

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 March 2017

**Public Authority:** Malvern Hills District Council  
**Address:** The Council House  
Avenue Road  
Malvern  
Worcestershire  
WR14 3AF

#### Decision (including any steps ordered)

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1. The complainants have made two requests to Malvern Hills District Council ("the Council") for varied information relating to Council policies and a specific planning matter. The Council refused to comply with the requests under section 14(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the Council has correctly applied section 14(1). However by failing to provide a refusal notice within the time for compliance the Council has breached section 17(1).
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 23 March 2016, the complainants wrote to the Council and requested information in the following terms:

*Could you please advise on what date the Council agreed a Policy Document containing details of "unreasonable complainant behaviour" and provide a copy of the Council Minute approving such a Policy and a copy of the Policy itself please?*

*We note that today's Council website now refers to "our Unreasonable Complaints Procedure" but ask when this was agreed as a Policy by Council.*

5. On 24 March 2016, the complainants made a further request in the following terms:

*Could we ask you please to treat our email of the 23 March 2016 as a Freedom of Information request please. Can you please add to this request the following:*

- (1) A copy of the Council's Code of Conduct for Employees referred to in Article 12.06.*
- (2) Copies of the six letters in response to the Council's letter of 16 April 2015 referring to our Certificate application [redacted reference number] as we requested in our email to Planning Services 1 September 2015 and in accordance with the relevant Planning Practice Guide paragraph 6,*
- (3) A list of the documents provided to the author of the review document dated 23 October 2015 by the Development Control Manager from our planning site history file please and upon which we have been assured the review document was based. Our email of 4 October 2015 to the Chief Executive refers as does our Consultant's of 2 October 2015.*

6. The Council responded on 2 September 2016. It refused the requests under section 14(1).
7. On 11 September 2016, the complainants requested an internal review.
8. The Council responded on 15 September 2016, but did not provide an internal review outcome.

### **Scope of the case**

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9. The complainants contacted the Commissioner on 16 September 2016 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of this case to be the determination of whether the Council is correct to apply section 14(1) to

the complainants' requests, and whether the Council has complied with section 17(1).

## Reasons for decision

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### Section 14(1) – Vexatious requests

11. 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.*

12. The Commissioner has published specific guidance on vexatious requests<sup>1</sup>. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes it will be obvious when requests are vexatious, but sometimes it may not. In such cases it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

### Context

13. The Commissioner has reviewed the submissions of both parties in order to clarify the context that the requests have taken place against.

14. It is understood that the complainants have submitted an application to the Council, under the terms of the Town and Country Planning Act 1990, for a 'Certificate of Lawfulness' in relation to land opposite their property.

15. This application was submitted in March 2015, but was subsequently withdrawn by the complainants before a decision had been reached by the Council. On 3 September 2015 the complainants submitted a complaint to the Chief Executive about the handling of the application prior to its withdrawal, and the actions of specific officers. The Chief Executive held a meeting with the complainants on 2 October 2015 to

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

discuss their concerns, and it was agreed that the application would be reviewed by a Council solicitor. Following appraisal by a Council solicitor, it was concluded that the application, if it remained live, would have been refused. The complainants were informed of this outcome on 23 October 2015.

16. After further correspondence on this matter, the complainants made a complaint on 31 January 2016 which contained allegations that the Chief Executive had failed to adhere to the Council's complaints policy and planning process obligations. The outcome of this complaint was a review undertaken by the Monitoring Officer, which resulted in a report dated 16 March 2016 (of which a copy has been provided to the Commissioner). This report found no evidence of wrongdoing by the Chief Executive or any involved officer, and referred the complainants to the Local Government Ombudsman should they remain dissatisfied.
17. The complainants made a further complaint against the Chief Executive on 20 March 2016. In response to this the Council wrote to the complainants on 22 March 2016 to advise that they had been designated as unreasonable complainants.

