

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 10 February 2016

Public Authority: Braintree District Council
Address: Causeway House
Bocking End
Braintree
CM7 9HB

Decision (including any steps ordered)

1. The complainant has requested information regarding rent at an industrial estate. The Commissioner's decision is that Braintree District Council has correctly applied the vexatious provision at section 14(1) of the FOIA. He does not require any steps to be taken.

Request and response

2. On 19 May 2015, the complainant wrote to Braintree District Council and requested information in the following terms:

"This is a request under the freedom of information act of 2000, and is a request for the following.

All rent paid by the various tenants of the whole estate recorded individually, of Perry Road Enterprise area Estate Witham Essex, which is on the South East side of the industrial estate, Witham Essex, between the dates of December 2007, and December 2009, and how frequently they were paid, and how much. The actual amount of rent of each unit annually, and full record of all the names of tenants, and the full record of rent paid by the various tenants between the above dates, and the frequency of their pay.

Further how much industrial rates were paid by individual units, and how frequent, for each unit, and the full record of it all."

3. Following the intervention of the Commissioner (case reference FS50586297), the council issued a response on 7 September 2015. It refused to provide the information relying on section 14(1) of the FOIA as it considered the request to be vexatious.
4. The complainant requested an internal review on 10 September 2015.
5. Having not received an internal review response, the complainant contacted the Commissioner on 12 October 2015. The Commissioner then wrote to the council on 15 October 2015 requesting that it carry out an internal review within 10 working days or inform the complainant and Commissioner if it does not conduct internal reviews after refusing a request under section 14(1) of the FOIA.
6. The council has not provided an internal review response in this case.

Scope of the case

7. The complainant contacted the Commissioner on 12 October 2015 to complain about the application of the vexatious provision at section 14(1) of the FOIA to his request for information.
8. The Commissioner has therefore considered whether the council has correctly applied section 14(1) of the FOIA to the request for information.
9. The Commissioner has not considered whether the council breached the time for compliance provision at section 10(1) of the FOIA in this decision notice as that issue is the subject of a previous decision notice¹.

Reasons for decision

10. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432530/fs_50586297.pdf

11. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*², 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.
12. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad 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) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution 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).
13. 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.
14. 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 requests³. 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

² UKUT 440 (AAC) (28 January 2013)

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

15. As way of background to the issue and in order to provide context and history, the council said that a dispute arose in relation to its function as commercial landlord. It explained that the complainant rented land at Perry Road, the area in question under the request, and litigation between the complainant and the council in relation to a lease renewal, rent review and lease termination resulted in the council ultimately taking possession of the land following non-payment of rent. It said that subsequent to this the complainant has pursued a campaign to reopen the litigation and pursue the council in relation to this matter.

16. The council further explained the background to the Commissioner as follows:

“The fundamental basis that the requester uses to maintain that the litigation should be reopened and the judgements against him set aside is that the Council has been deceitful to the court and that officers of the Council acted in a deliberately fraudulent manner. The allegations have also been expanded variously to include the Councils external appointed Solicitor, court staff and judiciary.

To date the requester has not clarified or provided cogent grounds for the allegations that there has been deliberate fraud or deceit. This has been considered at various times by the Court and the requester has been offered the chance to clearly outline the basis to the Council, no clear narrative has been provided.

In essence at the base of the dispute with the Council the level of the rental for the land is an issue. In the litigation at the root of this case, the requester was represented by his own professional surveyor who supported a valuation. The requester purports that the surveyor was fundamentally misled by the Council as to the value of the land and therefore the dispute should be reopened. This argument of course makes no allowance for the professional skill of his adviser in knowing prevailing market norms or being aware of other comparator data.

There has been a sustained examination of the case by the Courts, the case has been considered by a range of judges including within the Queens Bench Division of the High Court. There has been no basis set out which the courts have considered that the arguments merit further examination.”

17. The council provided the Commissioner with a copy of the decision of His Honour Judge Seymour QC on the 10 February 2012 (Kiss v Braintree District Council [2012] EWHC 197 QB) and drew attention to paragraph 108 where, when considering the making of a civil restraint order, the judge said that;

"...[complainant] has set out to pursue the Council with a series of applications, and by commencement of actions, all essentially designed to keep raising over and over again the same complaints.

[Complainant] has been in no way deterred by his persistent lack of success, but has sought to appeal on every conceivable occasion any reverse which he has suffered. As I have noted in this judgement, other judges have expressed the view about particular claims and applications that they were totally without merit."

