

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2017

Public Authority: London Borough of Hammersmith and Fulham
Address: Hammersmith Town Hall
King Street
London
W6 9JU

Decision (including any steps ordered)

1. The complainant has requested the council to disclose all emails from the Head of Parking Services' email account over a 6 month period which contain both the words "PCN" and "target" and "PCN" and "bonus". The council refused to comply with the request citing section 14(1) of the FOIA.
2. The Commissioner's decision is that section 14(1) of the FOIA does not apply in this case.
3. The Commissioner therefore requires the council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response under the FOIA which does not rely on section 14(1).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 4 August 2017, the complainant wrote to the council and requested information in the following terms:

"For the time period between and including the 7th Jan 2016 and 7th July 2016

- 1) Please search the council email account for the Head of Parking Services for all emails sent (to anyone) or received (from other council email addresses) that contain BOTH the strings

"PCN" and "target"

(eg On her or his email system this is done by typing this into the search box: PCN target)

- 2) Please search the council email account of your Head of Parking Services for all emails sent (to anyone) or received (from other council email addresses) that contain BOTH the strings

"PCN" and "bonus"

(eg ON her or his email system this is done by typing this into the search box: PCN bonus)

Please provide me with copies of these emails."

6. The council responded on 3 November 2016. It refused to comply with the request citing section 14(1) of the FOIA.
7. The complainant requested an internal review, which was received by the council on 29 November 2016.
8. The council carried out an internal review and notified the complainant of its findings on 3 February 2017. It upheld its application of section 14(1) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 3 February 2017 to complain about the way his request for information had been handled. He stated that he does not agree his request for information is vexatious.
10. The Commissioner's investigation has focussed on the council's application of section 14(1) of the FOIA to the complainant's request of 4 August 2016.

Reasons for decision

11. Section 14(1) of the FOIA states that a public authority is not obliged 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 (GIA/3037/2011). 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:
15. "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).
16. 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.
17. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests, which can be accessed via the following link:

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>
18. This guidance also explains that a public authority may apply section 14(1) if the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on

the organisation. This approach is supported by judgements of the Information Tribunal in the case *Independent Police Complaints Commissioner vs The Information Commissioner (EA/2011/0222)* and *Salford City Council vs ICO and Tiekey Accounts Ltd (EA/2012/0047)*.

19. In this context it is possible for a public authority to take account of the cost of considering exemptions and redaction. However, it can only do this where:
- The request is for a large volume of information;
 - It contains exempt material;
 - The exempt material cannot easily be isolated.
20. The Commissioner would note that this is a high test to meet and she would only expect a public authority to use section 14(1) on these grounds in exceptional circumstances.

The council's arguments

21. The council confirmed that it has considered the context of the request and the history of its relationship with the complainant. Also, the indicators as set out in the Commissioner's guidance that the request may be vexatious and whether the request is likely to cause a disproportionate or unjustified level of disruption.
22. Dealing with the context of the request and relationship with the complainant first, the council advised that it has processed numerous requests from him in the past relating to Parking Services and in particular the use of CCTV and the issues of PCNs. Prior to June 2013 the complainant confirmed that the requests were made to enable him to conduct research into the use of CCTV in a public space for a BBC Panorama programme. The complainant advised the council that a large amount of the material he gathered via his FOIA requests was used by Panorama.
23. The council explained that the complainant had informed it that one of Panorama's producers advised him that the BBC had passed the material he had gathered to a barrister who believed some of the material raised matters of substantial public interest. At the time the programme was broadcast the BBC had such a large amount of material, they were unable to include a particular item which interested them, concerning officers within Parking Services receiving performance related bonuses with regards to the issuing of PCNs.
24. The council said that the complainant was contacted by the BBC again with queries about such bonuses and asked to see the results of the

complainant's request of 7 July 2016, which was for the exact same information as the request which is the subject of this notice but over a 12 month period rather than 6. The complainant has said that because this July request was refused and then there was a delay in dealing with the revised request which is the subject of this notice the further programme broadcast by the BBC on 3 October 2016 had to go ahead without this information.

