

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 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 correspondence in which a specific councillor seeks information or advice regarding an ex-council building known as Park North. The Commissioner's decision is that Horsham District Council has correctly refused the request as vexatious under section 14(1) of the FOIA. She does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 26 September 2016, the complainant wrote to Horsham District Council ('the council') and requested information in the following terms:

"Please could you copy me on any correspondence / email sent to any officers or employees of Horsham District Council in which Councillor [name redacted] seeks information or advice regarding his interest / suggestion / proposal /intention to purchase any flats or any part of the ex - council building known as Park-North."
3. The council responded on 4 November 2016 (reference FOI 872) and refused the request under section 14(1) of the FOIA stating that it is wholly similar to part of a previous request received on 25 July 2016 to which a response has been provided and published on the council's

website under FOI Response 756¹. It said that it received an unusual pattern of requests for the same information and is of the opinion that some requesters are acting in concert, and vexatious.

4. On 15 November 2016, the complainant requested an internal review.
5. The council provided an internal review on 15 December 2016 in which it revised its position. It said that the grounds of refusal did not apply in relation to the request and that it holds no information in relation to the requested subject matter.

Scope of the case

6. The complainant contacted the Commissioner on 3 January 2017 to complain about the way his request for information had been handled.
7. During the course of the investigation, the council revised its position and reverted back to its initial response that the request is vexatious.
8. The Commissioner has therefore considered whether the council can rely on section 14(1) of the FOIA to refuse the request as vexatious.

Reasons for decision

9. Section 14(1) of FOIA 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 legislation. In *Information Commissioner vs Devon County Council & Dransfield*², the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

¹ <https://horsham.axlr8.uk/documents/756/FOI%20756%20Response.docx>

² UKUT 440 (AAC) (28 January 2013)

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 and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. 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).

12. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.

13. 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 requests³. 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.

14. The council said that the findings of the Commissioner in FS50655541⁴ and FS50658828, on materially identical grounds, support its reliance on section 14(1), and that the requester in this case was acting in concert as part of a campaign.

15. The Commissioner’s guidance on section 14(1) of the FOIA states at paragraphs 91 and 92:

“If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the

³ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014162/fs50655541.pdf>

organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious.

The authority will need to have sufficient evidence to substantiate any claim of a link between the requests before it can go on to consider whether section 14(1) applies on these grounds. Some examples of the types of evidence an authority might cite in support of its case are:

- The requests are identical or similar.
- They have received email correspondence in which other requesters have been copied in or mentioned.
- There is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time.
- A group's website makes an explicit reference to a campaign against the authority."

16. The Commissioner has reviewed both the requests in the aforementioned cases, and is satisfied that they are materially similar to the request in this case.

17. She has also reviewed the documents provided by the council to demonstrate that the requester in this case was part of the same campaign as the requesters in the aforementioned cases. She notes that the documentation consists of minutes of a council meeting where the complainant asked questions regarding development in the area, a petition regarding a planning application for new homes, two letters written by the complainant to local online newspapers regarding proposed new homes, and a letter written by the complainant referring to the councillor specified in the request and development proposals.

18. Paragraph 97 of the Commissioner's guidance on section 14 states the following:

"It is also important to bear in mind that sometimes a large number of individuals will independently ask for information on the same subject because an issue is of media or local interest. Public authorities should therefore ensure that that they have ruled this explanation out before arriving at the conclusion that the requesters are acting in concert or as part of a campaign."

19. In this case, the request was made eight days after the request in FS50658828, and before a response to that was issued, and the day before the response to the request in FS50655541 was made publicly

available on the council's website. This timing, together with the substantially similar wording of the request in this case to the requests in the two aforementioned cases, strongly suggests to the Commissioner that the complainant and the other individuals were acting in concert as part of a campaign.

20. In addition, the council has explained that the requester in this case is one of the original campaign group members (Save North Horsham) and the council knows that he operates with the requesters in the two aforementioned cases as they attend council meetings together, asking questions on the same topic and pursuing allegations against the same councillor.
21. The Commissioner is of the view that campaigns and groups can legitimately request information or ask questions of public authorities.
22. However, as in this case, when one person in the group or campaign has made a request and then it is followed by a similar or the same request from another person in the group or campaign then this can place a disproportionate and unjustified impact on the council in having to respond.
23. It can also be seen as a way of the group trying to circumnavigate the council's refusal of the initial request, when there is a legitimate route to appeal the council's initial refusal. Having other people in the campaign group submitting similar or the same request to try and get a different response can demonstrate an inappropriate use of the FOIA.
24. The Commissioner is satisfied that the council can take into account the reasons for refusing the other persons request when considering its response to this request.
25. Therefore, on review of the above, the Commissioner is satisfied with the council's application of section 14(1) of the FOIA to refuse this request when considered alongside the other individuals requests recorded under decision notices FS50655541 and FS50658828.

Right of appeal

26. 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

27. 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.
28. 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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