

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 March 2016

Public Authority: Wigan Metropolitan Borough Council

Address: Town Hall
Library Street
Wigan
WN1 1YN

Decision (including any steps ordered)

1. The complainant has requested the details relating to the liability orders issued by the Council in respect of unpaid council tax over the last six years. The Council refused the request under section 14(1) on the basis that it was vexatious.
2. The Commissioner's decision is that the request was vexatious and therefore the Council was entitled to refuse the request under section 14(1).
3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. On 16 September 2015 the complainant wrote to the Council via the 'What do they know' (WDTK) website and requested information in the following terms:

"Can you please provide me with the following information under the freedom of information act.

1. The number of Liability Orders obtained by WMBC/WBC/WC for the past six years. Please list the year and the amount for all six.
2. The number of Liability Orders served on the individuals named on

them. This applies to all six years.

3. The location of any Liability Orders that have not been served on the named individuals. This applies to all six years

4. If any Liability Orders have been sold/ traded or transferred to any department within the Local Authority, third party or franchises, could you please list how many and/or the amount gained from the transactions. This applies to all six years

5. Can you please explain what procedures, protocols or safeguards you have in place to ensure that all Council Tax Liability Summonses and Liability Orders are correctly issued to people within the Borough. This would be your Due Diligence. As an example, if you issued a summons to someone who had died, been jailed or moved out of the Borough, what protocols or safeguards would pick up on this?

If any instructions, minutes or transcript of any kind exist detailing any of the above, I would like to see them."

5. The Council responded on 7 October 2015. It stated that the request was vexatious and therefore refused to comply with it under section 14(1). In the circumstances the Council did not offer the complainant an internal review.

Scope of the case

6. The complainant contacted the Commissioner 8 October 2015 to complain about the way his request for information had been handled.
7. The Commissioner considers the matter to be decided is whether the Council was entitled to refuse the request under section 14(1) on the basis that it was vexatious.

Reasons for decision

8. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
9. The term 'vexatious' is not defined in the Act, but based on a number of Tribunal decisions the Commissioner considers that a request will be vexatious if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. He has published guidance which sets

out some of the factors that indicate that a request is vexatious. These are listed below:

- Abusive and aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping request
 - Deliberate intention to cause annoyance
10. It is important to recognise that in applying section 14 it is the request that must be considered rather than the person making the request. A public authority cannot simply refuse a new request on the basis that it has classified previous requests from the same individual as vexatious. However the background and context to the request can provide evidence as to whether any of the indicators listed above exist.
11. The Council has explained that the complainant is one of a number of individuals who it believes are part of a campaign seeking to frustrate the Council's ability to collect council tax by seeking to identify some legal loophole in its procedures. The Council is satisfied that its procedures are correct, legal and carried in accordance with the Local Government Finance Act 1992. The Council's website provides details of those procedures, advice to those who may have problems paying the tax and information about how its appeals procedures operate. In the event that a liability order is served the individual concerned would have the opportunity to challenge the order in court. The Council therefore argues that there are established means through which its administration of the council tax system can be challenged and that it is inappropriate and futile to search for a legal loophole which it says does not exist.
12. To support its position the Council has explained that the complainant has made two previous FOI requests, one contained a thirteen page letter, relating to the Council's legal status and the different names under which he believes the Council operates. The Council considers the complainant is attempting to challenge the legality of any council tax bill, or subsequent legal papers, issued by the Council on the basis of the name used by the Council in such documents.

