

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 July 2017

**Public Authority:** Barnsley Metropolitan Borough Council  
**Address:** PO Box 634  
Barnsley  
S70 9GG

#### Decision (including any steps ordered)

---

1. The complainants requested information from Barnsley Metropolitan Borough Council ("the council") relating to parking restrictions on a particular road. The council said that the requests were vexatious and refused to respond using the exemption under section 14(1) of the Freedom of Information Act 2000 ("the FOIA"). The complainants asked the Information Commissioner ("the Commissioner") to consider whether the council had correctly refused to respond. The Commissioner's decision is that the council correctly applied section 14(1). She does not require any steps to be taken.

#### Request and response

---

2. For clarity, this decision notice refers to "the complainants" throughout for ease of reference, who are husband and wife, regardless of whether or not the contact referred to was made by one or both of them.
3. On 17 October 2016, the complainants requested information in the following terms:

*"Why did you put 2 hour parking in place [details of address]"*

*Why was the above 2 hour parking only for this stretch of the above road and not all the surrounding streets?"*

*WHY WERE THE ELDERLY DISABLED RESIDENTS OF THE ABOVE ROAD WHO PAY FOR PERMITS SINGLED OUT FOR A DIFFERENT SCHEME FROM THE REST OF THE SURROUNDING STREETS?"*

*Why was this parking changed to 2 hours in 2011 by you to favour Hospital Patients as stated by the Ombudsman?*

*Why have you stopped sending the traffic wardens to this locality leaving it open to abuse on a regular basis?*

*Why was this 2 hour parking not put at the other side of [name of road] was it because you favoured Hospital Workers who fill this road from 7am to 6pm?*

*Why do some Traffic Wardens come and take car registration numbers and THEN THEY DO NOT COME BACK why? This is a waste of time and money".*

4. The council replied on 20 October 2016 and said that it was refusing to respond, relying on section 14(1) of the FOIA.
5. An internal review was requested on 18 November 2016.
6. On 1 March 2017, the council wrote to the complainants and said that it was not going to conduct an internal review because the request had not been handled as a request but was refused using section 14(1). Nonetheless, the council explained further why it had decided not to respond.

## **Scope of the case**

---

7. The complainants contacted the Commissioner on 27 October 2016 to complain about the way the request for information had been handled. They asked the Commissioner to consider whether the council had correctly applied section 14(1) of the FOIA.

## **Reasons for decision**

---

### **Section 14(1) – Vexatious requests**

8. Section 1(1) provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".*

9. The Commissioner has published guidance on applying section 14(1) of FOIA which includes information on how to apply this balancing exercise. For ease of reference, it can be accessed here:

[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)

10. 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 patently obvious when requests are vexatious. In cases where it is not so clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
11. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous difficult encounters between the parties as well as information requests. The council relies on this history when characterising these requests as vexatious.
12. The background to this matter is that problems have arisen for residents living near to Barnsley Hospital because of visitors to the hospital or hospital staff parking in residential streets. The complainants live in this area and are in dispute with the council about parking arrangements outside their property. The complainants disagree with the shared usage arrangement for the road, which means that the parking is both residential and open to members of the public for a restricted time of 2 hours. This has been in place since 2011 when the council determined that the parking area was not fully utilised. The complainants are elderly and disabled and would like more opportunity to park outside their own property. They have complained that it is unfair to charge £20 each year for a permit given the difficulties with parking and that other surrounding areas have residents only parking. The council says that the parking scheme existed before the complainants chose to move into the property and that it does not intend to change the scheme. The council says that this dispute has led to the complainants having both verbal and written contact with the council's Highways Service, councillors, Members of Parliament and the Customer Feedback and Improvement Team (complaints) since approximately 2015.
13. The council told the Commissioner that it does not hold any specific records of the verbal contact that has taken place between itself and the complainants on this matter however it believes that this has taken the

form of onsite visits and telephone conversations. It provided a written email from a member of staff confirming that he and another staff member had spoken to the complainants several times on the telephone. The council said that during these telephone conversations it had adequately explained the parking arrangements on the complainants' road. The staff member recalled one of the complainants commenting during one telephone call that, "I don't care what you say to me it doesn't matter because I won't go away until I get what I want".

