

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 July 2015

**Public Authority:** Blackpool Borough Council

**Address:** Town Hall  
Blackpool  
Lancashire  
FY1 1GB

#### Decision (including any steps ordered)

---

1. The complainant has made a request to Blackpool Borough Council ("the council") for information relating to a project funded by the European Regional Development Fund ("the ERDF"). The council refused the request under the exclusion provided by section 14(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly refused the request under section 14(1). However, in failing to provide a refusal notice within the time for compliance, the council breached section 17(5).
3. The Commissioner does not require any steps to be taken.

#### Request and response

---

4. On 23 October 2014 the complainant wrote to the council and requested the following:

*Reference here is made to Blackpool Council's published and public policies. According to the Council's "Data Protection Act - Council Policy" created on behalf of Blackpool Council ( ICT/0008/01, August 2013, Authorised by [redacted name] ICT (Information Guidance) I ask a question regarding the following entry:*

*That "In Compliance with the Data Protections Principles" "To*

*enable it to fully comply with the DPA", Blackpool Council will:  
"Follow the Council's published Corporate Retention Schedule"*

*The Corporate Retention Schedule is publicly information, published at:*

*<https://www.blackpool.gov.uk/Your-Counci...>*

*Issue Date 05/10/04, Version/Issue Number 1.2, Effective From Date 7 February 2005*

*According to Page 70 (and associated pages) this Corporate Retention Schedule, Blackpool Council retains ERDF (European Regional Development Fund) records for a period as follows (required by EU Directive), as well as for Audit purposes.*

*"Minimum 3 years after final payment of the programme is made to UK Government BUT...Currently to be kept until 31/12/2025 or until destruction date is advised.*

*Note: Do not destroy without first receiving confirmation from The North West Development Agency (or any successor body or CLG) that the 2007-2013 Programme has officially closed."*

*This retention and disposal schedule covers:  
Project Documentation including:*

- *Project bids*
- *Project briefs and business cases*
- *Project logs, risk logs etc.,*
- *Invoices*
- *Banks Statements*
- *Bank Reconciliation records*
- *Salary allocation (incl. Timesheets)*
- *General records and client files*
- *Partner Organisation records*
- *Public Funding records*
- *Paper Records (MUST BE ORIGINALS)*

*I require access to the specific project records and finances created for the following Project:*

*I-CAN (Interactive Community Access Network) ; Final Report 2008;  
Project Closure 2009 Closure Audit 2010, GONW 5220 EUR,  
Interactive Community Network Project 18*

*I require access to the project progress reports (as they were  
originated complete) and financial reports (as reported and  
officially signed, including match funding). This documentation is  
all part of the original paper records.*

5. The council requested clarification on 21 November 2014 on whether the complainant wished to inspect or be provided with copies of the information.
6. The complainant replied on 21 November 2014, and confirmed that he wished to inspect the information.
7. The council provided a substantive response on 9 December 2014 in which it refused the request under section 14(1).
8. The complainant requested an internal review on 9 December 2014.
9. The council provided the outcome of this on 19 December 2014. It maintained its position.

### **Scope of the case**

---

10. The complainant contacted the Commissioner on 2 January 2015 to contest the council's response. Specifically, he disputed the council's refusal under section 14(1).
11. The complainant has also contested that the council officer who handled the request held a conflict of interest. However, neither the FOIA nor the relevant Codes of Practice provide terms relevant to this, and as such this matter falls outside the Commissioner's jurisdiction.
12. The Commissioner therefore considers the scope of this case is the determination of whether the council has correctly applied section 14(1) to refuse the request.

### **Reasons for decision**

---

#### **Section 14(1) – Vexatious requests**

13. Section 14(1) states that:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."*

14. The Commissioner has recently published new guidance on vexatious requests and for ease of reference, this can be accessed here: <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>
15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

#### The complainant's position

16. The information that the complainant has requested relates to a project titled the 'Interactive Community Access Network' (or "I-CAN"), which was undertaken by the council following funding gained from the ERDF.
17. The complainant has advised the Commissioner that he was a former employee of the council, and had direct involvement in the project, which he has since been asked to assist in replicating for a third party. The complainant has also alleged that financial mismanagement took place on the original project, and has detailed that he is currently assisting a councillor and ERDF auditors in their investigation of this.

