

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 May 2017

Public Authority: Horsham District Council

Address: Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

Decision (including any steps ordered)

1. The complainant has requested information in relation to an area of land which included information relating to a named office holder. Horsham District Council refused the request under section 14(1) of the FOIA as it considered it to be vexatious.
2. The Commissioner's decision is that the council are able to rely on section 14(1) of the FOIA to refuse the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 25 July 2016 the complainant requested the following information from the council:

"1. The name(s) of the purchaser, (b) developer of Park North, and (c) the agent that acted for the purchaser/developer

2. The name of HDC's agent that marketed Park North for sale

3. The date that Park North was sold

4. Information held as to when building work will commence on the conversion of Park North into flats (since planning permission has been granted) and when these units will be available at the earliest opportunity for sale to the public –

5. A list of all meetings between Cllr [name redacted] (between the date of this FOI and 1 January 2013) and the new owner and the developer and/or the agent(s) who acted for the purchaser and /or developer. Such list to break down the date of the meeting(s) (i.e HDC, or in the agent's office, or site visit at Park North with new owner etc) and release of HDC's officer's notes and agendas and attendee lists of all such meetings.

6. Release of all emails between Cllr [name redacted] and the new owner of Park North, and any developer and any agent for the new owner/developer of Park North.

7. Release of all emails between Cllr [name redacted] and HDC's officers (i.e to Chief Executive and Council's Solicitor) should Cllr [name redacted] have sought advice in any form about any purchase or potential or likely purchase of any flat(s) not limited to issues pertaining to the Code of Conduct or any prejudicial; personal, or pecuniary interest on either himself (or his wife) or any company registered in his name in purchasing flat(s) in Park North and release of emails of advice given by officer(s) in reply.

8. Release of past copies of Cllr [name redacted] Register of Member's interest filed at HDC since his election."

5. The council responded on the 25 August 2016 refusing the request under section 14(1) of the FOIA as it considered it to be vexatious.
6. The complainant requested an internal review on the 26 August 2016 setting out why he considered the request is not vexatious.
7. The complainant emailed the council on the 26 October 2016 following up on his review request explaining that he posted his request for a review as he was having problems with his email at that time. The complainant attached a copy of his review request.
8. The council responded on the same day advising that it never received the posted review request of 26 August 2016, but on receipt of his 26 October 2016 follow up, the council advised it would now conduct one.
9. The council provided the outcome of its internal review on the 1 November 2016 upholding its original response to refuse the request.

Scope of the case

10. The complainant contacted the Commissioner on 4 November 2016 to complain about his request being refused.
11. The Commissioner considers the scope of the case is to determine whether the council can rely on section 14(1) of the FOIA to refuse the request.

Reasons for decision

Section 14(1) of the FOIA – vexatious requests

12. 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.
13. The term vexatious is not defined in the FOIA. The Upper Tribunal considered 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.
14. 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.
15. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in his published guidance². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All

¹ <https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.

16. The council provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA.
17. It firstly provided some background information to the Commissioner to add context to the request it has refused. It has stated that the specific decision that appears to have first caused the requestor to engage with the council was not the decision in relation to Park North, which this request is mentions, but the decision relating to the Horsham District Planning Framework (HDPF) Preferred Strategy Consultation (HDPF) set out in the minutes³ of 11 December 2013.
18. Subsequently, the Full Council considered Park North in June 2014 and again in October 2014. The council considers that the campaign against HDPF included Park North as a means of arguing that the council has not addressed a shortage of high quality office accommodation in the town which has manifested into a personal grudge against the named officer (and others in a leadership role at the council).
19. The council says that this has resulted in the complainant making frequent and overlapping requests and correspondence (either alone or in concert with others) about the same matter – namely the unsubstantiated allegations of the existence of correspondence of this particular office holder.
20. The council is of the view that there is a personal grudge and that this request is one of an aggregated series of requests, targeting a particular office holder and when taken into context; it considers the complainant is demonstrating personal enmity.
21. The council has told the Commissioner that the complainant has made unfounded allegations, and this request is making unsubstantiated allegations of the existence of information for which the complainant has no grounds.

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http://horsham.moderngov.co.uk/Data/Council/20131211/Agenda/AGENDA_131211.PDF

22. The council considers that the complainant has taken an unreasonably entrenched position against this particular office holder and has previously requested emails of this officer in a previous request made on 2 October 2015, which the Commissioner issued a decision notice for under reference FER0616686 finding that no information was held.
23. It also relies on the Commissioner's comments within that decision notice that she *"has not seen any evidence of wrongdoing surrounding (the council's) records management obligations and has not identified any reason or motive to conceal ...requested information"*.
24. The council sees this request as a continuing attempt to fish for information on this particular officer using a scattergun approach and does not see responding to this request will end the line of unsubstantiated enquiries and that it will only receive further requests no matter the response it gives.
25. The Commissioner's guidance on vexatious requests states at paragraph 84 in relation to 'fishing' that:

"...authorities must take care to differentiate between broad requests which rely upon pot luck to reveal something of interest and those where the requester is following a genuine line of enquiry. "
26. The council further advised that between December 2013 and October 2015, the complainant made almost 80 requests for information and 82% of those expected the council to search the emails of an office holder for information. Although there is a nine month gap between these requests and the request in this case, the council considers that a line must be drawn where a requester continually makes requests for information on the same subject matter (in this case the subject being the emails of one office holder over a period of time).
27. The council sees that this is placing an unsubstantiated and disproportionate burden on the council's resources in having to respond to the request.
28. The Commissioner has reviewed the list of these requests, between December 2013 and October 2015) provided by the council and notes it shows 77 questions have been asked in 19 requests for information.
29. Although it has been nine months since the last request listed by the council, the council has advised the Commissioner that the complainant has continued to write critically of the council and the named officer holder is mentioned in these.

30. The council also advised the Commissioner that the Independent Planning Inspector report of 8 October 2015 found HDPF to be sound and provided the Commissioner with a link⁴ to it.
31. The Commissioner has viewed this report and notes that recommendations were made but he does not see any suggestion of wrongdoing that would warrant follow up queries about any particular officers. The Inspectors Overall Conclusion in the report, at page 27, states: *"with the recommended main modifications set out in the Appendix the HDPF satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework"*.
32. The council says that the complainant has had sufficient dialogue with at least four different individuals and then an unusual pattern of requests were received within a short space of time, all of which were either identical or similar to this one. The council sees this as evidence of others also being in pursuit of a disruptive campaign.
33. It has provided the Commissioner with an email dated 2 October 2015 in which an individual emailed the complainant stating:

"...they seem to be doing all they can not to give any information on a number of requests... If you want another name on an FOI I would be willing."
34. Although this email was sent in 2015, a year prior to this request, the council considers it evidence that individuals are acting in concert.
35. It also provided the Commissioner with a copy of two other requests from two other individuals (one being the person who emailed the complainant in the above paragraph), dated 18 September 2016 and the other 22 September 2016. Both materially similar to part 7 of the complainant's request in this case. Although these requests were made approximately two months after the complainant's request, it has told the Commissioner this demonstrates further that the individuals are acting in concert with one another.
36. The council has also drawn the Commissioner's attention to a website and social media pages which it considers demonstrates a campaign and

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http://horsham.moderngov.co.uk/Data/Council/20151119/Agenda/Agenda_151119.pdf

that this evidence also helped to enable the council to rule out that these individuals were acting independently of the complainant.

37. The council has provided the Commissioner with links to articles written by the complainant where the named officer is mentioned which the council consider are unsubstantiated with no foundation to the alleged wrongdoing in them.
38. The complainant has argued that although he has written articles to the local newspaper, it is not about the issue with regards to this case; also writing to the newspaper is a democratic right and does not consider it relevant to his FOIA request.
39. The complainant has also stated that the accusations of him holding a grudge are incorrect.
40. The Commissioner has viewed these articles and is of the opinion that more senior officials should expect to come under more scrutiny from the public in relation to council decisions and she notes that this particular named officer is at a high senior level. However, this still has to be balanced against whether there are reasonable grounds for the scrutiny received, as stated in the Commissioner guidance on vexatious requests, at paragraph 61, where it needs to be considered if:

"The requester is pursuing a legitimate grievance against the authority and reasonably needs the requested information to do so. "
41. The council highlighted comments made in one article which it stated:

"Since the main beneficiaries of the QC's services seem to be in favour of the wards of [name redacted] and [name redacted] – they should cover the bill"
42. The council has also highlighted to the Commissioner a request made by the complainant on 4 July 2016 in which he requested to know how many staff members had made a complaint against the same named officer named in this request. To which the council advised there were none.
43. On review of the above, the Commissioner is satisfied with the council's view that the named officer appears to be a focus and that the requests in relation to him appear to demonstrate a fishing exercise in an attempt to try and uncover some wrongdoing.
44. The fact that Park North has been through a planning process and the Commissioner has not seen any evidence of wrong doing by the officer in relation to this case and after reviewing her conclusions in the

previous decision notice, FER0616686, the Commissioner is satisfied with the council's reasoning's and conclusions as to why this request is causing an unjustified and disproportionate level of disruption to the council in having to continue to respond to the requests for information in relation to the named officer holder and does not see that the council's response would end the line of enquiries.

45. Therefore the Commissioner finds that the council can rely on section 14 of the FOIA in refusing to respond to this request.

Right of appeal

46. 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

47. 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.
48. 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
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