14. The council said that it had written to the complainants about the parking arrangements and it provided copies of this correspondence to the Commissioner. This includes correspondence from the council's Executive Director for Development, Environment and Culture when the correspondence was escalated to a senior level. The council said that it considered that this correspondence had provided a detailed explanation for the parking arrangements on the complainants' road.
15. The council highlighted that the parking arrangements were in place prior to the complainants taking up a tenancy and whilst the council appreciates that the complainants consider that the parking is unsuitable for their particular circumstances, the council is satisfied that the scheme is operating in accordance with the rules of the scheme and is achieving its aims of provided shared use parking. The council has told the complainants that it is aware that funding is being sought to review some waiting restrictions but this has not yet been secured. It has explained to the complainants that in the current financial climate of budgetary restraints, it cannot change the parking arrangements. It has pointed out that the provision of residents only parking is not a statutory duty that the council has to provide and it believes that on most occasions, the complainants can at least park nearby if not always outside their own property. The council has also explained parking changes for another nearby road, which had prompted another complaint from the complainants.
16. The complainants had also submitted a petition about the same issue which had been considered by the council's Cabinet on 28 October 2015. There were 5 signatories to the petition including the complainants (residents on the same road) however the complainants were considered to have taken the lead. The council said that a substantive response was sent in response to that petition explaining why the council could not change the scheme, in which the final sentence was "I now consider this matter to be closed".
17. The council has also responded to previous information requests from the complainants dating back to the beginning of 2015 in the following terms:

Request on 18 February 2015

*"Thank you for your letter dated 3<sup>rd</sup> February 2015 in which you state that over the last few weeks the parking bay on [address details] had been monitored between 8am and 6pm Mon to Fri.*

*Would you be so kind as to supply to me in writing under the above freedom of information request because I dispute your findings.*

*I require the start date of your monitoring the finish date and the name of the official who conducted the monitoring also how many days there were 11 vehicles parked in the bay".*

Request on 25 August 2015

*"Will you please inform me in writing. How many foreign drivers have been issued with Parking Penalty Fines? and how many remain unpaid? From 1<sup>st</sup> January 2015 to 31<sup>st</sup> July 2015 in Barnsley Metropolitan Borough Council area".*

Request on 11 November 2015

*"Regarding the proposed change to permit only parking on Rowland Road, Barnsley, what will be the cost to change this?*

*Why is this change going to happen when the permit parking had expired?*

*What has caused this change when we asked for the same not 6 months ago. We were told that it could not be done for us elderly and disabled owing to Barnsley MBC having finite funding. What has changed?*

*When are we, the elderly and disabled, now going to be awarded the same permit only parking where we live because it is quite obvious that you now have got the funding, or is this yet more selective treatment for the elderly and disabled?*

Request on 18 February 2016

*"What was the total cost of all resurfacing work done to the pavement on Victoria Road, Barnsley"*

*Why has this work been done to the pavement when the surface of Victoria Road has been in a disgusting state for the last twenty years, this road surface is a disgrace and in a dangerous condition where my vehicle is at risk from damage".*

18 October 2016

*"1/When did the Highways department inspect the highway and pavements on both sides on [name of road] from Gawber Working Mens Club to Sainsburys supermarket.*

*2/What was the condition of the above road and pavements at the time of the inspection.*

*3/Was any remedial repairs [sic] to the above advised.*

*4/ON what dates and times were these inspections carried out and by whome [sic]"*.

18. Confirmation was also provided of the complainants' attempts to take the complaint to others. The council had given advice on the matter to a councillor who had been contacted by the complainants. He said that the complainants' MP had also written to the council on 3 occasions and substantive responses had been sent. The council also provided a copy of a letter from the Local Government Ombudsman stating that it had received a complaint about the matter from the complainants but on this occasion it had decided not to investigate because it was unlikely that the Ombudsman would find that the council was at fault. There has also been some media involvement.
19. The council said that it believes that it has provided as much clarification as possible and that making further information requests about this matter creates a disproportionate and unjustified level of disruption to the service, particularly when the parking scheme is not going to be changed which is what the council understands the complainants are seeking. The council has argued that the requests represent an abuse of the rights of information access.
20. The complainants have argued that these requests are not vexatious. They consider that the requests cannot be vexatious because earlier requests were made by one of the complainants, and the request that is the subject of this particular complaint was made by the other complainant in this case, his wife. She has stated that the use of section 14(1) is insulting and a denial of her basic human right to ask questions. She highlights that her husband's previous requests did not involve her because her signature was not on the correspondence. She says that they cannot be held responsible for each other's requests. She has alleged that the council does not want to respond because the topics raised are a "sore point" rather than because of any valid concerns about vexatious behaviour. She has accused the council of censorship and making a "gagging order".
21. The Commissioner disagrees with the complainants that it is not appropriate for the council to regard the current requests as a continuation of a pattern of behaviour dating back to 2015. She considers that the evidence clearly supports the council's overall position

