

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 April 2017

**Public Authority:** North Yorkshire County Council  
**Address:** County Hall  
Racecourse Lane  
Northallerton  
North Yorkshire  
DL7 8AL

#### Decision (including any steps ordered)

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1. The complainant has requested information in two requests concerning the assessments and reasons surrounding decisions to charge his now deceased sister in respect of her social care arrangements with North Yorkshire County Council (the council). The council initially responded withholding the information under section 14 and section 42 of the FOIA as it considered the requests to be vexatious, and some of the information to be covered by legal professional privilege. During the Commissioner's investigation, the council also sought to rely on section 41 as the information was confidential.
2. The Commissioner's decision is that the council was entitled to rely on section 14 not to comply with the requests. However, in responding to one of the requests outside the 20 working day time frame, the Commissioner finds that the council failed to comply with section 10. The Commissioner does not require the council to take any steps in this case.

#### Request and response

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3. The complainant made two requests for information which the council considered together in its internal review. The Commissioner has therefore considered them together in this decision notice.

18 July 2016 – Council reference DN0107KR

4. On 18 July, the complainant made the following request for information:

*"I would be grateful if you could inform me of the following:*

1. *Just how many assessments were produced regarding my sister as from the 30th July 2012 to her death in January 2015? I would appreciate copies of all assessments*

2. *Could you please explain to me how both of these assessments had a figure of £3588.97 under savings and investments when you knew that my sister had no savings whatsoever?*

3. *Why was this error not corrected?*

4. *Could you please explain to me how in July 2012 my sister had her disability allowance removed by [council officer A]?*

5. *Did [council officer A] carry out this assessment in accordance with the Care Act and was there an external unbiased witness present as stated by the Care Act?*

6. *[council officer B], [council officer C] and [council officer D] stated that an assessment on my sister was carried out just prior to 7th April showing by the Benefits and Assessment teams that my sister's contribution towards her care was nil and all payments should up until that date could be returned to my sister's account.*

7. *[council officer B] stated that on 28th October 2014 the Benefits and Assessment team that an assessment was carried out on my sister reinstating her care payment rate of £11.15.*

8. *I would like copies of the two assessments and your accompanying letters referred to in items 6&7 above as stated by [council officer D] in her letter to me dated 7th July 2015 as I did not receive the copies promised.*

*May I kindly remind both you and the NYCC that all requests for information are being made under the Freedom of Information Act."*

5. On 3 August 2016, the council responded, providing answers and information.

6. On 16 August 2016, the complainant wrote to the council expressing dissatisfaction with the response of 3 August 2016. In line with the section 46 guidance on internal reviews, the Commissioner considers

that expressions of dissatisfaction should be considered as requests for an internal review of the response.

7. The council responded to the complainant's email of 16 August 2016 on 16 November 2016. It explained that the request had been considered under the FOIA. It also stated that the council was refusing the request for information under section 14 of the FOIA as it considered it to be vexatious and unreasonably persistent. The Commissioner has considered this to be the internal review for this request.

*28 July 2016 – Council reference DN0115KR*

8. The complainant made the following request to the council:

*"On 25th March 2014 I received a letter from [council officer B] stating that my sister was to contribute towards her case. I am assuming that a meeting was convened to facilitate this:*

- 1. Please supply me with the name of the person chairing this meeting.*
- 2. Please supply me with a copy of the procedure for this meeting.*
- 3. How was the charge of £14.56 per week calculated?*
- 4. What was the reason for back dating my sister's contribution by requesting a lump sum of £875.68?*
- 5. You knew my sister had no savings and that this request would put her in a state of penury. Why did you proceed with this demand?*
- 6. The figure of £875.68 when divided by £14.56 is just over 60 weeks or fourteen months, which would back date payments due at about November 2012. What was the reason for your choice of this date?*
- 7. Why was the assessment (dated 30.07.2012) not taken into account when referring to item 6?*
- 8. Your brochure "What you should expect to pay for care services in 2013/14" page 9 states that if a person is receiving housing benefit, council tax benefit or pension credit they do not have to contribute towards their care. As my sister was receiving all three benefits why did this meeting still insist that my sister contribute towards her care?*

9. *Page 6 of the above brochure paragraph 2 the law of the land states that if you have an income less than basic level plus 25% no payment will be required, as my sister was below this level, why did she still have to pay?*

*I was informed by [council officer B] on 7th April 2014 that my sister's contribution was nil and all monies paid into my bank account by my sister could be returned to her account. This was verified in emails dated 24th April 2014 and again on 9th May 2014. On 29th October 2014 I was informed that my sister would have to again contribute towards her care but at the reduced rate of £11.15 per week as an Uplift Effective. This meant that my sister's total contribution at her demise would be 14 weeks at £11.15, a total of £156.10.*

- *What was the reason for stating my sister did not have to pay towards her care as from 7th April 2014?*
- *What was the reason for stating that my sister was again to pay towards her care as from 28th October 2014 but at a lower rate?*
- *What was the reason for the Uplift Effective?*
- *As my sister only contributed £156.10 towards her care, why was I presented with a bill for £1308.45?*

*Your office convened a meeting with the NYCC's legal team with the object of talking me to court for the return of the money you deemed I owed.*

- i. Please send me a transcript of this meeting.*
  - ii. Please advise who was present from the legal team at the meeting.*
  - iii. Why were the court proceedings stayed?"*
9. On 16 November 2016 the council responded. It explained that the request had been considered under the FOIA. It advised that the council was refusing this request for information under section 14 of the FOIA as it considered it to be vexatious and unreasonably persistent. It also explained that information requested relating to correspondence and discussions with the council's legal services was subject to legal professional privilege and was therefore exempt from disclosure under section 42 of the FOIA. As the council directed the complainant to contact the Commissioner if he remained dissatisfied with this response we consider this to be the council's final position.

## Scope of the case

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10. The complainant contacted the Commissioner on 13 October 2016 to complain about the way his request for information had been handled. He was concerned that he had not received full responses to his requests of 18 and 28 July 2016.
11. During the course of the Commissioner's investigation, the council stated that it considered that as well as section 14, section 41 also applied to the requested information for both requests, and provided its arguments in support of this position as it considered that the information was confidential to the deceased, and there would be a detriment to the confider if released to the world at large. The council also stated that it no longer relied on section 42, as on review, there was no information falling within the scope of that exemption.
12. The Commissioner considers the scope of this case to be to determine whether the council has handled the requests in accordance with the requirements of the FOIA, and whether it is entitled to withhold the requested information.

## Reasons for decision

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### Section 14(1) – vexatious requests

13. Section 1(1) of the FOIA 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”.*

14. The Commissioner has published guidance on applying section 14(1) of FOIA.<sup>1</sup> The Commissioner's guidance states that 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

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

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.

15. As in many cases which give rise to the question of whether a request is vexatious, the requests in this case are borne out of the requestor's complaints to the council. In this case, the complainant is concerned about the direct payment arrangements between the council and his sister for services it provided for her care. On her death, the council initially sought to recover unused direct payment money from the complainant as he was the nominated person on the direct payment agreement. The complainant's interaction with the council, including the requests, stem from this matter.

### **Council's position**

16. The council's position is that it considers the complainant's requests to be vexatious as they seek to reopen a closed complaint which has already been concluded by the council, and by the Local Government Ombudsman (the LGO). It states that it does not understand what the complainant hopes to achieve by this as there is now no outstanding debt being pursued by the council, and neither he nor his sister's estate are at risk of being financially disadvantaged.
17. For context, the council has provided a history of the complaint to the council. The requestor first raised the complaint after he was asked to pay £1,543.99 in respect of unspent "direct payments" to his sister following her death in January 2015. The complainant disputed the invoice and from his own calculations, paid what he referred to as the outstanding balance of £235.54 on 20 June 2015.
18. The complainant complained to the council about the matter to the council in letters of 2 and 5 August 2015. The council dealt with these through the statutory social care complaints process. The complainant added further comments on his complaint to the council on 29 August and 18 September. The council communicated the outcome of its investigation into his complaint on 29 September 2015. The council admitted that there had been some inconsistencies about the contributions owed by his sister for her care costs. It apologised for any confusion or distress and caused and explained that it was no longer seeking recovery of the debt.

19. The complainant was dissatisfied with the outcome of this, and then complained to the LGO. The grounds of his complaint to the LGO were as follows:
- The council completed inaccurate financial assessments for her contribution to her direct payment arrangements;
  - The council threatened court action against him for payment of surplus finds on the closure of his sister's direct payment account; and
  - The council treated his investigation into the circumstances of his sister's direct payment arrangement as a compliant and then failed to meet its published timescales.
20. On 20 June 2016, the LGO communicated its decision to the complainant. It did not uphold any aspect of the complaint. It concluded that the council's actions in respect of financial assessments of the complainant's sister fulfilled the needs of the Care Act, and the complainant's queries about the council's actions in this regard are unfounded. The LGO also found no fault in the council's explanation as to why the complainant's sister was required to contribute to her care.
21. With regard to the complaint that the council had threatened court action for payment of the unspent direct payments, the LGO found that the council has a duty to protect the public purse, and therefore has a duty to pursue individuals where there is a debt. It stated that it would not criticise the council for trying to meet this duty in this case.
22. In terms of the complaint about the council treating his correspondence about the direct payment situation, the LGO found no fault in the council's decision to deal with his complaint through the statutory process, and as there is no timescale or requirement to offer a staged approach to complaints, the LGO found that the council did not fail to deal with the complaint to agreed time scales.
23. The complainant was not satisfied with the Ombudsman's decision and so asked for it to be reviewed. The Ombudsman's review was concluded on 20 July 2016 and upheld the decision. It stated that his final recourse is therefore to apply to the High Court for a judicial review.
24. The council states that it is satisfied that the complainant's requests and associated correspondence seek to reopen this complaint with the council, despite him having exhausted the complaints procedure both with the council and the LGO. It therefore perceives this as unreasonable persistence.

25. It has explained to the Commissioner that the complainant made three requests for information in July and August 2016, which continued discussion of the previous complaint considered by the council and the LGO. The council states that it attempted to answer the requests by offering explanations of particular points. The complainant then challenged the responses stating that the council failed to answer his requests. In considering the various challenges to the questions posed in these requests, the council concluded that he was trying to re-open issues which were closed and to which no further recourse remained open with the exception of seeking a judicial review of the LGO's decision. Therefore in considering the internal review of the request of 18 July 2016 and the response to the request of 28 July 2016, it applied section 14 and informed the complainant of this on 16 November 2016.
26. The council has provided the Commissioner with a chronology of its correspondence with the complainant on these requests and related matters. This demonstrates the overlapping nature of the correspondence, whereby a request is made or clarification sought before the previous request or clarification is responded to. Requests and queries are also sent to different officers at the council, including members of the Benefits, Assessment & Charging Team and different individuals in the Information Governance Team. In addition to the individuals to whom he directs his requests, he also copies in a number of other email addresses at the council, including the Social Complaints inbox, as well as individuals at the LGO and his local MP's office.
27. The council has argued that it has sought to assist the complainant in his requests. For example, the council's response of 3 August 2016 to the request of 18 July 2016 provided the complainant with copies of his sister's assessments and confirmed how many assessments were undertaken. It also provided some clarification on the matter of the value recorded under the savings column, advising that capital balances have no bearing on the outcome of the assessment.
28. The complainant replied to the council's response on 16 August 2016 to dispute the advice and answers provided to him and seek further explanations. He did so in a less than complimentary tone which could be perceived to cause distress and upset to the recipient:

*"To say I am appalled at its contents is a gross understatement."*

*"As such, they should be correct in every detail and for you to say anything you put in them is irrelevant is bordering on idiocy."*

*"Thus, contrary to your imbecilic statements it matters a great deal what savings were entered in your assessments."*



29. The complainant's response to the council's letter of 16 November which relied on section 14 for refusing to comply with the requests also indicates what the council considers to be unreasonable persistence. He states that *"Please note that I will continue to do all that is necessary to obtain the information I believe I have a right to request"*.
30. The council considers that the complainant's multiple requests and associated correspondence are overlapping in themselves and also with the matters addressed by the council in dealing with the complaint and also by the LGO. It considers the requests to be futile as it is not clear what he seeks to achieve as the council is no longer pursuing him for the debt, and there is no further avenue to appeal his complaint. The council has therefore concluded that continuing to deal with the requests would cause disproportionate effort to be expended.

### **Complainant's view**

31. The complainant has informed the Commissioner that the information requested 'which may or may not relate to incorrect assessments as to care costs for the elderly in general and my late sister in particular' is 'vital'. He also stated that he considers the response from the council relying on section 14 to be 'deliberate sleight of hand'.
32. In November 2016, the complainant informed the Commissioner that no new requests have been made to the council for any different information relating to his sister. He considers that the concerns raised are a continuation of the original case with the Commissioner (concerning a data protection matter). He stated that:

*"My requests have always been basic and quite simple, just a clarification of how the care assessments were calculated, why they were backdated with demands for hundreds of pounds from a senior citizen who was below the poverty level, without savings and in receipt of numerous state benefits which made her ineligible to pay for her care in any event.*

*The subterfuge employed by the Council in this matter does beggar belief."*

33. The complainant also stated to the Commissioner that *"All I have ever requested is clarification over this [the changes in his late sister's care contributions] and all I have ever received is a wall of silence."* He also confirmed that he had not received any of the requested information.

### **Commissioner's view**

34. The Commissioner has had sight of the correspondence between the complainant and the council relating to the requests. It is clear that there is very much an overlap in the questions posed and information sought, and the complaint that was considered by the council and the LGO.
35. It is also clear that the council has tried to answer the complainant's questions, both under the freedom of information requests and in general correspondence. The Commissioner recognises that the answers provided by the council either generate further new questions, or repeated questions as the complainant does not accept the council's position.
36. The Commissioner has had regard to the complainant's position and finds that contrary to his assertion that he has not received any of the requested information, it is obvious that the council has provided the complainant with answers many of his questions within the requests and associated correspondence. The issue appears to be that the complainant does not accept the answers, as demonstrated by his letter of 3 August 2016 in which he refers to the council officer who answered his questions as 'imbecilic'.
37. The Commissioner finds that the matters that the complainant is seeking information on have been dealt with by the LGO, and he has reached the end of the LGO's complaint process. The LGO did not find in his favour, and informed him that the only avenue remaining was to challenge the decision by judicial review, an option which the complainant did not pursue. In addition to this, the council is no longer seeking repayment of the outstanding amount. The Commissioner therefore agrees with the council that the requests serve no useful purpose and seek to reopen matters that have been concluded through other bodies, and to which no redress remains open as the time for judicial review has expired.
38. In terms of the complainant's position in relation to these requests, it is clear to the Commissioner that he remains concerned about the care services assessments, and the fact that the account was left in debit when his sister died. However, in the Commissioner's view this does not warrant the type of language the complainant directed at the council officer in his letter of 3 August 2016, and nor does it warrant the level of persistence that he has demonstrated. She also considers that the complainant is incorrect when he says that he has not received any of the requested information as it has been demonstrated that he has, rather it seems to be the case that he does not agree with the information and advice provided.

39. The Commissioner finds that in balancing the purpose and value of the request against the disproportionate and unjustified level of disruption and distress felt by the council and its officers, the council was entitled to rely on section 14 to refuse to comply with the requests.

**Section 10 – time for compliance**

40. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"no later than the twentieth working day following the date of receipt"*.
41. In this case whilst the first request of 18 July 2016 was responded to within the required time frame, the second request of 28 July 2016 was not. It was responded to on 16 November 2016, 78 working days after the request was made.
42. The Commissioner therefore finds that the council failed to comply fully with section 10 of the FOIA.

## Right of appeal

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43. 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)

44. 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.
45. 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**  
**Group Manager**  
**Information Commissioner's Office**  
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