

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2015

Public Authority: Chester West and Chester Council

Address: Floor 2, HQ Building
58 Nicholas Street
Chester
CH1 2NP

Decision (including any steps ordered)

1. The complainant has requested information relating to the transfer of land at Butchers Stile Playing Fields to Davenham Parish Council. Cheshire West and Chester Council has applied section 14(1) of the FOIA to the complainant's request on the basis that it is vexatious.
2. The Commissioner's decision is that the Council has properly applied section 14(1).
3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. On 11 October 2014, the complainant wrote to Cheshire West and Chester Council ("the Council") and requested information in the following terms:

"Official records, and your responses to my research of 2012, confirm your Council having stolen a large area of Butchers Stile Playing Fields, land owned by the Parish Council since 1955, HM Land Registry confirmed the theft. In November 2012 and as a result of my complaints Maria O'Neill, your Council's property Manager, wrote to Davenham Council, brokering a Try Party [sic] deal which would see that part of Butchers Stile her Council had stolen returned to the Parish Council on condition that it agreed to gift free of charge to Weaver Vale

Housing Trust Ltd that Part of Butchers Stile Playing Fields the Trust had stolen from it in 2012 – the Parish Council agreed.

Please confirm the exact date your Council returned the land to the Parish Council via HM Land Registry, and please provide me copy of all correspondence your Council exchanged with HM Land Registry when organizing the return of the land."

5. On 10 November the Council provided its response to the complainant's request. The Council informed the complainant that it was refusing his request in reliance on section 14(1) of the FOIA, advising him that his request was vexatious and likely to cause a disproportionate or unjustified level of disruption to the Council and irritation or distress to its officers.
6. The Council's refusal notice made reference to language used by the complainant in his previous correspondence, which had suggested that he treats his requests for information as a game and that the Council's responses provide excellent entertainment to him and his colleagues. The Council stated that it had reviewed this request in the context of the complainant's previous contact. The Council's experience had shown that the complainant would not be satisfied with any response it issued and that he would likely submit numerous follow-up requests or enquiries. The Council referred to the decision of the First Tier Tribunal decision in '*Information Commissioner v Devon County Council & Dransfield*' and to the complainant's previous requests under references 2198439, 2198389, 2198332, 2199063 and 2198493.
7. The Council confirmed its position is that the complainant's request is harassing and obsessive and that it imposes a significant burden on the Council. It asserts that the complainant's use of the information access legislation is manifestly unreasonable and that responding to this request would impose a disproportionate burden on the Council, resulting in a detrimental impact on its resources.

Scope of the case

8. The complainant contacted the Commissioner on 10 November 2014 to complain about the way his request for information had been handled.
9. In this notice the Commissioner has set out his decision concerning the Council's application of section 14(1) of the FOIA to the complainant's request.

Reasons for decision

10. Under section 14(1) of FOIA, a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
11. 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.
12. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess 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) and harassment or distress of and to staff.
13. However, the Upper Tribunal also cautioned 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).
14. 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.
15. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his

¹ UKUT 440 (AAC) (28 January 2013)

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.

Background information

16. The Council has provided the Commissioner with the following information in order to give him some background to the complainant's request:

"Since around 2010 [the complainant] has been in correspondence with the Council, its officers and members and other third parties on issues concerning land ownership at Butchers Stile Playing Fields. He has also corresponded on other matters. As repeated in his request, as well as making enquiries and seeking information, he has made allegations of fraud and corruption involving the Council, Davenham Parish Council and Weaver Vale Housing Trust. He has made allegations against individuals, including Council officers and Members alleging unlawful conduct. In a 22 month period between July 2012 and May 2014 there were over 2,400 emails received and over 1000 items of correspondence from [the complainant]. Since 2011 the Council has dealt with around 90 requests for information, a large amount of which were subsequently subject to internal review. Since 1 January 2015 the Council has received 20 items of correspondence from [the complainant].

