

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2015

Public Authority: Darlington Borough Council
Address: Town Hall
Darlington
County Durham
DL1 5QT

Decision (including any steps ordered)

1. The complainant has made a request to Darlington Borough Council ("the council") for information relating to 'bedroom tax'. 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).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 12 December 2014 the complainant wrote to the council and requested the following:

"1, Please send me a copy of the procedure the council followed in assessing my property for bedroom tax purposes?"

2, As the process for deciding how many bedrooms my property has rests with the HB decision maker please tell me the council's formal definition of what is a bedroom?"

3, Please advise me of the council's working definition of the term 'bedroom'?"

4, Please advise where in the council's written decision making policy on the bedroom tax says it will refer my case to the Rent

Officer Service?

5, Please advise how many of the bedroom tax decisions in Darlington were decided on the basis of a determination from the Rent Officer Service?

6, Please advise on and forward a copy of the council's policy on referring a social housing property to the Rent Officer Service on the basis that my property is unsuitably large as contained in the Housing Benefit Guidance Manual or HBGM at 4.1440?

7, Please advise how your policy differs from if my property was managed by a private landlord and I was a private tenant?

8, Please advise of the council's policy for formally notifying me of the bedroom tax decision?

9, I note the council's letter does not follow the draft letter it was advised to send by the Secretary of State in the A4/2012 Housing Benefit circular. Please advise why this was the case and please supply council minutes of where the form and timing of the notification letter was decided?

10, I note the council's alleged notification letter of your bedroom tax decision does not state that I have a formal right of appeal the bedroom tax decision. Please advise why you maintain this is a lawful notice and not a deficient one?

11, I note an alleged notification letter from the council purporting to notify me of your bedroom tax decision was issued before 1 April 2013 and despite the Secretary of State guidance in the A4/2012 Housing Benefit circular stating it cannot be sent until after the bedroom tax policy comes into effect. Please advise why this was the case and please advise whether you maintain this to be a deficient notice. I further request a copy in writing of the minutes of any council meeting where this was agreed?

12, Please forward a copy of the council's policy for the bedroom tax where an alleged bedroom measures less than 50 square feet or its metric equivalent?

13, Please advise by return a copy of the council's written policy for bedroom tax purposes where an alleged bedroom is less than 70 square feet or its metric equivalent?

14, Please advise of the councils written bedroom tax decision

making policy for an alleged bedroom size of between 50 and 70 square feet or its metric equivalent?

15, Please advise how if the council's policy on bedroom size for determining whether a social property has a bedroom differs from its policy for a private tenant in a private property?

16, On March 12th 2013 the exemptions for bedroom tax purposes were changed by the Secretary of State to allow an extra bedroom for an approved foster carer and the parents of a soldier, then please advise how and when you reassessed my claim due to this regulatory change. If the council did not reassess my claim after this change please advise how you know my household does not contain an approved foster carer or a soldier. Further advise by return whether you have asked or written to me as the tenant whether my household contains an approved foster carer of soldier. If not then please advise how the council maintain it can rely on the decision to reduce my Housing Benefit as a correct decision?"

5. The council responded on 13 January 2015, and refused the request under section 14(1).
6. The complainant requested an internal review on 13 January 2015.
7. The council provided the outcome of this on 29 January 2015. It maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 13 January 2015 to contest the council's refusal of his request made on 12 December 2014. On receiving the council's internal review he confirmed he wished to continue in his complaint.
9. 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

10. 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."

11. 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>
12. 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

13. The complainant has advised the Commissioner that he considers the council is inherently secretive, and alleges widespread corruption within it. As such, he details that he has made prior requests in order to force the council to be open and transparent. In the circumstances of this request, the complainant has referred to needing the information for a Supreme Court hearing, but no further information about this has been submitted to the Commissioner.
14. The complainant, in reference to the previous requests for information that he has made, and has suggested that the council has purposely delayed responses and internal reviews in order to frustrate his wider efforts to gain information.
15. Lastly, the Commissioner is aware from the complainant's submission that he specifically refers to holding a 'grudge' against the council. The Commissioner also notes that the complainant considers "*[...]unless they can show me somewhere in law where it states there is a limit to the amount of requests a person makes and they can then prove them to be frivolous I will stop[...]*".

