

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 August 2016

**Public Authority:** Torridge District Council  
**Address:** Riverbank House  
Bideford  
Devon  
EX39 2QG

#### Decision (including any steps ordered)

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1. The complainant has requested information regarding an internal review of Torridge District Council's (the council) procedure for listing and delisting Assets of Community Value.
2. The council refused to comply with the request citing section 14(1) of the Freedom of Information Act (FOIA).
3. The Commissioner considers that this request has been made in concert with other requesters who have submitted previous requests as part of a campaign causing burden and disruption for the council. Therefore the council has correctly applied section 14(1) of the FOIA. She does not require any steps to be taken.

#### Request and response

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4. On 13 October 2015, the complainant made the following request for information:  
  
*"Please could you send me a copy of the internal review of Torridge District Council's Assets of Community Value listing review procedure?"*
5. The council responded on 10 November 2015 and refused to provide the requested information citing section 14(1) of the FOIA on the basis that it considered the request to be a repeat of a request made previously by the local action group.

6. Following internal review, the council wrote to the complainant on 18 December 2015 and upheld its decision to rely on section 14(1).

### Scope of the case

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7. The complainant contacted the Commissioner on 18 March 2016 to complain about the way her request for information had been handled.
8. The Commissioner considers the scope of this investigation to be whether the council have correctly applied section 14(1) to this request.

### Background

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9. The local action group had previously made an application to have a local public house listed as an Asset of Community Value (ACV) by the council.
10. This application was initially successful but the public house was subsequently removed from the ACV register after the owners of the public house appealed the decision.
11. The action group was dissatisfied with the decision to remove the public house from the ACV register and complained to the council.
12. The council agreed to review its procedure for dealing with requests for ACV listing and subsequent appeals but upheld its decision to delist the public house.
13. The Commissioner has received a similar complaint regarding a request for the above review of the procedure. The council applied section 14(1) to both requests. The Commissioner's decision can be found in decision notice FS50616655.

### Reasons for decision

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14. Section 14(1) of the FOIA allows a public authority to refuse to comply with a request for information if it is considered to be vexatious.
15. The Act does not provide a definition of the term, however, in *'Information Commissioner vs Devon County Council and Dransfield [2012] UKUT 440 (AAC), (28 January 2013)'* (Dransfield), the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use and the question of whether a request is

vexatious ultimately depends upon the circumstances surrounding that request.

16. The Tribunal concluded that 'vexatious' could be defined as the *"...manifestly unjustified, inappropriate or improper use of a formal procedure"* (paragraph 27).

### **The council's position**

17. The council explained to the complainant, in its original response to the request, that it had received numerous requests for information, as well as complaints and general correspondence, from the local action group and it believed the complainant to be a member of this action group. The council set out that all correspondence received was in relation to the issue of the listing of the public house.
18. The council explained to the complainant that it considered the issue had already been comprehensively addressed and further requests for information were now deemed vexatious and intended to cause disruption.
19. The council also explained that the issue had absorbed a disproportionate amount of resources and any further requests from the action group on this issue would only receive an acknowledgement by response.
20. At internal review, the council upheld its decision to apply section 14(1). It explained to the complainant that under the FOIA, it is the request, not the requester that is deemed vexatious.
21. The council explained that it had taken into consideration the context of all previous correspondence with the local action group and a letter from the Head of Paid Service sent prior to the request advising that the council could not justify spending further resources on this issue.
22. The council provided the Commissioner with its submission as part of this investigation. It explained to the Commissioner that the request was the same as a request made by other members of a local action group (FS50616655). The council had also refused the previous request on the basis of section 14(1). The request in this case was made four days after the refusal of the request in FS50616655.
23. The council explained that it recognised that this is the first request for information the complainant had made individually. However, as the council considers the complainant to be working in concert with the local action group, it submitted that the burden placed on the council forms part of the same overall burden as in case FS50616655.

24. The council provided evidence that both the complainant and the previous requester are members of the local action group involved in a campaign to reverse the council's decision on an Asset of Community Value. The evidence comprised emails relating to the previous request in FS50616655 headed with the name of the local action group and an email from the complainant to the council prior to her request in this case in which she also identified herself as a member of the group.
25. The council also explained that the request was the same in nature as the requests made previously by other members of the action group. It also explained that all requests and correspondence made by the action group members relate to the council's decision to not list a local public house as an Asset of Community Value under the Localism Act 2011.
26. The council explained that it had followed its published procedure in making this decision and that the resulting decision had been subject to an ongoing and lengthy complaint by the action group. The council explained that the original response from the action group regarding the decision comprised a 132 page complaint which was sent to several council officers simultaneously.
27. The council also explained that having exhausted the council's complaints procedure, the action group pursued the complaint with the Local Government Ombudsman who found no fault in its decision. The Commissioner notes at this point that the Ombudsman's decision was made after the request for information. She has not been made aware on what date the complaint was made to the Ombudsman.
28. The council confirmed to the Commissioner that it considered the complainant would have been aware of the activities of the action group, including the previous application of section 14(1), but still sought to submit a request for the same information as previously requested by the action group.
29. The council also confirmed that it considered the burden placed upon it was as a consequence of the action group as a whole and not the individual requester.