25. In terms of the indicators that assist in determining whether a request is vexatious, the council stated that compliance with this request would place an unreasonable burden on the council. The search criteria had located 100 emails many of which also had attachments. The council had provided the complainant with examples of two emails which had been reviewed and appeared irrelevant to the type of information he sought. The first of these was an email from a resident to the Head of Parking who had received a PCN when collecting items which were described as a "bonus". The second email was a suggestion that the council and the police could "target" known locations to tackle a particular issue (not directly related to PCNs). It informed the complainant that such examples demonstrated the wide range of irrelevant material which is located by the search criteria specified in the request and would require some degree of processing. It asked the complainant to consider again revising his request and his search criteria so that it is not processing information he does not require. The council confirmed that the complainant declined this offer and informed the council that he had already narrowed the parameters of his request to cover a 6 month period as opposed to 12 in order to reduce the burden on the council.
26. The council explained that it considers compliance based on the search terms specified in the request would place a burden on the council by forcing staff to process for disclosure 100 emails with attachments when the nature of the information the complainant wishes to obtain is obvious from previous dealings. It confirmed that in order to ensure that it does not disclose personal data or other exempt information the council would need to divert scarce resources to conduct a detailed examination of the material. This would impose unnecessary expense and disruption on the council and would be likely to impose a significant burden on the council teams which would need to be consulted about disclosing the information.
27. The council said that it felt it was reasonable to expect applicants to work with the council to reduce the burden on council resources and reduce unnecessary processing in relation to FOIA requests, as far as possible. The council therefore considers the complainant's refusal to modify the search to exclude irrelevant search results would place a burden on the council, requiring disproportionate effort.

28. In respect of unreasonable persistence, whilst it did not consider the complainant was unreasonably persistent it did note that there was a pattern of behaviour towards Parking Services which could be described as persistent.
29. In terms of intransigence, the council advised that the broad nature of this request had returned information covering a range of topics without a clear focus. This was because the words "PCN", "target" and "bonus" could appear anywhere in an email or attachment and be caught by the request. The council said that it has tried to provide the complainant with advice and assistance, to narrow his request, but his refusal to do so amounts to intransigence. It stated that it felt such intransigence stemmed from a suspicion that the council was seeking to remove information which the complainant wished to obtain from the search results.
30. The council also advised the Commissioner that it considered the request has a scattergun approach given the broad nature of the request and the complainant's attitude to the advice regarding narrowing it further. It stated that because the request would impose a burden by obliging the council to sift through a substantial volume of information to isolate and extract the relevant details, would encompass information which is only of limited value because of the wider scope of the request, and create a burden by requiring the council to spend considerable time considering exemptions and redactions, the request has the characteristics of a scattergun approach.
31. It also felt that there was no obvious intent to obtain information. The council stated that the complainant had not outright asked it for its position on PCNs, targets or bonuses. Instead the complainant made a request that lacks focus and refused an offer of assistance to help provide a meaningful response to the request. The council confirmed that this led it to question whether the complainant was seeking information from the council or whether he was using the FOIA to harass and annoy.
32. In terms of purpose and value, the council advised that it accepted there is a clear public interest in information relating to the payment of performance-related bonuses with regards to issuing PCNs. However, it believes this information could be obtained by submitting a FOIA request with a clearer focus.

The Commissioner's decision

33. The Commissioner will first consider whether the task of redaction and preparing the information identified as in the scope of the search

parameters of the request would be grossly burdensome on the council to warrant the application of section 14 of the FOIA.

34. As stated above, this is a high threshold to meet and should only be considered by public authorities in exceptional circumstances and where the sheer volume of information and the task of redaction are so great that it is sufficient to engage section 14 of the FOIA.
35. The council has confirmed that it has identified 100 emails many with attachments that fall within scope. It explained that these emails will contain personal data and other exemption information which would require redaction prior to disclosure. It considers the task of preparing 100 emails and attachments to be burdensome and would result in scarce public resources being diverted away from other functions.
36. The Commissioner does not consider this request meets the threshold described in paragraphs 18 to 20 above. She does not consider 100 emails and the attachments to a proportion of them to be a large amount of information to process and prepare. It is a fairly precise and moderate amount of recorded information to process for disclosure under the FOIA and is far from the volume of information that could potentially fall within the threshold. Requests considered by the Commissioner previously to which this argument has been supported have involved exceptional circumstances; very large volumes of information and a task of redacting such volumes that would not be straightforward but rather complex and very time consuming.
37. She considers 100 emails and attachment falls considerably short of the threshold required and the process of redaction in this particular case would be relatively straightforward and not time consuming. She accepts that personal data would need to be redacted but this would be a fairly straightforward process in this case considering the likely contents of the emails, the number of emails to review and the council's experience of Data Protection issues. The council has argued that other exempt information will need to be redacted, so for example information which is commercially sensitive. The Commissioner considers the potential for other exempt information in this case considering the likely contents to be fairly small and certainly not burdensome.
38. As this is not an exceptional case but rather, in terms of size and work involved, a request comparable to the average request public authorities of this size often receive, the Commissioner does not agree that section 14(1) of the FOIA applies to this request on this basis.
39. The Commissioner will now address the council's other arguments for applying section 14(1) of the FOIA.

