

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2014

Public Authority: London Borough of Hammersmith & Fulham
Address: Hammersmith Town Hall
King Street
Hammersmith
London
W6 9JU

Decision (including any steps ordered)

1. The complainant made a number of requests to London Borough of Hammersmith & Fulham (the "Council") for information broadly concerning a claim he made against the Council's insurance. The Council concluded that these requests were vexatious and cited section 14 of the FOIA.
2. The Commissioner's decision is that the Council had correctly applied section 14(1) of the FOIA.
3. The Commissioner requires no steps to be taken.

Background

4. Following a motor vehicle accident on 4 April 2010, the complainant submitted a claim against the Council's insurance. This claim was rejected by the insurance company. The complainant subsequently made a complaint in August 2010 about the handling of his claim and the service he received from the Council. He also, at this stage, made a request to the Council under the FOIA. His complaint was not upheld.
5. The complaint went through three stages with each stage not upholding the complaint. The request had the clock stopped pending the complainant's clarification which was not provided and a request for the initial five questions to be withdrawn. The Council has argued that its

responses to both the initial request and subsequent Subject Access Requests provided much of the information latterly requested by the complainant in the requests in question in this investigation.

6. The complainant also made a complaint to the Local Government Ombudsman who declined to investigate as it was a matter for the courts and beyond its jurisdiction. Since then, the complainant has taken the matter to the Small Claims Court (and is awaiting a date for the hearing).

Request and response

7. Between the 2 October and 14 November 2013 the complainant made the following requests to the Council (the Notice records in bold the dates these requests were made):
 1. *"Please send me a copy of LBHFs insurance claims policy in force at the time (or other document) that confirms council employees are tasked with preparing insurance claims against their employer."* **(2 October)**
 2. *LBHF's Data Protection policy* **(26 October)**
 3. *LBHF's insurance claims policy in force at the time of my claim* **(26 October)**
 4. *Please therefore supply a full comprehensive breakdown of complaints, correspondence and accidents concerning the location.* **(26 October)**
 5. *[Named individual] states LBHF carries out "reactive" work on the location. Please disclose details of what correspondence LBHF has been 'reacting' to regarding the location, if not complaints.* **(26 October)**
 6. *Please also disclose LBHF's insurance claims spread sheet (with personal data redacted) and details of your Enquiries and Complaint's System (ECS) pertaining to the location.* **(26 October)**
 7. *Please also supply details of all call-out reports and repair works for the location, including details of what prompted the call out or repair.* **(26 October)**
8. *On 8 September 2010 I requested the following from [Named individual]:*

How many times requests for compensation for damage to vehicles have been made, what percentage of requests are met, how many are

denied, what legal action has been taken and the results of those legal claims. I have yet to receive a response from [Named individual]. Please disclose this information or state which exemption you are applying under the act. (26 October)

9. *Please therefore disclose internal training documents or policy details and protocols concerning the role and responsibility of LBHF's insurance officers. (14 November)*
 10. *Please therefore disclose all emails and correspondence concerning the problem of residents having access to emergency service keys for the location and concerning vehicles driving into the bollard. (14 November)*
 11. *Please also disclose all financial records pertaining to insurance claims at LBHF. (14 November)*
 12. *Please also disclose written responses to all insurance claims made to LBHF from the insurance claims department. (14 November)*
 13. *Please also disclose details of all court action taken against LBHF for road traffic accidents. (14 November)*
 14. *Please also disclose all details of all complaints made against LBHF for the previous five years. (14 November)*
 15. *Please also disclose all internal emails sent and received by LBHF's insurance claims department." (14 November)*
8. The Council responded on 25 November 2013 and stated that the requests were vexatious. As such it applied section 14 of the FOIA.
 9. The Council carried out an internal review and responded on 10 January 2014. In this response the Council provided a context of its handling of the complainant's requests:

"H&F identified and logged 13 new RFIs [requests for information] which were received from you between 02 October 2013 and 14 November 2013 as part of your correspondence with the Information Management Team in relation to your complaint about H&F's handling of your subject access request [...]

Some of these 13 RFIs appeared to be a resubmission of RFIs which you had previously submitted to H&F in 2010 and were you were dissatisfied with the way that they were processed by H&F in 2010. Given the length of time which has passed since your RFIs were processed in 2010, H&F did not conduct an internal review into how the

RFIs from 2010 were processed but instead logged these as new RFIs [...] H&F responded to these 13 new RFIs on 25 November 2013..."

The Council went on to uphold its application of section 14.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. During the investigation of the case the Council informed the Commissioner that it was also applying section 14(2) to questions 1 to 5, and question 7, on the basis that these were repeated requests.
12. The Commissioner has investigated whether the Council is entitled to rely on section 14 of the FOIA to refuse to comply with the complainant's requests.