#### The council's position

18. The council believes that the request holds limited serious purpose or value, and has in particular referred the Commissioner to the two different reasons that the complainant has stated are the purpose for his request. Namely that the information is needed to enable him to advise a third party on a similar project, and that it is also needed to investigate the alleged mismanagement of the ERDF funding.
19. The council believes that these conflicting reasons indicate limited serious purpose or value for the request. The specific ERDF funding accessed for the project is no longer available, and as such the council does not perceive that the information holds any discernible value for current projects. The council has also confirmed that the live project was audited by the council's Internal Audit Service, and that it has since been referred by the Chief Executive to be further audited by a senior

officer outside the council's ICT service, with no mismanagement being identified.

20. Additional to this, the council considers that compliance with the request would cause a significant burden, as the information is unstructured and likely to be held across 41 folders currently within council archives, and would require a manual search by council officers to identify relevant information. The council has also advised that significant resources would also be required to facilitate the inspection sought by the complainant, which the council considers would require the involvement of two council officers so that any requested photocopying could be undertaken without documents being left unsupervised.
21. Related to the perceived burden, the council has also directed the Commissioner to correspondence from the complainant following the council's internal review. In that correspondence the complainant proposes that there is no need to consider any redaction of specific information due to his prior knowledge of the full content, and that he is able to extract the relevant information independently; meaning that any arguments for disproportionate burden are not valid. The council considers that the complainant does not understand that his request for information has been made as a private individual under the terms of the FOIA, and that his previous role within the council does not provide an enhanced right to the information requested.

#### The Commissioner's analysis

22. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be refused on vexatious grounds, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
23. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the purpose and value of a request outweighs the impact that the request would have on the public authority's resources in providing it.

*The purpose and value of the request*

24. Having referred to the submissions of both parties, it is clear to the Commissioner that the complainant holds concerns about the mismanagement of funding provided by the ERDF, and has also communicated with a councillor on this particular matter. The Commissioner considers that there is a strong public value in ensuring that public monies are managed properly and with due oversight. However, in the circumstances of this request, it is clear that the project and its funding have been subject to audit by the council on several occasions, and there is no evidence available to the Commissioner that supports the complainant's allegations. Neither is there any visible evidence that suggests an investigation is being undertaken by ERDF auditors.
25. The complainant has also suggested that the purpose for his request is to understand how the project could be replicated, as he has been asked by a third party to provide advice on a similar project. However, the council's position is that the project would be of limited use to any current or future projects, due to the specific ERDF funding no longer being available.

*The burden upon the council*

26. It is evident to the Commissioner that compliance would entail considerable costs for the council, both in retrieving the information for disclosure, and organising an inspection by the complainant. Whilst the Commissioner has noted that the complainant may have privileged knowledge of the information from his prior employment, he does not consider that this lessens the arguments proposed by the council. The terms of the FOIA do not allow for limited disclosure, and should the council provide complete access to the entirety of the unstructured information to one individual under the FOIA, this would by default equate to full public disclosure.

*Conclusion*

27. The Commissioner considers that there is a strong public interest in transparency for information requests relating to the use of public monies. However, in the circumstances of this case he has identified that compliance with the request would place significant burden upon the council, which would need to divert public resources to retrieve and prepare held information for disclosure.
28. In such situations, the Commissioner must consider whether there is sufficient value in the request to warrant the diversion of public resources. In the circumstances of this case, the Commissioner has

considered the supporting factors provided by the complainant, including the intended replication of the project by a third party, and the allegations of financial mismanagement within the original project. Whilst these factors have been considered, it is reasonable for the Commissioner to consider that any third party interested in replicating the project would already have access to formal support from the ERDF, without recourse to the FOIA by an individual acting in a private capacity. There is also no evidence to support the complainant's allegations about mismanagement, and it is again reasonable for the Commissioner to conclude that any further audit or investigation would be undertaken by the proper national or European authority, rather than an individual in a private capacity. Whilst the Commissioner has noted that the complainant has been in communication with a councillor as part of his concerns, and that this councillor may also be seeking held information, it remains clear that the complainant was the requester, and the interests of another individual cannot be considered in a determination on this case.

29. Having considered the above, the Commissioned has concluded that the request does not hold sufficient value to justify the diversion of public resources that compliance would require, and that the council was therefore correct to apply section 14(1) to the request.

### **Section 17(5) – Provision of a refusal notice**

30. Section 17(5) requires that where a public authority is relying upon a claim section 14(1) applies, it must give the applicant a notice stating the fact within twenty working days following receipt of the request.
31. In this case, the Commissioner has identified that the council provided its refusal notice outside of 20 working days, and as such breached the requirement of section 17(5).

## 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: 0870 739 5836

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)

33. 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.
34. 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**