The council's position

16. The council considers that the request relates to information in respect of a housing benefit decision involving the complainant, and that this represents a personal motive for the request. The council also considers that for the complainant to challenge the housing benefit decision he should follow the formal right of appeal.

17. The council has advised the Commissioner that the request is one of a large volume submitted by the complainant, who has consistently submitted requests since the introduction of the FOIA. Since August 2006, the council has calculated from its records that the complainant has submitted 142 requests, containing 914 individual questions. Of these 142 requests, 20 have been submitted by the complainant between 1 April 2014 and the date of this request.
18. The council has elaborated that there is no consistent subject that these prior requests have focused on, but they are largely connected by theme of alleged misconduct and financial malpractice by the council. In particular, the council considers that the majority have focused on the Children's Social Care Services (on which the complainant has also submitted a number of corporate complaints) and the Complaints and Information Governance Team.
19. The council considers that it has previously responded to requests even in situations where section 14(1) would have been more appropriate. This is because of the complainant's wider complaints against Children's Social Care Services and the council's desire to resolve areas of concern outside the FOIA. As part of the council's efforts, several officers have met with the complainant in person, who has then stated that his intention is to disrupt council services through the submission of complaints and information requests. The council has explained that the complainant's actions are now having a detrimental effect on the Complaints and Information Governance Team, due to his habit of making multiple requests in a short space of time, and then pursuing an internal review for each request.

The Commissioner's analysis

20. 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.
21. 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

22. Having referred to the submissions of both parties, it is evident that the request, when considered in isolation, relates to a personal matter involving a housing benefit decision. As such, the Commissioner considers that any dispute about this matter would need to be referred to the appropriate authority.
23. It has also become apparent to the Commissioner that the request is one of a large volume that has been submitted to the council over a short space of time, and that these requests are typically multipart and seeking different facets of information on one topic, in addition to seeking explanations and reasoning about the council's actions. The subjects of these requests span a broad variety of seemingly unrelated subject matters and areas of council business. The Commissioner is aware of this from having previously considered prior requests by the complainant in decision notices FS50578506, FS50578508, FS50564188, FS50578391, FS50578406, FS50578465, and FS50578495. Having considered the request in context, and the specific submissions provided by both parties, the Commissioner considers it highly likely that the purpose of the request is to purposely disrupt council services.

The burden upon the council

24. It is evident to the Commissioner that the request relates to a personal matter that would need to be considered by the appropriate public authority. Whilst the burden imposed by this request in isolation may not be prohibitive, it is clear that there has been a long history between the council and the complainant which has resulted in a considerable number of information requests being submitted over a short space of time. The council has provided plausible evidence of the cumulative impact on its service provision that the complainant's requests have so far had, and this has also been indicated through the Commissioner's prior investigations for the decision notices cited in paragraph 25.

Conclusion

25. The Commissioner considers that there is a strong public interest in transparency for information held by local public authorities. However, in the circumstances of this case he has identified that the request relates to a personal matter that would need to be referred to the appropriate authority. This therefore limits the value of the request, as the FOIA is not an appropriate way to appeal such matters.

26. The Commissioner is also highly aware that the request one of a significant volume that has been submitted by the complainant since 1 April 2014, and that these requests span a range of varied subjects. The Commissioner has already noted that the complainant has confirmed he holds a grievance against the council, and that he intends to submit requests until these are proven to be frivolous. The Commissioner considers that this admittance by the complainant gives considerable weight to the council's assertion that he is purposely attempting to disrupt the council's business through submitting a large volume of complex requests. The Commissioner considers that submitting requests with such intent is a clear abuse of the statutory rights that FOIA provides, and is satisfied that the complainant's actions are now starting to affect the council's ability to provide a public service. The Commissioner recognises that responding to the request would therefore divert the council's resources from addressing valid requests with public value.
27. Having considered the above, the Commissioned has concluded that the council's identification of the request as vexatious is correct, and that section 14(1) has been appropriately applied.

Right of appeal

28. 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

29. 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.
30. 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
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