider inviting the complainant to make a subject access request under section 7(1) of that Act, for any personal data held by the Council which relates to that specific complaint.
30. Section 50(1) of the Act requires the Commissioner to make a decision in relation to complaints he receives about public authorities' compliance with the FOIA and EIR when dealing with requests for information. However, under section 50(2)(c) the Commissioner has the right to refuse to make a decision if it appears to him that a particular application is frivolous or vexatious.
31. In view of the findings of this decision notice, and of decision made by the Commissioner and by the Tribunal previously, the Commissioner considers that the complainant has sought to use requests for information and subsequent complaints to the Commissioner as a means of pursuing his grievance against the Council. The Commissioner believes this represents a pattern of vexatious behaviour. In future the Commissioner will consider whether it is appropriate for him to exercise his discretion under section 50(2)(c) to refuse to make a decision in relation to any complaint about a request of a similar nature from the complainant."

Right of appeal

32. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

Signed

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