40. The Commissioner understands that the complainant has made a number of requests relating to Parking Services, in particular PCNs and CCTV over the last 6 years. However, she does not consider this demonstrates an obsessive pattern of behaviour or unreasonable persistent in this case. To clarify, the Commissioner understands the complainant made the following requests over this time period:

July 2011 to June 2012	9 information requests
July 2013	1 subject access request
August to October 2014	2 information requests, 1 subject access request and 1 complaint
March 2015	1 subject access request
July and August 2016	2 information requests

41. She notes that the majority of these requests were made during a 12 month period, 4 years prior to the request being considered in this notice. The Commissioner understands that these requests related to PCNs the complainant had received, his appeal against them and research he was conducting on the use of CCTV which then made its way to the BBC. The Commissioner also notices there are noticeable gaps often of up to 12 months between the complainant's requests and contact with the council and only a few further information requests were then made. The complainant advised the council that the latest requests were related to further contact from the BBC and a further Panorama programme that was due to be aired.
42. The Commissioner does not consider the request to be unclear or unfocussed. The complainant specified exactly what recorded information he requires and defined the search parameters he wished to be used clearly. Obtaining an applicant's clarification is only required if the request is worded unclearly or in such a broad manner that the public authority is unsure exactly what the applicant requires or what they should be searching for. This was not the case here. The complainant was specific about what information he required and the council stated itself that it was well aware of what the complainant was wishing to obtain.
43. The complainant's refusal to narrow the scope of this request again does not constitute unreasonable behaviour or suggest that his intention for not doing so is merely to place further burden on the council, harass or annoy. The complainant had already narrowed the request once understanding that his request over a 12 month period would exceed the cost limited prescribed by the FOIA and was entitled to say no to the

council's proposal to narrow it further and for the request to be considered on its own merits.

44. The complainant's decision to reject the council's proposals to reduce the request further does not, in the Commissioner's view, amount to intransigence. Intransigence is usually fitting to a case where the applicant shows no willingness to engage with the authority, rejecting attempts to assist out of hand and has taken an unreasonably entrenched position. The Commissioner does not consider the complainant falls within this category. As stated above, he has accepted that his earlier request would exceed the cost limit and narrowed it in accordance with the council's advice and assistance. This is not the behaviour of an applicant that is unwilling to engage or which takes an unreasonably entrenched position. Rather the complainant has said no to the second proposal to narrow the request as he requires all the information falling within the scope of his search parameters.
45. Similarly, the Commissioner does not consider that a scattergun approach has been taken here. When a request appears to be part of a completely random approach, lacks clear focus or seems to have been solely designed for 'fishing' for information without any idea of what might be revealed, the Commissioner may agree that a scattergun approach has been taken. However, the Commissioner considers this is not the case here. The request was clearly focussed with clear instructions on how to search. The complainant is also well aware of what information such searches may reveal, as is the council, as it has stated that it knows what the complainant is wishing to receive from this request.
46. In terms of purpose and value, the Commissioner considers the context of this request and earlier requests demonstrate the serious purpose and value of the information the complainant has been obtaining or trying to obtain and the public interest in Parking Services within the London Boroughs. There have already been two Panorama programmes using or wishing to use the material the complainant obtained or wished to obtain and the complainant himself had 3 of the 5 PCNs he received over the time period overturned at appeal. This equates to over 50% of the PCNs issued to the complainant not standing up to scrutiny. It does understandably make members of the public question the extent of this issue, whether it is more widespread and the actions of the council and other local authorities.
47. For the above reasons, the Commissioner has concluded that section 14(1) of the FOIA does not apply to this request. She accepts that the complainant has made a number of requests over a period of 6 years relating to Parking Services but the pattern in which they have been made, the time between some and the context in which the requests

have been made does not demonstrate to the Commissioner that the latest request is vexatious. The number of requests is also not considered to be excessive or demonstrate unreasonable persistence on the part of the complainant. He has had legitimate concerns and wished to gain access to information to help him and others understand more clearly how PCNs are issued, in particular in connection with the use of CCTV. The Commissioner does not agree that the redaction of 100 emails plus several attachments would be overly burdensome on the council and it was not unacceptable for the complainant to say no to the council's suggestion to narrow the request for a second time.

Procedural matters

48. The Commissioner notes that the council took considerably longer than 20 working days to respond to the complainant's request. She has therefore found the council in breach of section 10 of the FOIA in this case.

Other matters

49. The Commissioner also notes that the council failed to carry out an internal review within 20 working days and again took considerably longer.
50. The section 45 code of practice advises public authorities to carry out an internal review promptly and within 20 working days. As the council failed to do this and took considerably longer, the Commissioner would like to remind the council of the requirements of this code and the requirements of the FOIA more generally.

Right of appeal

51. 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

52. 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.
53. 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

Samantha Coward
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