

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2015

Public Authority: City of London Corporation
Address: Guildhall
London
EC2P 2EJ

Decision (including any steps ordered)

1. The complainant has made a series of requests to the City of London Corporation (CoL). The CoL refused all of the requests on the basis they were vexatious in accordance with section 14(1) of FOIA. The Commissioner considers that section 14(1) was properly applied and therefore the CoL is not required to take any steps as a result of this notice.

Request and response

2. On 20 July 2015 the complainant wrote to the CoL and requested information in the following terms:
 - a) *"In the light of the long housing list and shortage of social accommodation in the City of London, please inform me how many flats in [named estate] are occupied by the police, what houses and numbers, for what specific purposes and who in the CoL did personally authorise such occupation?"*
 - b) *"Over 6 years official CoL complaint procedure have been blocked and as a result, my various complaints have never been acknowledged, investigated and replied to me in breach of CoL regulations and law. I understand that some executive officers of CoL are involved in this breach and cover up to the Town Clerk's Office?"*

Therefore my question is: who personally in CoL did authorize this breach of law and who personally involved in this serious breach? Please provide me with full names and positions of such officers."

- c) *"As until now I do not have any acknowledgement and replies from [named official] in breach of CoL rules and regulations, please inform me full name, position and direct email address of the superior of [named official] for further complaints if necessary.*
- d) *Please send me full information (3 points) as per my email below to which [named official] did fail to reply. I look forward to your earliest acknowledgement, ref. number and reply."* The CoL has confirmed that the full information (3 points) that had been requested was:
- Full name and position of CEO of the Police Committee
 - Email address
 - Direct email address
3. The CoL responded on 27 July 2015 and confirmed that it held the requested information. It considered, however, that it was not obliged to comply with the requests on the grounds that they were vexatious for the purposes of section 14(1) of FOIA. The CoL went on to state that, in accordance with section 17(6) of FOIA, it would not respond to any further correspondence, or similar FOIA requests, from the complainant on these particular or related matters.
4. The CoL explained that where an applicant is unhappy with the way in which it had handled a request, the usual practice would be to follow the CoL's FOI complaints procedure. On this occasion, however, the CoL advised the complainant that any complaint should be made directly to the Commissioner in light of the consideration that had already be given to the requests.

Scope of the case

5. The complainant contacted the Commissioner on 4 August 2015 to complain about CoL's determination that his requests were vexatious and to refuse them on this basis. The Commissioner's analysis of the CoL's application of section 14(1) of FOIA is set out in the body of this decision notice.

Reasons for decision

Section 14(1) – vexatious requests

6. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request if that request is vexatious. Its inclusion within the legislation is designed to protect public authorities from those who abuse, whether wittingly or not, the right to seek information.
7. In *John Lee v Information Commissioner & King's College Cambridge* (EA/2012/0015, 0049, 0085)¹ the First-tier Tribunal introduced section 14 by stating that, along with section 12 which relates to the costs of compliance, it is a tool provided to a public authority for preventing the disproportionate use of the rights available under FOIA, so as to protect their resources from being misused (paragraph 50). A critical point for the purposes of FOIA is that it is the request and not the requester that must be vexatious. Notwithstanding this, a public authority may take into account the history and context of a request when deciding whether the exclusion applies.
8. FOIA does not set out what is meant by a 'vexatious' request. However, the way in which the term should be interpreted was scrutinised by the Upper Tribunal in *Information Commissioner vs Devon County & Dransfield [2012] UKUT (AAC), (28 January 2013)*². The Upper Tribunal found that the term vexatious "in section 14 carries its ordinary, natural meaning within the particular statutory context of FOIA" (paragraph 24). The Upper Tribunal also agreed with the observation of the First-tier Tribunal in *Lee* that the term implies a "manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 69).
9. In accordance with the principles identified in *Lee*, the *Dransfield* judgment established that the concepts of 'proportionality' and 'justification' are fundamental considerations when deciding whether a request can reasonably be classified as vexatious. It therefore follows that the key question for a public authority is whether the purpose and value of a request justifies the distress, disruption or irritation that would be incurred by complying with the request.