18. As stated in paragraph 13, the Commissioner needs to consider 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.
19. The Commissioner asked the council to bear in mind that the complainant has said that he only asked for the details of the enterprise area units, consisting of 12 units and that he has already been provided with details of two units and therefore only needs the records for ten units. He has specifically stated that the request is not for the whole of the Perry Road industrial estate.
20. In relation to the disruption and distress caused by the request, the council said that the clarification of the request through the Commissioner has tightened the scope endeavouring to make it more reasonable to obtain the information. Whilst the council acknowledges that this would be easier to comply with, and therefore more appropriate, it does not consider that this is sufficient to change the fundamental underlying basis for considering the request to be vexatious. It explained that it will hold relevant information on at least some of the units, although, due to the passage of time since the data would have been initially created, it is not certain that full information on all units will be held as a result of normal business processes. It said that the basis for refusal does not arise out of difficulties with technical compliance, but because of the characterisation of the fundamental dispute the requester is pursuing.
21. It further explained that consideration was given to compliance with the request on the basis that this may have satisfied the complainant and given closure to his concerns. However, the council considered that this is unlikely given his previous history and the range of unit sizes and styles which would have been covered by the request. It said that the complainant has submitted a sequence of requests for information in relation to the rents paid at his unit and adjoining units which were considered and responded to but the current request is unreasonable in its extent and perpetuates the campaign further. It explained that the complainant has in other correspondence continued to make assertions

that he will return to court in relation to the underlying dispute and that in refusing this request on the basis of it being vexatious, it is not seeking to deny the complainant his legitimate rights to pursue a claim that the council is fraudulent (however for completeness it strongly denies this allegation), but in light of the previous litigation it is keen to stop further satellite arguments and to reduce the scope for further expense and time in considering future correspondence and litigation.

22. Turning now to the serious purpose and value of the request, the council said that the legitimate promotion of the complainant's right to protect his interest in the land was clear at the time and that for him to litigate and protect that interest was reasonable. However, the council is of the opinion that when the court made a clear considered judgement, and the appeal process was concluded, the continuation of the dispute with substantial personalisation of complaints against officers of the council became unreasonable and vexatious.
23. The council is of the view that there is no reasonable prospect that the information requested would provide the complainant with information which would add anything to the dispute or support the finalisation of this matter. Conversely, it considers that in light of the way he has pursued the complaint he would use the requested information to create further points of dispute which at best would be tangential to the core issues. The council informed that Commissioner that since the request in this case was made the complainant has launched further satellite litigation in the County Court (Claim OC0010993 16 November 2015) to use the County Court to consider the councils actions in this request as support for the reopening of a case last heard on the 17 November 2013. It said that in reviewing the particulars of claim, paragraph 15 states that "Alternatively as the claimant has irrefutable proof of the defendants deceit now, dismiss the defendants entire false defence...". The council explained to the Commissioner that if, as the complainant asserts, he already has irrefutable proof, then there is no need for additional information to support his allegation.
24. The council said that it is clear that the complainant has a personal disagreement with the authority which he has perpetuated with an unreasonable level of persistence, making a number of unfounded allegations of fraud, corruption and cover up. It described this as a clear case where the complainant, having exhausted substantial attempts at endeavouring to find fault with the council's actions through the courts, has moved to using the information access framework to pick at the edges of the dispute in order to further his cause.
25. When considered in isolation, the request in this case could appear to have serious purpose and value, that being to establish if the council

have acted appropriately in respect of rental rates at an industrial estate. However, when considered in the context and history of the case, including the existence of vexatious 'indicators' as detailed in the aforementioned guidance on vexatious requests (such as personal grudges, unreasonable persistence, unfounded accusations, futile requests), and the fact that the complainant is pursuing a private matter which has been considered by a range of judges, the Commissioner does not consider that the purpose of the requests justifies the disproportionate effect on the authority. He acknowledges that the request may not be difficult to comply with, but considers that the provision of the requested information is likely to cause harassment and distress to staff as it would appear to be a means of furthering the complainant's grievance with the council. This can be considered as an inappropriate use of information rights under the FOIA. Taking into consideration the findings of the Upper Tribunal in Dransfield, that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the council was correct to find the request vexatious. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in these instances.

Right of appeal

26. 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

27. 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.
28. 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

Deborah Clark
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