#### The Council's position

18. The Council considers that the two information requests represent unreasonable persistence by the complainants, and an unwillingness to accept the outcome of their previous application and complaint. Whilst the substantive matter remains of importance to the complainants, the requests do not serve a clear public interest that would justify the use of resources that compliance would require.
19. The Council has further informed the Commissioner that, whilst not relevant to the original decision to apply section 14(1), the complainants referred the substantive matter to the Local Government Ombudsman ("the LGO") in July 2016. The LGO issued its decision in January 2017 and found that the Council had shown no fault in handling the complainant's application and complaint.

#### The complainant's position

20. The complainants have informed the Commissioner that the two information requests were submitted in order to secure information for their complaint to the LGO.
21. The complainants also contest that, under planning legislation, they have a right of access to the 'six letters in response' referred in part 2 of the second request.

#### The Commissioner's conclusion

22. 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.
23. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

*The purpose and value of the requests*

24. The Commissioner understands that the requests have been made during an extended dispute between the complainant and Council that relates to an application under planning legislation. Following concerns raised by the complainants to the Chief Executive, the application was independently reviewed by a solicitor, who concluded that the application, had it remained live, would be refused. A complaint was then made against the Chief Executive, and a review undertaken by the Monitoring Officer which found no grounds for further action. A further complaint was then made by the complainants on 20 March 2016, which the Council declined to action under its unreasonable complainant's policy on 22 March 2016. This refusal appears to have led directly to the two requests under consideration.
25. In this context, it is reasonable for the Commissioner to interpret the requests as relating intrinsically to a private interest that is being pursued by the complainants. Although it is noted that the purpose of the requests was to support a complaint to the LGO, the Commissioner recognises that the LGO already holds powers to request evidence without recourse to the FOIA. It is also noted that, regardless of any privileged right of access the complainants may hold to the 'six letters in response' referred in part 2 of the second request, the Commissioner's determination must be limited to the terms of the FOIA.

26. There is also limited evidence available to the Commissioner that indicates the requests hold value. The disputed application appears to have been withdrawn by the complainants on a voluntary basis, with no formal decision being sought from the Council. It is also noted that the complainants have been informed of their right to refer their concerns to the LGO, and that this has been acted upon.

*The burden on the Council*

27. The Commissioner recognises that the two requests have taken place against a significant context of correspondence and actions undertaken by the Council to address the complainants' application and complaint. Whilst the Council's submission has not provided specific arguments for burden, the Commissioner recognises that responding to the requests would, of necessity, require public resources to be expended.

*The Commissioner's conclusion*

28. There is limited evidence available to the Commissioner that suggests the requests serve a clear public value. The complainants' application and complaint have seemingly been comprehensively considered and concluded by the Council, and, at the time of the request, the complainants held the right to refer the matter to the LGO; which is a step that they have since taken.
29. The Commissioner further recognises that compliance with the requests would divert and consume limited public resources and impact the Council's ability to respond to legitimate requests. Having considered the value and purpose of the requests, there is no clear indication that this would be warranted.
30. On this basis the Commissioner must conclude that section 14(1) has been correctly applied to the requests.

**Section 17(1) – refusal of request**

31. Section 17(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
32. In this case the Council issued its refusal notice outside 20 working days, and therefore breached section 17(1).

**Other matters**

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Internal Review

33. Under the FOIA, there is no obligation for a public authority to provide a complaints process. However, it is good practice (under the section 45 code of practice) to do so. The Commissioner advises public authorities to ensure that an internal review takes no longer than 20 working days, or 40 working days in exceptional circumstances.
34. In the circumstances of this case, the Commissioner notes that the Council's response of 15 September 2016 does not address matters under the FOIA, and consequently does not represent an internal review outcome. The Commissioner therefore advises the Council to refer to the section 45 code of practice in the handling of future requests.

## Right of appeal

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35. 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)

36. 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.
37. 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**