¹<http://www.informationtribunal.gov.uk/DBFiles/Decision/i914/20121219%20Decision%20EA20120015,%200049%20&%200085.pdf>

² <http://www.osscc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

10. In the circumstances of the *Dransfield* case, the Upper Tribunal found it instructive to assess the question of whether a request is truly vexatious by considering four wide-ranging 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) any harassment or distress (of and to staff). The Upper Tribunal did, however, also caution that these considerations were not meant to represent an exhaustive list. Rather, the Upper Tribunal 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).
11. With regard to its application of section 14(1), the CoL has argued that the requests impose a disproportionate burden, are unjustifiably persistent and have the sole aim of continuing issues that have long been resolved. It further considers that the complainant's actions are of a harassing nature and are clearly vexatious when viewed in the context of his history with the CoL.
12. At the invitation of the Commissioner, the complainant has offered his own views on why he considers that section 14(1) was incorrectly applied. Firstly, he has highlighted that the requests "are absolutely normal requests". Accordingly, it is the complainant's opinion that the CoL's claim relating to the burden of complying with the requests is flawed. Secondly, he considers that for over 8 years the CoL has not satisfactorily replied to repeated complaints from him and other residents about the management of a particular residential estate. The Commissioner has found it helpful to test the CoL's refusal of the requests against the legislation by considering each of the complainant's arguments in turn.
13. To begin with, the Commissioner has observed that it is not immediately clear that all of the requests are on the same theme or issue. Consequently, this raises the question of whether it would be appropriate to consider the requests as a set. For example, a journalist may make requests on a variety of different subjects to a public authority. In this event, a public authority may be on less solid ground if it chooses either to argue that the requests as a group were indicative, say, of obsessiveness or to refer to the burden generally of complying with the requests. This shares a position with the conditions imposed on a public authority that is considering aggregating the costs of complying with more than one request under section 12 of FOIA; regulation 5(2) of the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004 requiring that the requests which are to be aggregated relate to the same or similar information.

14. The Commissioner has noted that the complainant has not sought to separate out the requests on the basis that they concern essentially different issues. Equally, the CoL considers that the requests all derive from long-standing complaints and should be considered together for the purposes of the application of section 14(1) of FOIA. The Commissioner has accepted this position.
15. Turning to the issue of burden, the Commissioner notes that there is nothing in the requests themselves that suggests they would be particularly difficult to process. Indeed, requests (b) – (d) are noticeably straightforward. This is not necessarily the end of the story, however; a point which is reflected at paragraph 56 and 57 of the Commissioner's guidance³ on section 14(1) of FOIA:

56. A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden.

57. The requester's past pattern of behaviour may also be a relevant consideration. For instance, if the authority's experience of dealing with his previous requests suggests that he won't be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority.

16. CoL has not specifically argued that complying with the requests in question would be burdensome but asserts that the argument must be seen against the backdrop of its previous engagement with the complainant. By way of background, the CoL has explained that a characteristic of its dealings with the complainant is the huge volume of papers that have been generated. The CoL considers that, without exception, there are two features of the correspondence; one is the persistent and repetitive nature of the complainant's requests, and the other is the vexatious nature of the requests. In addition, the CoL has referred to the burden of dealing with formal proceedings instigated by

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

the complainant, the circumstances of which are referred to further on in the notice.

17. The Commissioner has not had sight of all of the correspondence that the CoL has received from the complainant, which the CoL has explained runs to hundreds of documents and are all on a similar theme. Instead, for illustrative purposes, the CoL has provided a selection of the papers that it considers demonstrates the reason for using section 14(1) of FOIA and a summary of the information requests received from the complainant between 2014 and 20 July 2015. These were made on six separate occasions, which includes the date of the requests under consideration. The majority of the requests ask for the names of officials that the complainant believes have some involvement with, or part to play in, his complaints about issues affecting the estate and particularly his place of residence.
18. To evidence the wider pattern of requests, the CoL has also cited over 20 emails that were sent by the complainant following its refusal notice, over half of which were received following the Commissioner's acknowledgement of the complaint made to him about the application of section 14(1) of FOIA. A number of these emails again contained requests for the names of officials that the complainant believed were complicit in blocking the full investigation of his complaints.
19. When considering whether a public authority has complied with the legislation, the Commissioner will normally have to return to the circumstances as they were presented at the time a request was made. This though is not a hard and fast rule, which was a point expressed by the First-tier Tribunal in *Gregory Burke v The Information Commissioner* (EA/2015/0050, 19 September 2014):

15. In his decision notice, at paragraph 22 the ICO, in commenting on submissions made by CCNI noted:- "that some of the supporting evidence provided by the Charity Commission post-dates the requests and must therefore be immediately disregarded." This is a clear error. In deciding whether or not section 14(1) is applicable to a request for information a public body needs to consider all the relevant circumstances. If it reasonably apprehends (for example) that the request is part of a pattern of repeated requests of little value which is likely to continue, then in responding to a subsequent investigation by ICO the existence of subsequent requests may provide a degree of confirmation of the reasonableness of its apprehension. Subsequent events should not therefore be "immediately disregarded" by the ICO in his investigation.

