

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2015

Public Authority: Councillor David Gabriel
Address: North Huish Parish Council
c/o 3 Sunnyside
Avonwick
TQ10 9LX

Decision (including any steps ordered)

1. The complainant has requested recorded information which relates to North Huish Council's decision not to remove information associated with the complainant from its website and parish noticeboards and to a complaint made by the complainant in regards to this.
2. The Commissioner's decision is that North Huish Parish Council has correctly applied section 14(1) and consequently the Council is not required to respond to the complainant's four requests considered in this notice on the grounds that the requests are vexatious.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

On 19 March 2015, the complainant wrote to North Huish Parish Council on four occasions, and requested information in the following terms:

Email 1:

"Please would councillors provide details as to the complaints that I have brought to council that they feel were 'unfounded'."

Email 2:

"In addition to the list of complaints that council feel are unfounded as stated in the minutes of 3rd March 2015 please would you provide the evidence to back up that statement."

Email 3:

"Please would councillors provide details of the complaints that were brought to council by me and that they feel were 'unfounded'."

"Please would you provide any written letters, statements, legislation, council's correspondence or records supporting as evidence council's conclusion that the complaints listed were unfounded."

"Please would councillors provide details of the 'unreasonable treatment' and 'constant attacks on councillors' in list form with dates."

"Please would you provide any written letters, statements, audio recordings, council's correspondence or records supporting as evidence these listed incidents."

"Please would councillors provide details on what action they took in order to protect councillors so that councillors will not resign."

Email 4:

"Please would you provide me with a copy of Mr Coopers resignation as a parish councillor with North Huish Parish Council."

4. On 21 March 2015, the complainant wrote to the Council to make a further request for information:

"Please would you provide me with the name/s of the persons who approved the Minutes of 3rd March 2015 for public viewing on the parish council website and the noticeboards in the parish."

5. On 13 April the Council issued a refusal notice to the complainant in respect of her requests of 19 and 21 March. The Council informed the complainant that it 'deems these requests to be vexatious' and therefore it is relying on section 14(1) of the FOIA.
6. The complainant wrote back to the Council – also on 13 April, asking to be informed whether it holds the information she had requested and to be told the reasons why the Council considers her requests to be vexatious.
7. On 14 April the Council responded to the complainant's latest email. It informed her of the following: 'When the Council considered your request and deemed it to be Vexatious under Section 14(1) of the Freedom of Information Act 2000, it also decided not to confirm or deny that it holds the information requested or to explain why it considered the request to be vexatious.'

8. On 12 June 2015, the complainant wrote to the Council and asked it to conduct an internal review of its decision to apply section 14(1) to her requests.
9. The Council completed its internal review and wrote to the complainant on 8 July 2015 to advise her of its final decision. The Council informed the complainant that its original decision was the correct one to make and that it would not provide her with further information in respect of its application of section 14(1) of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 14 April 2015 to complain about the way her request for information had been handled.
11. The Commissioner has investigated the Council's handling of the complainant's four requests for information and particularly the Council's refusal to supply any recorded information relevant to those requests in reliance on section 14(1) of the FOIA.

Reasons for decision

12. 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.
13. 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.
14. 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

¹ UKUT 440 (AAC) (28 January 2013)

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.

15. 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).
16. 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.
17. 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 representations

18. The Council has informed the Commissioner that it has been subjected to a series of complaints from the complainant dating back to December 2014. The complaints have been presented in person by the complainant at Council meetings and by email - the Council receiving over 30 emails received in a 4 month period, sometimes between 3 and 5 a day.
19. The Council considers that the complainant's complaints stem from her refusal to accept the reply made by the Council to a question asked in December of 2014 which she has asked in numerous forms.
20. In addition to the correspondences the complainant has sent to this Council, the complainant also written twice to South Hampshire District

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

Council over the alleged breaking of the Council's Code of Conduct by a Councillor.

21. Likewise the complainant has also submitted three complaints to the Information Commissioner. These concern an alleged contravention of the Data Protection Act and two complaints about breaches of the FOIA.
22. In all of the instances referred to above, the complaints made to the Parish Council the decisions have been deemed to be unfounded.
23. Since December 2014, the complainant has accused the Parish Clerk of lying, of having no integrity and of committing some unspecified crime that might be brought out into the open if the clerk failed to do as she requested. These accusations have been referred to the police.
24. The Council asserts that it has been subjected to a disproportionate and unjustified level of disruption by the complainant. It stresses that it has tried to listen to her complaints and to reply to them fairly and honestly.
25. The Council has an "Open Forum" at the start of each meeting when parishioners are able to present matters of concern. The complainant has made use of this forum to voice her concerns and many of her emails have been dealt with under the "Correspondence" section of the meeting.
26. The Council considers it has consistently tried to answer the complainant's questions. Nevertheless the complainant either cannot or will not accept the Council's response and she simply repeats the question.
27. In this case, the information sought by the complainant seems to cover two distinct areas: the reaction of the complainant to the Council trying to deal with her complaints and the letter of resignation of a Councillor from the Council.
28. The Council considers that there is little point in going over the same ground yet again in respect of how it has dealt with the complainant's complaints.
29. In respect of the Councillor's resignation letter, the Council points out that the complainant was present at the Meeting at which the letter was read out. The body of the letter was also written in the Council minutes which the complainant has access to via the Parish Council website and there is nothing in addition to this that the Council can provide to the complainant.
30. The Council has advised the Commissioner that it has reviewed and discussed the request made by the complainant in this case and has

considered the Commissioner's guidance "Dealing with Vexatious Requests (section 14)". Having done this, the Council considers that at least nine of the thirteen indicators of vexatious requests apply to the behaviour of the complainant. These are:

- The request has placed presented the Council with an undue burden.
- It is motivated by what appears to be a personal grudge against the Council's clerk.
- The complainant has used language that goes beyond the level of criticism that a public authority should reasonably expect to receive.
- There has been undue persistence in attempting to reopen an issue that has been comprehensively addressed by the Council.
- The complainant has made unfounded accusations against the clerk.
- The complainant has adopted an unreasonably entrenched position.
- The complainant has made frequent and overlapping requests.
- The matter pursued by the complainant is relatively trivial and requires a disproportionate effort on the part of the Council. The Council points out that it has only 7 members and its precept this year was £1,500: It does not employ any paid staff and the Council's work is carried out voluntarily.
- The complainant's request would serve little purpose in that the information has already been dealt with or is available to the requester. The complainant has made no obvious attempt to obtain the available information and the Council strongly asserts that the complainant already has all the information the Council holds and which she seeks in her four requests above.

31. Weighing all of the factors outlined above, the Council believes that the complainant's four requests are vexatious. The Council asserts that the complainants continued requests and associated complaints demonstrate an abuse of the FOIA Freedom of Information Act 2000 and therefore the complaint considered in this notice is without foundation.

The Commissioner's conclusions

32. The Council's application of section 14(1) of the FOIA is primarily based on the issue of proportionality; where answering the complainant's requests would be unreasonable and onerous and would serve very little purpose.

33. Based on the Council's representations in this case and his consideration of the other complaints brought to him by the complainant, it is clear that the Council has already spent a great deal of time and resources in dealing with this matter with the complainant. The Commissioner has no difficulty in finding the complainant's requests place a significant burden on the Council.
34. On its face, the burden placed on the Council by the complainant's requests considered in this notice is not great. However, it is clear to the Commissioner that these requests cannot be considered in isolation from those made by the complainant previously and must be viewed in the wider circumstances of this case.
35. The requests are evidently part of a pattern of requests and behaviour which focus on her relationship with the Council and there is some evidence that the complainant is mounting a sustained campaign against the Council in respect to her matter.
36. There is evidence of a significant volume of correspondence from the complainant which has been sent with unreasonable frequency – exemplified by the four requests she made which are considered in this notice. In the Commissioner's opinion the volume and frequency of the complainant's correspondence has had the effect of causing unnecessary harassment to the Council.
37. The Commissioner agrees with the Council that the information sought by the complainant is of very limited value: It is sought by the complainant for her own purposes and in the Commissioner's opinion it is of very limited value in terms of the wider public interest.
38. The Commissioner is mindful that the Council 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.
39. In arriving at his decision, the Commissioner has adopted the holistic approach advocated by the Upper Tier Tribunal in the Dransfield case. He is also mindful of the judgment of the Upper Tribunal in *Wise v The Information Commissioner (GIA/1871/2011)*, where 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.”
40. 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

41. 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

42. 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.
43. 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