13. In respect of the Council's contention that the requests form part of an active campaign it has identified a number of FOI requests submitted via the WDTK website by other individuals on similar issues which the complainant has annotated. The Council is not arguing that these individuals are personally known to one another, but that there is sufficient evidence of their interaction on the subject of its council tax procedures to demonstrate they are encouraging one another's efforts and that there is some level of coordination between them.
14. Based on the evidence provided by the Council the Commissioner is satisfied that complainant's latest request is a continuation of his attempts to challenge the legality of the Council's council tax procedures and this forms part of a wider, albeit informal, campaign. The Commissioner notes that being part of a campaign does not mean a request is automatically vexatious; far from it. However it does allow account to be taken of both the value of the purpose pursued by the campaign and the means by which it is conducted, when considering whether a request is vexatious.
15. The Commissioner will now consider the extent to which the complainant's latest request meets any of the factors listed in paragraph 9 which indicate a request is vexatious.
16. The Council has argued that the request is vexatious on the basis of the burden it places on the Council. The Council is not arguing that the request on its own is burdensome. However, it is arguing that the request is burdensome when viewed in the context of the other correspondence the complainant has had with the Council on this subject and when account is taken of the collective impact of the wider campaign.
17. The Council has listed other correspondence from the complainant on council tax issues. There are six such communications. Most of these appear to be in response to the Council's attempts to collect council tax from the complainant and therefore the Commissioner is not satisfied that these entirely support the Council's argument as they may have been generated regardless of his involvement in any wider campaign. However the issues raised by that correspondence do support the Council's argument as to aim of the campaign, ie to challenge the legality of its procedures, including the names used by the Council on bills etc. It is also noted that if, as appears to be the case, the complainant's intention is, in part, to challenge his own council tax bill, the means by which he is choosing to pursue his challenge are not the recognised ones. In some of the correspondence the complainant seeks to bill the Council for services which he claims to have provided the Council. The Commissioner doubts whether the complainant ever believed such a claim would be successful.

18. The Council has also argued that as well challenging the Council's council tax procedures through FOI requests the complainant has raised similar issues through his local councillor. This adds to the weight of the burden imposed by the campaign he is part of.
19. The Council has explained that it had received twenty two FOI requests from those it believes to be associated with the campaign from the beginning of January 2015 to the end of October. Although this may not appear a particularly large figure, it represents a significant proportion of the 1082 that it had so far received in 2015. These requests were made using seven names, but the Council has not ruled out the possibility that some of those requests were made using pseudonyms. If this is the case the number involved in the campaign could be even lower. Over the last five years the Council's council tax services alone has received fifty requests attempting to challenge its legal authority to collect the tax. This gives weight to the argument that a small group are taking up a disproportionate amount of the Council's resources. Added to this is, what the Council calls, a large amount of other communications between the various requestors it council tax service.
20. The Commissioner has considered the volume of requests and other communications generated by the complainant and others associated with the informal campaign. In his experience of regulating FOIA and dealing with complaints about requests refused under section 14(1), he has encountered many examples where the volume of requests and associated correspondence has far exceeded those reported by the Council in this case. Nevertheless, the Commissioner finds that the volumes involved do represent a significant level of activity. However the numbers on their own would not render the request vexatious.
21. Therefore the Commissioner has also considered the nature of the correspondence and the campaign. Although being an informal campaign there is not one set objective, the Commissioner considers it likely that the campaign is seeking a means of challenging the Council's right to collect council tax on an unfounded belief that there exists some legal loophole in the Council's procedures. There are well established means by which individuals can appeal or challenge the council tax bills they are personally liable for when they have legitimate grounds to do so. However the evidence provided by the Council supports the argument that a small group of individuals persist in trying challenge the entire legal authority of the Council to collect council tax. The Commissioner considers that this is evidence that the request shows signs of unreasonable persistence and of being based on unfounded allegations.
22. In conclusion, the Commissioner finds that the request is part of an informal campaign to challenge the legality of the Council's council tax

procedures which collectively places a burden on the Council. The Commissioner accepts the Council's statement that its council tax services operate in accordance with the Local Government Finance Act 1992. Therefore the real value of the campaign must be questioned, particularly when means of challenging individual bills already exist. In light of this the Commissioner finds that the burden and distraction imposed by the request can be considered disproportionate when viewed as part of the wider campaign. The Commissioner is therefore satisfied the request is vexatious and that the Council were entitled to refuse it under section 41(1). The Commissioner does not require the Council to take any further action on this matter.

Right of appeal

23. 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

24. 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.
25. 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

Robert Mehan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF