

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 January 2017

**Public Authority:** London Borough of Bromley  
**Address:** Civic Centre  
Stockwell Close  
Bromley  
BR1 3UH

#### Decision (including any steps ordered)

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1. The complainant has requested information from the London Borough of Bromley ("the Council") broadly relating to a land encroachment at a specific address.
2. The Commissioner's decision is that the request is vexatious and the Council was therefore correct to refuse to respond to the request under section 17(6) of the FOIA.
3. The Commissioner requires the Council to take no steps.

#### Request and response

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4. On 13 July 2016, the complainant wrote to the Council and requested information in the following terms:

*"In order to fulfil the council's obligation under the FOI and further to my previous requests please provide FULL DETAILS of the information provided by yourself regarding the land encroachment at [redacted address] and details of a statement that appears "incorrect/misleading";*

*a). WHO decided, name not officer position/rank the information regarding the inaction of the council?*

*b). Their definition of minimal with regard to the area of "stolen" land (dimensions) allowed.*

*c). The time they stated the encroachment/theft had been in situ and why the council decided they would be complicit in allowing a council*

*asset of worth, to be "disposed of" when amenity land sale was "against council policy"*

*d). The location and dimension of the "small area of land" it is alleged the council gained".*

5. The Council responded on 4 July 2016. It refused to respond to the request. It explained that it had previously advised the complainant that his requests were vexatious and any further correspondence on the matter would be filed and not responded to.

### **Scope of the case**

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6. The Commissioner accepted a complaint from the complainant on 25 July 2016. The complainant was unhappy with the response he had received.
7. The Commissioner has had to consider whether the Council was correct to refuse to respond to the request under section 17(6) of the FOIA on the grounds that the request is vexatious.
8. The Commissioner will first consider whether the request is vexatious. She will then consider whether the Council was correct to not respond to the request in accordance with section 17(6).

### **Reasons for decision**

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#### **Section 14 – vexatious requests**

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

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

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.
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 provided some background to the request. It explained that the complainant's grievance stems from a refusal in 2003 to sell him a piece of amenity land adjoining his property. The Council explained that the land in question was considered to be important public amenity land

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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)

and the Council's policy is not to sell such land. However, the Council explained that in the 1980s, before their policy changed, it had sold such pieces of land. After this, the Council explained that the complainant began extensive correspondence with various Council officials and members on the matter, examining current and former amenity land on corner of a specific estate and asking for details about earlier sales and Council policy. This led to the complainant submitting a complaint to the Ombudsman in 2005. The Council confirmed that the Ombudsman did not pursue the complaint after receiving information from the Council.

16. In its response to correspondence from the complainant on 4 July 2016, the Council stated:

*"The Council has investigated these matters thoroughly in the past; it is satisfied that it has done all that it could. Nothing has changed since 2010 when the Chief Executive determined that no further Council time should be spent on the matter. There is nothing further the Council can do in these matters. Council resources and staff time are under even more pressure now than they were in 2010 and your continued e-mails and queries on the matter remain vexatious, and an abuse of the limited resources available to the Council".*

17. The Council explained that the complainant continues to contact the Council and its staff alleging various misdeeds, problems and encroachments in relation to other properties on the particular estate. The Council stated that new claims are investigated. However, the complainant has made some spurious claims and some malicious claims. The Council provided the Commissioner with an example of a malicious claim made by the complainant. The Council explained that the complainant made a claim that one of its surveyors was racist because the Council would not sell land to the complainant but did not pursue recovery of land in another case because the person in occupation was of Indian origin.
18. The Council explained that the subject behind the request in this decision notice was brought to the attention of the Council in 2010. This relates to two small pieces of amenity land and in both cases the encroachment had taken place so long ago that the residents in question were legally entitled to claim possessory title and the Council had no grounds to sustain proceedings to recover the possession. The Council confirmed that the complainant was informed of the outcome for both cases and he subsequently went on to make FOI requests on the matter and he has reactivated the same matter in the current year.
19. The Council provided the Commissioner with a report which detailed the requests made by the complainant. The Council explained that the

report shows that the complainant made a high number of requests over the years on similar matters. The Council also explained that the complainant continues to make regular complaints about the same issues to a number of officers, in particular the Director of Environmental Services and the Chief Executive. The Council explained:

*"The amount of work generated by his persistent complaints far outweighs the substance in them or the level of officer time spent dealing with them. I currently have on my desk 1 ombudsman file, 2 complaint files, 2 property files and a stack of FOI and complaint e-mails I have printed out about this matter. This is over 6 inches of paper generated by one man who is aggrieved because we would not sell him a small parcel of land 13 years ago".*

#### *The Commissioner's view*

20. The Commissioner acknowledges that the Council has had extensive correspondence with the complainant over a significant number of years broadly relating to the same or similar subject matter.
21. The Commissioner appreciates that requesters are fully entitled to make requests for information to public authorities for information it holds. However, the Commissioner considers that a line must be drawn where a requester continually makes requests for information on the same subject matter over a short period of time.
22. The Commissioner considers that a burden is placed on a public authority where it responds to information request but each response/internal review response results in follow up requests or correspondence on the same/similar subject matter. In this case, the Commissioner considers that a response is unlikely to satisfy the complainant, and that a line needs to be drawn otherwise the matter could continue into the foreseeable future.
23. The Commissioner does not consider that the inherent purpose and value of the request outweighs the burden and disruption that would be caused by complying with the request. She therefore considers that the request is vexatious.

#### **Section 17**

24. Section 17(5) of the FOIA provides that:

*"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies, must, within the time for complying with section 1(1), give the applicant a notice stating that fact".*

25. Section 17(6) states that a public authority is not required to provide a refusal notice where:

*"(a) the public authority is relying on a claim that section 14 applies, (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request".*

26. The Commissioner understands that on 29 March 2010 the Council had advised that complainant that his requests on this matter were classed as vexatious and any further correspondence on the matter would be filed and not responded to.
27. The complainant continued to submit correspondence on the same/similar topics over the next few years. The Council therefore reiterated its position on 4 February 2014.
28. The Council further confirmed its position on 4 July 2016 where it advised the complainant that it was not responding to correspondence on this matter.
29. The Commissioner notes that the complainant continues to contact the Council regarding the same matters that the Council has previously considered to be vexatious. She is also aware that warning has been given to the complainant on multiple occasions, that requests/correspondence on the same/similar subject matter will not be responded to.
30. On this basis, the Commissioner has determined that the Council has correctly not responded to the request in accordance with section 17(6).

## Right of appeal

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31. 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)

32. 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.
33. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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