that the complainants have both been pursuing this complaint jointly and are both responsible for the cumulative effect on the council, albeit that one of them may have taken the lead in terms of making verbal contact and signing the most correspondence. Indeed, even the complaint to the Commissioner about the handling of this particular request has come from both complainants acting together. The Commissioner considers that it would be much too artificial to look at this request in isolation merely because it is only signed by one of the complainants. As already explained, the Commissioner must take a wider view of all the circumstances. The Commissioner does not accept that there is any evidence to suggest that the use of section 14(1) in this case was an attempt by the council to be deliberately evasive or discriminatory. Section 14(1) has been applied to the requests and the connected pattern of behaviour from the complainants.

22. In this case, the complainants are obviously deeply unhappy about the parking situation outside their property and the council's response to that ongoing problem. It is in the public interest that public authorities are accountable and transparent about their actions and decisions where appropriate. However, it is clear to the Commissioner that the council has provided detailed explanations already about the parking arrangements outside the complainants' property and has responded properly to the complaints over a long period of time, which reduces significantly any serious purpose or value that these requests may otherwise have had. It is important to realise that the Commissioner's role in this matter is not to judge afresh whether or not the council should have made a different decision about the parking. The Commissioner's role is to judge whether on this occasion, these requests have tipped the balance towards disproportionate pressure, outweighing any value in responding.
23. It may have been a legitimate use of the legislation to make some requests connected to the parking dispute. The Commissioner's impression was that the complainants were at least in part genuinely seeking information that they thought would assist them in pursuing their complaint against the council and she understands that this issue has caused personal distress. Nonetheless, the complainants have had a reasonable opportunity to make enquiries of the council over a long period of time. Their contact has now reached a point where it can fairly be considered excessive. The Commissioner considers that the complainants are now attempting to use the legislation as a means to apply an inappropriate amount of further pressure, criticise the council and to continue their complaint, despite having had a clear and detailed outcome communicated to them.
24. The Commissioner particularly notes that the council has tried persistently to explain its position to the complainants and has responded to a good deal of correspondence including some previous

requests for information. It has also discussed the issues with the complainants during a number of telephone conversations. Although the complainants are very unhappy with the council's position, this does not change the fact that the council has justified and explained that position fully. This is clearly not a case of the council deciding that it simply does not want to answer difficult questions, as alleged by the complainants. Third parties including councillors, an MP and the Local Government Ombudsman have also been involved providing a suitable opportunity for more independent assessment and support. It is now the case that the complainants simply do not accept the outcome. The Commissioner notes that a member of the council's staff recalls being told by the complainants that they would not stop until the outcome they wanted was achieved. Pursuing issues in this way, despite all reasonable avenues of complaint having been exhausted, is a strong indication of vexatious behaviour and clearly places an unreasonable strain on public resources.

25. The Commissioner also notes that the complainants have accused a council department of being "a joke" that is "not fit for purpose". They often accuse the council of being "disgusting" and of discriminating against them and acting unprofessionally. They have characterised what they have been told by the council as "rubbish". The Commissioner also notes that the request itself which is the subject of this complaint is written in provocative language and text, showing that it is clearly an attempt to continue a complaint that the council considers it has dealt with as far as it is able to at this time. While the Commissioner accepts that public authorities should be reasonably robust to withstand discourteous comments, she considers that when added to the ongoing calls, letters and requests, it is fair to conclude that any reasonable authority would regard persistent contact of this nature as crossing the vexatious threshold.
26. The Commissioner considers that on this occasion any serious purpose or value of the requests is outweighed significantly by the burden imposed on the council and it is not reasonable to expect the council to engage continually with the complainants in connection with this matter. She therefore considers that the council was correct to rely on the exemption under section 14(1) of the FOIA to refuse to respond to these requests.

## Other matters

---

27. The Commissioner notes in this case that the council said it was not going to conduct an internal review because it had refused to respond to the requests using section 14(1). The Commissioner would like to highlight that she would normally expect a public authority to conduct



an internal review in this scenario before a complaint is made to her office. She trusts that the council will consider this when responding to future requests.

## Right of appeal

---

28. 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)

29. 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.
30. 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** .....

**Elizabeth Archer**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**