

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 July 2016

Public Authority: London Borough of Southwark
Address: Room 312
Town Hall
Peckham Road
London
SE5 8UB

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Southwark (the Council) for all the final orders of the Court in the 198 applications made by the Council in respect of the section 146 notices on leaseholders in the period 1 April 2015 to 18 February 2016, and for the statement of case for each of the 198 leaseholder cases progressed to Court for the period 1 April 2015 to 18 February 2016.
2. The Commissioner considers that the requests were vexatious and that section 14(1) was correctly engaged.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 18 February 2016 the complainant made two requests for information to the Council. Her first request sought the following information:

"Please provide copies of all the final orders of the Court in the 198 applications made by Southwark in respect of the s.146 notices on leaseholders in the period 01 April 2015 to today's date.

Please do not redact any identifying details.

Please note: Civil Procedure Rules 5.4C in respect of the "Supply of a document to a non-party from Court records":-

(1) The general rule is that a person who is not a party to proceedings may obtain from the Court records of a copy of :-

(b) a judgment or order given or made in public (whether made at a Hearing or without a Hearing)

Please copy as many as you are able to do in the 18 hour limit. Please note the 20 day limit for responding to this request.

Please do not redact any personal or other details"

5. On 15 March 2016 the Council refused the complainant's request, citing section 14 of the FOIA. Following an internal review this position was maintained.

6. The complainant's second request was for the following information:

"Please provide copies of the following under FOI Act and also considering the Civil Procedure Rules 5.4C.

1. A copy of the statement of case for each of the 198 leaseholder cases progressed to Court for the period 01 April 2015 to present day.

If the work exceeds the 18 Hour limit please provide as many copies of the statement of case as is possible within the time limit.

Please do not redact any details at all from the copies of the statements of case.

Civil Procedure Rule 5.4C - The supply of a document to a non-party from Court records states that:-

(1) The general rule is that a person who is not a party to proceedings may obtain from the Court records a copy of :-

(a) A statement of case, but not documents filed with or attached to the statement of case".

7. The Council responded on 24 March 2016 stating that the request was vexatious and it had been refused under section 14 of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 24 and 29 March 2016 to complain about the way her requests for information had been handled.

9. The complainant disputed the Council's application of section 14 to the requests.
10. The Commissioner has had to consider whether the Council has correctly applied section 14 to the requests.

Reasons for decision

11. Section 14(1) of the 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.
12. 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*.¹ 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.
13. 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.
14. 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).
15. 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.

¹ GIA/3037/2011

16. 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 requests². 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

17. In determining whether the requests fell under the exemption set out under section 14, the Council explained that it had assessed whether the requests or the impact of dealing with them are justified and proportionate or not. The Council also explained that it had considered the broad issues identified by the Upper Tribunal in the Dransfield case.
18. The Council has stated that the complainant has submitted 17 requests relating to section 146 notices, loans and possessions to date. Some of these requests have been for the same information, but to avoid exceeding the £450 cost limit the complainant has submitted multiple requests for the same information but for different time periods. Of these 17 requests, 15 have led to a request for an internal review, and seven appeals have been made to the Information Commissioner's Office (ICO).
19. In addition the Council has stated that it informed the complainant in three responses made in October 2015 that due to the number of requests she had made on the closely related subject of section 146 notices, leaseholder loans and the use of process servers, the Council considered the subject exhausted and any further requests might be considered vexatious. Since that time the complainant has submitted a further 10 requests on these subjects.
20. The Council has stated that one of the related requests had taken more than 18 hours to compile, and that it was still in the process of redacting information from its response to the request. The Council explained that this had placed a significant burden on it.
21. The Council has stated that it would appear from correspondence received from the complainant that she believes that the Council's use of section 146 notices is unlawful, and that she appears to be attempting to use the FOIA to as part of a continuing campaign to prove that the Council has not acted correctly in issuing section 146 notices.

2

http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

22. Further evidence of this is that the complainant also appears to have submitted similar requests to other local authorities and where those local authorities have stated that they do not issue section 146 notices the complainant sends these statements to the Council.
23. The Council has stated that it is satisfied that its procedures are legal and correct, and that if the complainant wished to challenge the Council's power to issue section 146 notices it does not believe that the FOIA is the appropriate way to do so.
24. The Council has therefore argued that there does not appear to be a serious purpose to these requests, apart from further fuelling the complainant's campaign against the Council's use of section 146 notices. Particularly as some of this information is available to the complainant from other sources, but she has chosen to continue to submit multiple information requests on the same issue.
25. The Council further argued that the complainant has directly criticised members of its staff and has used intemperate language in her correspondence. This, in addition to the volume of requests, their frequency and overlapping nature, is causing unjustified and disproportionate levels of disruption and distress.

The Commissioner's view

26. In coming to a decision, the Commissioner has considered the requests, the volume and frequency of the requests and whether the requests have placed a disproportionate burden on the Council, and caused disruption to the Council's other duties.
27. When considering whether a request constitutes a significant burden on a public authority the Commissioner endorses the Tribunal's approach where "it is not just a question of financial resources but also includes issues of diversion and distraction from other work." (Welsh v IC [EA/2007/0088])
28. It is the Commissioner's view that the requests in their context can be said to cause a significant burden in terms of expense and distraction. The requests can be regarded as placing pressure on the Council in order to force it into an admission of wrongdoing regarding section 146 notices. The Commissioner also finds that as the requests would have contributed to a significant distraction from the Council's core functions that the requests can be considered to constitute a significant burden.
29. The Commissioner has also considered whether the serious purpose of the requests is such as to render the requests not vexatious. This is where for example, there might be a circumstance in which a request

might be said to create a significant burden and yet, given its serious and proper purpose, ought not to be deemed as vexatious.

30. In this case the Commissioner does not consider that sufficient weight can be placed on the purpose identified to make it inappropriate to deem the request vexatious. This is in view of the overall burden of the requests and the way that they were framed so that they can be reasonably seen as an example of inappropriate pressure on the Council.
31. Therefore, after taking all the relevant matters into account, including the history and context of the request, the Commissioner has found that the number and strength of the factors in favour of applying section 14(1) are of sufficient weight to deem the requests as vexatious.

Right of appeal

32. 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

33. 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.
34. 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
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