20. Following the approach of the Tribunal, the Commissioner accepts that it may be appropriate to consider the evidence in the round in order to confirm whether a public authority's argument for vexatiousness has

validity. Using the information supplied by the CoL, the Commissioner would agree that the volume of correspondence received is significant. It would seem fair to conclude from this that the management of the correspondence is likely to have required the CoL to divert staff time away from its normal business functions. As stated in the Commissioner's decision notice – FS50548810, 15 December 2014⁴ – from which the *Burke* appeal stemmed, a 'high frequency and volume of correspondence may further weaken the justification for the continued making of requests' (paragraph 18). The Commissioner goes on to say though that 'potentially offsetting the weight of this factor is the seriousness and complexity of the dispute itself and the importance of the requested information.'

21. Although section 14(1) is not qualified by the public interest test, the Upper Tribunal in *Dransfield* expressed the view that it may be appropriate to ask the following question: *Does the request have a value or serious purpose in terms of the objective public interest in the information sought?* This goes to the heart of whether a request is proportionate and justified in the circumstances. A factor in the consideration of where the balance of the public interest lies is outlined at paragraph 61 of the Commissioner's guidance. This states: *If the problems which the authority now faces in dealing with the request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the argument, or its impact upon the public authority, is disproportionate or justified.*
22. It is apparent that the complainant has serious concerns about both the way his complaints to the CoL have been handled and the procedural mechanism used to manage his correspondence about the complaints. The subjects of the core complaints are serious and obviously deeply distressing to the complainant and, as mentioned previously, the complainant altogether rejects the CoL's claim that the complaints have been properly investigated. Furthermore, from the tone of the requests, the complainant is patently frustrated in respect of what he considers to be the CoL's lack of engagement and transparency. It should be noted here that a fractious relationship between an applicant and a public authority does not automatically mean that an arising information request is vexatious and the requests themselves, while critical, do not contain abusive or intemperate language. All of these factors would lend weight to the case against the application of section 14(1) of FOIA.

⁴ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042938/fs_50548810.pdf

23. The Commissioner also recognises, however, that there is a fine line between persistence and obsessiveness. The evidence supplied by the CoL indicates that the requests ultimately refer to either long-standing complaints or a matter connected to a long-standing complaint, all of which have been investigated by the CoL and in some areas by independent third parties, including the Local Government Ombudsman and even the Courts.
24. It is noted that these reviews took place some years before the date of the requests. However, there is nothing to suggest that a fundamentally new issue has evolved, or further evidence come to light, that would justify the continued requests to the CoL. In this regard, it is not within the Commissioner's remit to consider the robustness of these reviews but he would offer that the fact that an applicant is dissatisfied with the outcome of a review is not the same as saying that the review was unsound. This is particularly the case where an applicant has had an opportunity to have his or concerns investigated independently.
25. In the Commissioner's view, one prominent indicator of a vexatious request is where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny. Where, as here, this is the situation, the Commissioner considers that a public authority is entitled to say 'enough is enough'.
26. Although the Commissioner realises the extent of the grievances felt by the complainant, he doubts in any event that compliance with the requests would lead the complainant any nearer to a resolution of these grievances. This is because the requests themselves do not ask for anything probative in respect of his underlying complaints. The Commissioner considers this is important as it significantly weakens the claim that the disruption to the CoL created by the handling of the complainant's correspondence is justifiable. Leading from this observation, the Commissioner considers the pattern of the complainant's contact with the CoL indicates that compliance with the requests would likely only generate further requests and complaints. Again, the Commissioner considers this is a notable factor in the assessment of whether the requests are vexatious.
27. In conclusion, the Commissioner has found that the line between justified persistence and obsessiveness has been crossed. To paraphrase the Upper Tribunal in *Dransfield*, he considers that the requests emphasise the attributes of manifest unreasonableness and a lack of proportionality when the requests are viewed holistically. The Commissioner has therefore determined that the CoL was correct to refuse the requests in accordance with section 14(1) of FOIA.

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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF