

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 September 2017

**Public Authority:** Northumberland County Council  
**Address:** County Hall  
Morpeth  
Northumberland  
NE61 2EF

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to Blyth Town Football Club. The Commissioner's decision is that Northumberland County Council has correctly applied the provision for vexatious requests at section 14(1) of the FOIA. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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2. On 2 October 2016, the complainant wrote to Northumberland County Council ('the council') and requested information in the following terms:  
  
"Where in Northumberland is there football played every Saturday and Sunday morning and afternoon and during the week during the football season at NCC owned premises other than South Newsham Pavilion.

1. South Newsham Pavilion, Blyth

Please give all the reasons why NCC curtailed the times the cafe at the South Newsham Pavilion, Blyth is selling food and drink. Send details of what NCC have specified the times and to whom the cafe is allowed to trade. The legal department were looking into the situation please send all their findings. Did Blyth Town Football Club (BTFC) require and did they have planning permission to run a commercial venture.

Was the trading at the cafe breaching the conditions in the lease. A simple yes or no answer is required either it was or it wasn't.

Please send all the correspondence between NCC and BTFC regarding the above matters and all correspondence regarding breaches of the lease. Including phone calls/conversations, meetings as well as any written communication.

Please send details of all the action taken by NCC in dealing with breaches of the lease.

Please send details of the checks NCC made to ensure BTFC were able to fund the building for both planning applications that were approved.

Please send details of the amount of 106s money given to Colas for the car park extension who authorised the money to be paid to Colas and who authorised the change from Straughans to Colas

## 2. Beachway, Blyth

There is a plot of land adjacent to Bayview, Beachway, Blyth to the south side which runs from the end of the public tarmacked road to the current seawall and runs south upto the gate and the area owned by NCC. Please send all the details of when the ownership was transferred from NCC to become part of the land owned by Bayview, Beachway, Blyth, the amount paid for the land and the person who acquired it. I also would like the person(s) who authorised the sale and their position in NCC."

3. The council responded on 21 October 2016. It provided information regarding where football is played on Saturdays and Sundays and who authorised the sale of land adjacent to Bayview. It applied the exemption for vexatious requests at section 14(1) of the FOIA to part 1 of the request and the exemption for information reasonable accessible to the applicant by other means at section 21 of the FOIA to part 2 of the request.
4. On 27 November 2016, the complainant expressed dissatisfaction with the response.
5. The council provided an internal review on 28 December 2016 in which it provided further information regarding money paid to BTFC in respect of expenditure incurred with Colas on the car parking works and maintained its position regarding the application of section 14(1) of the FOIA.

## Scope of the case

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6. The complainant contacted the Commissioner on 24 February 2017 to complain about the way her request for information had been handled.
7. The complaint to the Commissioner focuses on the application of section 14(1) of the FOIA. Therefore the Commissioner has not deemed it necessary to investigate the application of section 21 of the FOIA.
8. The Commissioner has considered whether the council has correctly applied the provision for vexatious requests at section 14(1) of the FOIA to part 1 of the request.
9. The complainant has said that she wants the council to remove the vexatious claim and ensure that BTFC adhere to all the conditions and legislation with regard to their use of what is a community asset (paid for by the residents) and public open amenity space.
10. The Commissioner can only consider whether the council has correctly applied the provision for vexatious requests. She cannot ensure that BTFC adhere to planning conditions and legislation.

## Reasons for decision

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11. 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.
12. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*<sup>1</sup>, 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.

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<sup>1</sup> UKUT 440 (AAC) (28 January 2013)

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 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).

14. The Commissioner therefore needs to consider 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.

15. 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<sup>2</sup>. 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.

16. As way of background and in order to provide context and history, the council said the following:

“...this FOI arises from a long running issue between the complainant, her husband and a small number of other local residents and Blyth Town Football Club (‘BTFC’). The numerous complaints relate to a development of the facilities at the football club. The football club has sought and gained planning permission for various works and in

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

addition the Council negotiated a new lease with the club to enable to [sic] works to proceed.

Many of the complainant's emails relate to the lease or planning in relation to the BTFC site and pavilion. Despite having explained the planning process and the Council's response to planning breaches, there is an expectation by the complainant that licences will be withdrawn and draconian measures taken on planning breaches when these occur. That is not how this Council prefers to approach these situations; instead, we work with the leaseholder or planning recipient, albeit through the enforcement process, to arrive at a mutually agreeable solution. In some cases, that results in retrospective planning consent. This approach has not found favour with the complainant and she has stated in her email dated 27<sup>th</sup> November 2016 that she will *'continue to inform NCC as long as BTFC continue to breach any policies, procedures, agreements with regard to planning and the lease regardless of whether the breaches affect me personally or not'*.

Up to the date of this FOI, the Council feels that it has been responsive to the complainant's (and her husband's) not infrequent emails. A meeting had already been held with local residents, which included the complainant, on the 14<sup>th</sup> June 2016 at which Council Officers explained the planning and licensing process and our response to breaches; we have a record of that meeting. Having explained the process and responded to a number of informal and formal requests for information about planning, licensing, leases and s106 funding relating to BTFC and its pavilion over a period of many months, we felt that the complainant's request...was covering old ground. "

17. The complainant provided the following information as background to the request:

"There is an issue with a Blyth town football club (BTFC) using a community asset which was paid for by 106s money from our community. BTFC are a community Amateur Sports Club (CASC) which means the club must remain amateur.

BTFC had two planning applications

1. For a stand, floodlights, fence around the site
2. Extension to the pavilion and MUGA

A large number of residents objected to both applications, the first was initially refused by NCC then overturned by the planning inspectorate.

The second was successful. There was petition of 248 residents who objected to the developments.

Both planning consents required their car park to be extended and other conditions were to be discharged BEFORE any construction work was to be carried out. BTFC started construction on the site BEFORE discharging the planning conditions on both applications. In addition they also did not adhere to the plans approved in the planning consent for both applications and so were breaching planning.

BTFC were given a new lease by NCC as the one they had would not allow either planning consents to be built. Negotiations between NCC and BTFC took months to work out as the planning consent did not sit comfortably with the status of a community asset and the site's status as public amenity open space.

BTFC were given the site for amateur football but the first application was for the first team to progress up the league which means they are now a semi-professional club with a sole owner of the club being a Local Councillor of Blyth Town Council."

18. As stated in paragraph 14, the Commissioner needs to consider 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 requests.
19. In its initial response to the complainant, the council said that the requested information regarding the pavilion is exempt under section 14(1) of the FOIA as it has become a burden on the authority due to the frequency and repeat nature of the requests received on this subject matter via FOI and direct to the Service Areas. It said that this has placed undue pressure on staff and has placed a significant strain on the council's limited resources.
20. The Commissioner asked the council for a further explanation of the detrimental impact of complying with the request; why it would be disproportionate; and whether previous requests had been responded to in full.
21. The council informed the Commissioner that between the period of April 2016 and October 2016, it had received 40 emails from the complainant and responded to 39 and that the vast majority have been in relation to BTFC and concerns about breaches of the lease, planning, access or Section 106 funding. It said that responding to these requests, which on occasion included an unreasonable expectation for a timeframe for

response placing additional pressure on staff (for example the complainant's emails of 19 May 2016 and 12 July 2016 requested a response on the same or following day), generated a significant additional workload and pressure on staff. The council submitted that in view of the background correspondence and history there is evidence to support the application of the vexatious exemption. This is on the basis that the frequency and repeated nature of the requests were placing a burden on the council's time and resources which it considers disproportionate to the value and purpose of the request.

22. The council said that responding to the request would involve staff from a number of departments searching through drives, folders and inboxes for anything which could remotely relate to BTFC and the lease and might contain any of the relevant information (emails, minutes of meetings, formal correspondence etc.). It explained that staff would then need to review all records found to establish whether they were relevant; to exclude duplicates; to consider whether the documents could be released and/or whether redaction might be required; and collate all the documents. It said that this would involve at least 10 members of staff spending between half a day to a full day. The council said that in view of the correspondence that had already taken place and the additional value that could be gained from undertaking the above processes, it considers that the request would impose a disproportionate burden in terms of officer time and costs and stress to the staff involved.
23. In relation to whether previous requests were responded to in full, the council provided the Commissioner with details of five requests received from May 2015 to before the request in this case was made. The Commissioner notes that four of those requests were responded to in full and one was partially responded to (with part of the information being classed as exempt under the exemption for commercial interests at section 43(2) of the FOIA). The council stressed that these requests only represent a fraction of the correspondence with the complainant.
24. The Commissioner informed the council that the complainant has submitted that if the council accepted the issues she raised straight away and dealt with them there would be no need for her to contact the council thus reducing time, effort and stress on council officers. She said that the number of emails are caused by the issue due to the action of BTFC and if the council stopped BTFC from breaching the lease there would be no necessity for her to communicate with the council.

25. The Commissioner also asked the council to comment on the following specific points made by the complainant. The council's response to each point is also noted below.

"1. In order to deal with Health & Safety issues, which were serious issues, at the site during construction it took 7 e-mails from myself. Initially NCC stated it wasn't their remit then the safety officer went to look at the site he said everything was fine. He had not looked at the site properly and after revisiting the site he completely agreed what I had said was correct and said the issues had been dealt with. This should have taken no more than 2 e-mails instead of the 7, where I had to insist I was right. The issues were the extension to the pavilion had scaffolding (the height of the building) which was fully accessible to the public. Bearing in mind this is a public open amenity space where children play."

The council informed the Commissioner that the complainant did raise health and safety issues which were resolved satisfactorily with the appropriate officers in the council.

"2. I had a copy of the new lease from Land Registry as NCC initially would not send one out. I asked NCC for a copy of the one they had as the one BTFC had sent to Land Registry had pages missing and you could not make out the colours on plans which the lease referred to. When I read through the lease there were other mistakes to which NCC response was it did not matter. The lease was rejected for registering from Land Registry for the very mistakes I had pointed out! It took three attempts before Land Registry would register the lease."

The council informed the Commissioner that there was an initial problem with the registration of the lease which was resolved and that the complainant is believed to be in possession of a copy of the lease.

"3. As I said there have been much communication regarding planning. NCC was repeatedly informed of breaches of planning but insisted everything was ok. How can allowing six floodlights instead of the four, and the felling of trees, none of which were to be removed, to provide a car park with a different footprint than that given consent, a pavilion with an extra two doors and two windows etc. be acceptable? Eventually the first application had enforcement action placed on it and to stop this a variation application was applied for in 2016. This has been subsequently refused by both NCC and the planning inspectorate. The second application had a site visit as late as June whereby officers stated there was no breach of planning. At this point the extra

openings were clearly visible. Again NCC would not accept planning had been breached. Eventually in October a variation application was applied for in order to stop the breaches I had informed NCC of. This is yet to be decided."

The council informed the Commissioner that it has not allowed the works to be undertaken and has accepted that many of the reported problems were in fact breaches of planning conditions. It explained that BTFC has undertaken work that is not in accordance with the planning conditions and is working with the council to regularise any anomalies and that the council, as landlord, has been in discussion with BTFC about the importance of complying with the lease to prevent it being terminated.

"4. There have been countless breaches of the lease. The pavilion was selling food and drink from 8am until 11pm a clear breach of the lease. No commercial activity is to be carried out at the site. NCC first reaction was to say this was a good use of a community asset instead of agreeing it was a breach of the lease. This was first reported in February and it took several months before NCC took any action and the activity was indeed deemed to be in breach of the lease. BTFC have been denying public access to the site and NCC have been either unwilling or unable to stop this as it is still continuing."

The council informed the Commissioner that it has discussed the numerous allegations with BTFC and where the lease has not been complied with BTFC has taken appropriate remedial action. It explained that a number of complainants have stated that they want the council to immediately rescind the lease if a breach occurs but it has explained that that is not how the council prefers to deal with the issue.

"5. There is a potential misappropriation of public money as NCC have paid the first instalment of 106s money for a car park whose footprint does not and has never had planning permission. I have asked when the money was paid and the response was June 2016 but not the exact date, this has a bearing on the situation as the work wasn't carried out until June residents had a meeting with council officers in June."

The council informed the Commissioner that there has been no misappropriation of public funds. It explained that BTFC successfully applied for a section 106 grant to improve the car parking at the ground and that the full grant awarded was £33000. An initial payment of £4998 was made on 14 June 2016 and as it was clear that there were a number of planning breaches, further payments were stopped

until the breaches were resolved. In July 2017 all but one breach had been rectified and a further payment of £15000 was authorised with advice to BTFC that that the balance of £13002 will be paid when the last outstanding issue is satisfactorily dealt with. The council said that it believes this is a proportionate stance to take with the club.

"6. I have questioned the legality of fencing off public open space and charging for access when there is a game on, the only response given is that it's allowed when asked where it states this there is no answer just because it can. The lease clearly states the only restriction of access is for the main pitch (not any other part of the site) when a match is played charging at the gate is restricting public access."

The council informed the Commissioner that the lease allows BTFC to close off access to the pitch and the area within the fence (close to the pitch) when there is a football match taking place and that this was necessary to comply with Football Association rules. It said that at all other times the site should be accessible to all.

"7. I informed NCC that BTFC were breaking their Alcohol License as they were advertising & selling alcohol outside their licensing hours."

The council informed the Commissioner that these allegations were referred to the appropriate council officer and various actions were taken where appropriate.

"8. As BTFC is a CASC it must remain amateur, it cannot have a limited company owned by one person and there is no commercial activity allowed at the site in the lease."

The council informed the Commissioner that the status of BTFC is a matter between BTFC and its regulators and that it has a lease with council that allows the club house to be used to support its activities.

26. The Commissioner acknowledges the council's response above. However, she notes that it is not within her remit to adjudicate on whether breaches of health and safety, planning procedures and conditions, the lease itself, and the alcohol licence occurred or whether the council dealt with those issues correctly or in a timely manner.
27. Notwithstanding the above paragraph, it appears to the Commissioner that the complainant has brought to the attention of the council matters which had sufficient basis to warrant action by the council. However, it does not necessarily follow that because the communications from the

complainant raised valid points, that the request in this case has sufficient value and purpose to justify the disproportionate effect it is having on the council.

28. The Commissioner considers the purpose and value of the request in this case is to hold the council to account for its dealings with BTFC and to ensure that both the council and BTFC act appropriately. She considers that this does have serious purpose and value.
29. However, the Commissioner considers that this value has been reduced because the council has stated that the request in this case largely covers old ground and the alleged breaches have been dealt with. She also considers that the value is reduced because the council has explained to the complainant the planning and licensing process and its response to breaches.
30. The Commissioner has considered the position that if the council accepted or dealt with issues and stopped BTFC breaching the lease there would be no need for the complainant to communicate with the council. However, she has taken into account the council's position that it has explained how it deals with breaches to the complainant and that this isn't always as the complainant expects or wants it to be. As stated earlier, it is not for the Commissioner to judge how the council should deal with breaches. However, she does consider that the council should be allowed to do so in a manner that it judges to be proportionate to the issue and its resources and considers that any issues with the council's handling of the matters in this case this could be taken to the Local Government Ombudsman or the Planning Inspectorate for consideration. The Commissioner is not aware that the complainant has taken these other, more appropriate, avenues.
31. Also taken into consideration is the complainant's statement that she will 'continue to inform NCC as long as BTFC continue to breach any policies, procedures, agreements with regard to planning and the lease regardless of whether the breaches affect me personally or not'. The Commissioner also considers that providing the requested information may not satisfy the complainant. Compliance with the request may result in further correspondence and the Commissioner has seen no evidence to suggest that providing the requested information would satisfy the complainant or bring an end to the issue. Conversely, she considers that the complainant may use the requested information to

create further points of dispute. The Commissioner notes that breaches of planning permission can be reported to the council via its website<sup>3</sup> and therefore there is an alternative avenue for the complainant to pursue her concerns without making requests for information to the council. Once a suspected breach has been reported in this way it would be for the council to investigate and take appropriate action rather than the complainant needing to obtain information under the FOIA to provide evidence of a breach.

32. Taking into account the context and history of this case, the Commissioner does not consider that the purpose of the request justifies the disproportionate effect on the council. As stated above, she considers that providing the requested information may not satisfy the complainant, may result in further correspondence and may not bring an end to the issue when there are other avenues which the complainant can use to report her concerns. The Commissioner acknowledges that the complainant's previous correspondence appears to have raised valid concerns that warranted further action but considers that the situation has reached the point where the burden on the council in terms of officer time and stress to staff needs to be avoided. The Commissioner can understand how responding to this request, when coupled with previous dealings on the same matter, would cause a disproportionate or unjustified level of disruption, irritation or distress.
33. Returning to the findings of the Upper Tribunal in Dransfield, and its view that a holistic and broad approach should be taken in respect of vexatious requests, the Commissioner has decided that the council was correct to deem the requests as vexatious. Accordingly the Commissioner finds that section 14(1) of the FOIA is engaged.

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<sup>3</sup> <http://www.northumberland.gov.uk/Planning/Planning-monitoring-and-enforcement.aspx#whatactiondoesthecounciltake>

## Right of appeal

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34. 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)

35. 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.
36. 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 .....

**Deborah Clark**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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