

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2015

Public Authority: Brighton and Hove City Council

Address: Hove Town Hall
Norton Road
Hove
BN3 4AH

Decision (including any steps ordered)

1. The complainant has requested the details and qualifications of a surveyor who determined that the soundproofing of his flat is appropriate.
2. The Commissioner's decision is that the Council is entitled to rely on section 14 of the FOIA as the grounds for refusing to comply with the complainant's request. He finds that the information of a very limited value to the wider public interest and that the request represents an attempt to pursue a complaint in a matter where the local Government Ombudsman has already determined the Council has no responsibility.
3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. On 3 April 2014, the complainant wrote to Brighton and Hove City Council ("the Council") and requested the 'details and qualifications of a surveyor referred to in a letter from the Council dated 2 April 2014.
5. On 30 April 2014, the Council issued a refusal notice to the complainant in which it refused to comply with his request in reliance on Section 14 of the FOIA. The Council provided the complainant with a chronology of requests he had made previously concerning his property from October 2012 to the date of this substantive request. The Council advised the complainant that his request had now become burdensome in nature and unreasonably persistent.

6. On 17 November 2014 the Council wrote to the complainant to advise him that it had re-examined its decision. The Council concluded that it was satisfied it was right to treat the complainant's request as vexatious for the reasons cited in its refusal notice.

Scope of the case

7. The complainant contacted the Commissioner 18 November 2014 to ask him to investigate the Council's refusal of his complaint.
8. This notice is the Commissioner's decision in respect of the Council's application of section 14 of the FOIA.

Reasons for decision

Section 14 – vexatious requests

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. There is no public interest test.
10. 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.
11. 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) harassment or distress of and to staff.

¹ UKUT 440 (AAC) (28 January 2013)

12. 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).
13. 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.
14. 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 Council's position

15. The Council informed that Commissioner that the complainant has been in dispute with the Council since 2003, when he first moved to his current address.
16. The request in this case has flowed from a complaint made by the complainant about the soundproofing of his flat, and in particular, to an assessment made by a surveyor which found the works carried out by the Council to be adequate.
17. The Commissioner understands that the complainant holds the belief that the work carried out by the Council is inadequate and that he requires the Council to undertake further work to soundproof his property.

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

18. The Council has informed the Commissioner that the complainant has written to various council officers and individual Councillors over the past 11 years about this matter.
19. The Council asserts that the complainant will immediately respond to the Council's responses and that he will copy his responses to up to twenty members of its staff on the basis that he has had some dealing with him in the past, whether or not the issue is of relevance to those staff.
20. In 2007 the complainant made a complaint to the Local Government Ombudsman. The Council provided the Commissioner with a copy of the Ombudsman's final decision of 8 August 2007 which was made following her investigation: The Ombudsman found that there was no significant maladministration on the Council's part and that there is nothing to require the Council to undertake any additional investigation in respect of the complainant's concerns. The Ombudsman found that the Council has no duty to assess the complainant's property in terms of noise.
21. To support its application of section 14, the Council referred the Commissioner to its refusal letter, sent to the complainant on 30 April 2014, and in particular the Council drew his attention to the table documenting the requests the complainant had made since 10 October 2012.
22. The table illustrates that the complainant has made twenty requests under the FOIA since October 2012: All of the complainant's requests concern information relating to the complainant's own address – to works carried out at the property, details of contractor's qualifications and insurance policies associated with contractor's work.
23. Of the twenty requests made during this period there were only two occasions when the complainant asked the Council to review its response/decision.
24. In addition to his information requests, the complainant has also submitted complaints about individual members of staff who have disagreed with his assertion that additional soundproofing work should be carried out by the Council.

The Commissioner's conclusions

25. The Council's application of section 14(1) of the FOIA is primarily based on the issue of proportionality; where answering the substantive request would be unreasonable and onerous.
26. Essentially, the Council considers the matter of the soundproofing of the complainant's flat is settled, and that the information sought by the complainant is of very limited value. It is the Council's position that

complying with the substantive request would be unnecessarily burdensome.

27. The burden placed on the Council by this request is, on its face, not great. However, it is clear to the Commissioner that the request cannot be considered in isolation from those made by the complainant previously.
28. The request is self-evidently part of a pattern of requests, made by the complainant since October 2012 with regular frequency. In making his requests, the complainant is clearly endeavouring to pursue a dispute with the Council on a single and essentially personal issue. He is seeking to establish the Council's liability regarding the soundproofing of his flat: To do this the complainant is utilising the statutory provisions of the FOIA. In addition to this, the complainant has pursued his complaint by referring the matter to the Local Government Ombudsman.
29. The Commissioner must have regard to the Ombudsman's unambiguous conclusion: The Council does not have a duty to re-inspect the complainant's property in respect of the level of soundproofing.
30. In the Commissioner's opinion it follows that it would be unreasonable for the complainant to pursue this matter further by way of his request under the FOIA. Even if the Council was prepared to comply with the complainant's request, the information the Council might provide would not further the primary purpose of his complaint.
31. The Commissioner considers that the information sought by the complainant is of very limited value to the wider public: It is even questionable whether knowledge of a surveyor's details and qualifications would be of any significant value to the complainant himself.
32. In the Commissioner's opinion it is only necessary for the Council itself to be satisfied that its surveyors are properly qualified to undertake the tasks they are charged to perform. Put simply, the details and qualifications of a surveyor is not information which will serve the greater public interest.
33. The Commissioner is mindful that the Council has already considered a significant number of information requests raised by the complainant in respect of his property. It has spent a significant amount of time, effort and resources in dealing with the complainant's requests and the cumulative effects of these requests has been to require the Council to go over 'old ground' and to spend even more time and resources on an issue which has been dealt with.

34. The Commissioner can adduce little merit in requiring the Council to revisit this issue, particularly in view of the Local Government Ombudsman's conclusion.
35. He finds that the information sought by the complainant is of limited value to the wider public and that the disruption caused by the request to the Council's normal administrative burden has become out of proportion.
36. 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.”
37. 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

38. 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

39. 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.
40. 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