### **The complainant's position**

30. In her request for internal review, the complainant made several arguments against the application of section 14(1). She explained that she had made no previous requests for information and considered the council's communications with the local action group to be a separate matter.
31. The complainant explained that she did not consider her request to be unreasonable or objectionable and it was not likely to cause a

disproportionate or unjustified level of disruption to the council. She explained that she considered the impact on the council in meeting the request would be negligible.

32. The complainant explained to the council that her request had value and serious purpose in terms of the objection public interest in the information sought as the Department for Communities and Local Government (DCLG) was reviewing the Assets of Community Value legislation and was receiving suggested changes to that legislation from interested parties.
33. In her complaint to the Commissioner, the complainant confirmed that she required the requested information to make a submission to the DCLG and explained that any change made to improve existing legislation is of wider benefit to the public.
34. The complainant also explained that the requested information would enable her to understand why the council decided the matter as it did. She did not confirm whether this 'matter' was the decision to not list the public house as an Asset of Community Value or the decision to not change the council's procedure on listing Assets of Community Value.
35. The complainant confirmed to the Commissioner that she was a member of the action group and provided a detailed timeline of the group's activities regarding the Assets of Community Value listing decision.
36. The complainant explained that she considered all correspondence from the action group was justified and had a serious and proper purpose.
37. The complainant explained that she considers the council has taken longer to prepare a response applying section 14(1) than it would take the council to send an already prepared document. The complainant considers that this casts doubt on the validity of the council's statement *"...this request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation..."*.

### **The Commissioner's position**

38. In considering this case, the Commissioner has taken account of the council's and complainant's submissions, her own guidance and the related decision notice FS50616655.
39. In case FS50616655, the Commissioner concluded that the council was correct to apply section 14(1) to the request due to the burden placed upon it by the action group's requests and correspondence. She considered that the complainants were unlikely to be satisfied with the information requested and correspondence on the matter would be likely

to continue and therefore cause further disruption to the public authority.

40. The Commissioner's guidance regarding applicants working in concert to gain information<sup>1</sup> states at paragraph 94:

*"If the available evidence suggests that the requests are genuinely directed at gathering information about an underlying issue, then the authority will only be able to apply section 14(1) where it can show that the aggregated impact of dealing with the requests would cause a disproportionate and unjustified level of disruption, irritation or distress"*

41. The burden and disruption to the council has been considered in the Decision Notice issued in case FS50616655. The key issue in this case is ascertaining whether this request was made in concert with the action group's previous request and therefore represents a continuation of the burden and unjustified disruption already demonstrated.
42. The Commissioner acknowledges the complainant's assertion that any correspondence between the council and the action group is a separate matter to her request for information. However, taking into account the complainant's statement to the Commissioner that she is a member of the action group and her detailed knowledge of the group's activities, including the application of section 14(1) to the action group's most recent request, the Commissioner considers there to be a clear and identifiable connection between the complainant's request and the action group's previous request and chain of correspondence.
43. The Commissioner notes that the request made by the complainant is almost identical in its wording to that made by the previous requester and was made only four days following the application of section 14(1) to the previous request. The Commissioner considers this to be evidence suggesting that the complainant was communicating and working with the action group to circumvent the application of section 14(1) and gain information from the council on behalf of the action group.
44. The Commissioner also notes that the complainant's stated aim for requesting the information, in order to provide suggestions to DCLG, is the same aim as the previous requesters in case FS50616655.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

45. The complainant also states that she wishes to obtain the information to understand how the council made its decision. The Commissioner notes that the council provided explanations regarding both its decision to not list the public house and its decision to not change its procedure for listing Assets of Community Value.
46. She also notes that the council's procedure for listing Assets of Community Value is available on the council's website.
47. Having taken into account the complainant's statement that she is a member of the action group, her detailed knowledge of its activities, the same reasons for requesting the information, the near-identical wording of the requests and the short time period between the application of section 14(1) and the complainant's request, the Commissioner is satisfied that the complainant's request was made in concert with the action group and therefore with the requesters in case FS50616655.
48. The Commissioner considers this request to be a continuation of the correspondence made by the action group's members and the burden and disruption demonstrated in FS50616655 extends to this request. The Commissioner, therefore, considers the council was correct in its application of section 14(1).

## Right of appeal

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49. 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)

50. 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.
51. 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**