Reasons for decision

Section 14 – vexatious requests

13. The Commissioner has first considered the application of section 14(1).
14. Section 14(1) of FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
15. In determining whether a request is vexatious, the ICO believes that the key question which public authorities need to consider is whether complying with the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where it is relevant, public authorities will need to take into account wider factors such as the background and history of the request.
16. In particular in this case the Commissioner will consider the following indicators:
 - Burden on the authority
 - Frequent or overlapping requests

- Disproportionate effort
 - Whether there is an obvious intent to obtain information
17. The threshold for when a request is considered to be vexatious need not be set too high and it is not a requirement for all categories to be relevant to a request. However, where the request falls under only one or two categories or where the arguments sit within a number of categories but are relatively weak, this will affect the weight to be given to a public authority's claim that section 14 of the FOIA is engaged.
18. The Council's arguments as to why it believes the request is vexatious and the Commissioner's observations are outlined below, under the relevant headings.

Burden on the authority

19. The Council stated that if section 14(1) of the FOIA was not relied on, section 12 of the FOIA would be invoked. It argued that the requests were "*enormously broad and wide reaching.*" The Council added that the cost of complying with the request would be prohibitive and in excess of the 18 hours or £450 appropriate limit.
20. The Council argued that the complainant's continued frequent correspondence, including a SAR, must also be taken into account when considering the burden the complainant is placing on the authority.
21. The Council provided the Commissioner with a chronology of all the requests and complaints the complainant had made against the Council together with a summary of the response the complainant received and the outcome. This information illustrates the breadth of the complainant's requests.

Frequent or overlapping requests

22. The Council explained that this was a fair description of this request as all questions were received as part of the complainant's correspondence with the Council's Information Management Team. This was whilst they had been conducting its internal review. It added that to date the complainant's letters on this subject continue.
23. The Council argued that in this case the complainant had already been provided with most of the information he had requested, where his questions are not repeated they would result in the Council utilising a disproportionate amount of resources.

24. The council stated that the complainant had received sufficient information from the Council to assist him in this in 2010 and his subsequent SAR provided him with further information. However, the complainant had submitted new requests containing many repeated questions from 2010 which in the council's view, demonstrated that he is improperly using the council's formal procedures set up under the FOIA.

Disproportionate effort

25. The Council stated that the matter the complainant is pursuing is relatively trivial. It provided written evidence (listed below) from the complainant which in the Council's view implies that it is an intentional tactic employed by the complainant to coerce the Council into paying his claim.

"My claim is £484.96. It has likely cost LBHF twice this amount already in time and effort with correspondence, Freedom of Information Requests and Subject Access Requests."

"This is now costing LBHF thousands of pounds instead of just £484.96. For what? I suggest the most sensible course of action is for LBHF to settle for the amount I've claimed."

26. The Council explained that the complainant's decision to revive the issue and subsequently waste Council resources, is in the Council's view the complainant's attempt to blame the Council with an approach akin to *"this is your own fault for not giving me what I want."* The Council considers this to be an example of vexatious behaviour.

No obvious intent to obtain information

27. The Council is of the view that the above complainant's letters demonstrate that his requests are an attempt to harass the Council. It added that the vast majority of the information he had requested, such as *"all complaints made against the Council for the previous five years"*, would have no relevance to him or his case. The Council stated that the majority of the requests have no serious purpose.

Complainant's submissions

28. The complainant argued that the Council had not reviewed his request but stated that his review is not upheld, without providing any reason,

explanation or evidence that the Council had conducted an investigation. He recapped his request:

"I hit a road obstruction in 2010 and asked for information to support my insurance claim against the Council. They didn't disclose and the request 'lapsed'.

In 2013 I obtained new information which suggested I should take Hammersmith to the Small Claims Court. I took legal advice on this new information and was advised to proceed.

So last year I resubmitted the lapsed request and Hammersmith now claim this request to be vexatious."

29. The complainant explained why in his view the requested information is useful. He stated that road-obstruction insurance claims hinge on whether local authorities were negligent in maintaining the highway to the standard required under statute. He added that the information is helpful to claimants as it allows them to ascertain whether or not a local authority has been negligent, which he believes, could avoid unnecessary legal action.
30. The complainant further explained that if the Council has not been negligent maintaining the highway, it is in its interest to disclose the information to avoid legal proceedings. He argued that disclosure of this information is in the public interest as it allows negligent local authorities to be held to account by local residents.
31. The complainant argued against the suggestion made by the Council that he is harassing the Council's departments and employees with erratic requests. He stated that *"when the correspondence is read in full, it is clear I have been passed round and round in circles by LBHF employees."*

Are the requests vexatious?

32. The Commissioner has considered the points made by the Council and its reasons to refuse the requests for information. The Commissioner has noted the chronology of all the complainant's requests /complaints against the Council and the summary of the responses the complainant received along with the outcome.
33. The Commissioner is of the view that the request does not have a serious purpose or value. He acknowledges that the complainant has made a number of requests since August 2010 in addition to continued frequent correspondence on this subject matter. The Commissioner

would consider this to be voluminous amount of requests for information on the same subject.

34. The Commissioner accepts that a number of the complainant's correspondence have covered issues previously discussed and responded to by the Council. He notes the complainant's behaviour in making requests to the Council which whilst not too numerous, they have been wide ranging and (arguably) repetitive and demanding on resources. He also notes that the majority of the information requested would have no relevance to the complainant or to his case.

Conclusion

35. Taking into consideration all of the above details, the Commissioner is satisfied that the Council correctly applied section 14(1) in this case. As such he has not gone on to consider the application of section 14(2).

Right of appeal

36. 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

37. 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.
38. 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

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