

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 May 2016

**Public Authority:** London Borough of Richmond Upon Thames

**Address:** Civic Centre  
44 York Street  
Twickenham  
TW1 3BZ

#### Decision (including any steps ordered)

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1. The complainant has requested information from the London Borough of Richmond Upon Thames ("the Council") relating to emails between two individuals.
2. The Commissioner's decision is that the Council has correctly applied section 14(1) of the FOIA to refuse to comply with the request.
3. The Commissioner requires the Council to take no steps.

#### Request and response

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4. On 9 November 2015 the complainant wrote to the Council and requested information in the following terms:

*"You have evaded me asking you to define the emails you saw, or did not see when you first interviewed [redacted name]; those emails of 17.11.14 and 3.12.14. These are, of course, the emails [redacted name] hid from me. I want to know whether these emails were hidden from [redacted name] by [redacted name]. Remember [redacted name] categorically stated that all her emails on the subject of the lightbulb would be provided to me. She further wrote on 4.1.15; "My only involvement has been solely concerned with clarifying communication between the Council officer and a resident". If this was all she was doing, why on earth would her email of five long paragraphs be totally blacked out by Council officers and the SLLP. I now ask for the*

*information as to what you saw, under a Freedom of Information request and would expect your confirmation of that process."*

5. The Council refused to comply with the request on the grounds that it was vexatious under section 14. This position was maintained at internal review.

### Scope of the case

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6. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. Specifically he disputed the Council's application of section 14 to the request.
8. The Commissioner has therefore had to consider whether the Council correctly applied section 14 to the request.

### Reasons for decision

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9. 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. There is no public interest test.
10. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
11. 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 authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

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<sup>1</sup> GIA/3037/2011

12. 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. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
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 requests.<sup>2</sup> 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 position*

15. The Council explained that the request stems from a complaint the complainant had regarding a street light outside his house. The complainant believed that the street light was too bright. The Council therefore assessed the lighting levels and found the lux levels well below the recommended level. However, since the assessment the Council has reduced the wattage and therefore expects that the lux levels are even lower.
16. The Council explained that all efforts that have been made by it to resolve the matter have been unsatisfactory to the complainant. The complaint has been fully investigated by the Council and concluded on 20 February 2015 in which the Director of Environment at the Council found that the complaint was not upheld.
17. The complainant has further approached the Local Government Ombudsman with his concerns regarding the street light. A decision was

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

provided by the Local Government ombudsman on 13 August 2015 in which it found no fault in the way that the Council had handled the matter.

18. The Council explained that the complainant has been *"relentless in sending streams of e-mails"* to a Councillor and Council Officer despite being advised by the Council that it will no longer correspond with him on the subject matter.
19. The Council explained that some of its officers have felt distress from the issue and the Council has taken the decision to deem the complainant as an *"Unreasonable Persistent and Vexatious complainant"* as the relentless contact has caused a disproportionate and unjustified level of disruption, irritation and distress to some of its officers.
20. The Council argued that it has spent considerable resource trying to satisfy the complainant and responded to his relentless correspondence. The Council explained that it inserted a shield to further reduce the level of street light near his property but the complainant remains unhappy and continues to make complaints about issues that have already been addressed.
21. To support its view that the request should be treated as vexatious, the Council referred to two previous decision notices that have been issued by the Commissioner. It considered that these decision notices were relevant to this request.
22. In FS50544138 at paragraph 26<sup>3</sup>, the Commissioner stated:

*"The Commissioner is satisfied that, in this context, the continued persistence of the complainant in requesting information he has either already been provided with, or told is not held is likely to have caused disruption to council staff. It was also likely to cause irritation in that its employees were dealing with the same issues again and again. The council also argues that it would be an unreasonable use of council resources to allow the complainant to continue requesting information where there is no likelihood of achieving the outcome which it understands that he wants, and where there the requests have already been considered and responded to previously."*

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<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043021/fs\\_50544138.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043021/fs_50544138.pdf)

23. In FS50605008<sup>4</sup> at paragraph 16, the Commissioner found that:

*"The Commissioner's guidance on vexatious requests states that to show unreasonable persistence, a public authority must demonstrate that 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'."*

24. To conclude, the Council argued:

*"At a time when local authorities' finite resources are being stretched even more due to significant reduced government funding the Council must draw a line under matters that have already exhausted the proper channels for recourse".*

The Commissioner's view

25. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, 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. The Commissioner has acknowledged and considered all arguments provided by the Council and the complainant. When coming to a decision, he has further acknowledged that there is a long standing issue between the complainant and the Council.
26. The Commissioner notes that the Council has already spent a lot of time and resources in trying to resolve this matter, all of which appear to have been unsuccessful. The Commissioner is also aware that the complainant has exhausted the Council's internal complaints procedure and he has also approached the Local Government Ombudsman regarding his concerns. Both of these complaints have been investigated and not upheld. It therefore appears that the complainant is attempting to reopen a matter that has been investigated and closed. The

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<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1560389/fs50605008.pdf>

Commissioner is also of the view that compliance with this request would not resolve the matter at hand.

27. In coming to a decision, the Commissioner has taken into account the conclusions set out in paragraph 26 of the decision notice FS50544138 and paragraph 16 of the decision notice FS50605008 detailed above. He considers that these conclusions also apply to this case.
28. He is therefore satisfied that the Council was correct to apply section 14 to the request.

## Right of appeal

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29. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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** .....

**Chris Hogan**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**