Allegations of corruption and conspiracy have been (and continue to be) published on websites and bulletins published by [the complainant]."

17. To manage the volume of correspondence generated by the complainant the Council has put in place 'special measures'. These require the complainant to use a single point of contact. The complainant has challenged this approach and has submitted a complaint to the local Government Ombudsman about it.
18. The Commissioner understands that the Ombudsman's decision of 5 February 2013 was that the Councils decision to use a single point of contact did not constitute maladministration.

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

19. On 7 December 2012 the Council provided the complainant with a summary of information concerning the ownership of land at Butchers Stile Playing Fields. This information gave details of ownership of the various parcels of land.
20. On 27 June 2014 the Council shared an independent report with the complainant. This report concerned the complainant's allegations of fraud and corruption in respect of land at Davenham. The report concluded that there were no further avenues to be investigated and the matter was considered closed.

The Council's position

21. The Council is satisfied that it has already provided the complainant with all the information it holds in respect of the title deeds and ownership of the land at Butchers Stile Playing Fields. It has informed the Commissioner that the sports field was previously registered to the Council as part of the title number CH494148. This was removed on 25 March 2013 and is now shown as being unregistered.
22. The Council has advised the complainant that enquiries about registered land should be made to HM Land Registry.
23. The Council advised the Commissioner that its decision to apply section 14 to the complainant's request of 11 October was based on the long history of excessive and burdensome correspondence from the complainant and on the efforts the Council has made to provide him with information, explanations and assistance. The Council maintains that this work has caused a significant detrimental impact on the Council in terms of the time and resources it has been required to spend in dealing with the complainant's requests and enquiries.
24. The Council believes it would be disproportionate to supply the complainant with the information he seeks in this request. It considers that the information would confirm the current ownership of the land in question and the complainant would not be satisfied by this information. In the Council's opinion, complying with the request would simply fuel the complainant's further demands and his continuing harassment of Council staff.
25. In the Council's opinion complying with this request would place a disproportionate burden on the Council in terms of its staff and resources, taking into consideration the inherent nature of dealing with land ownership issues.

The Commissioner's conclusions

26. The Council's application of section 14(1) of the FOIA is based on the issue of proportionality; where answering the substantive request would be unreasonable and onerous.
27. Based on the evidence which the Council has provided to the Commissioner, it is abundantly clear that the Council has already spent a great deal of time and resources in dealing with this matter with the complainant. Consequently, the Commissioner easily finds that the complainant's request would place a significant burden on the Council.
28. On its face, the burden placed on the Council by this request is not great. However, it is clear to the Commissioner that the request cannot be considered in isolation from those made by the complainant previously, which have also concerned the land at Butchers Stile Playing Fields.
29. The request is self-evidently part of a pattern of requests made by the complainant about this specific piece of land. There is clear evidence that the complainant is mounting a sustained campaign against the Council in respect of alleged wrong-doing.
30. This campaign has involved a significant volume of correspondence from the complainant which has been sent with unreasonable frequency: It has generated a number of complaints against members of the Council and its staff and, in the Commissioner's opinion; these have had the effect of causing unnecessary harassment to the Council.
31. The Commissioner does not dispute that the information sought by the complainant has some value. Nevertheless he is minded to accept the Council's assurance that it has provided the complainant with as much information as it possibly can in respect of the specific piece of land.
32. The Commissioner is mindful that the Council has already considered a significant number of information requests raised by the complainant in respect of Butchers Stile Playing Fields. It has spent a significant amount of time, effort and resources in dealing with the complainant's requests and the cumulative effect of these requests has now past the point of where requests on this same issue are excessively burdensome.
33. The Commissioner is mindful of the judgment of the Upper Tribunal in *Wise v The Information Commissioner (GIA/1871/2011)*. In that case, the Tribunal stated:

"...there must be an appropriate balance 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."

34. In view of the above, the Commissioner has decided that the Council has correctly applied section 14 to the complainant's request.

Right of appeal

35. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

36. 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.
37. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF