

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 June 2018

Public Authority: Mid Suffolk District Council
Address: Endeavour House
8 Russell Road
Ipswich
Suffolk
IP1 2BX

Decision (including any steps ordered)

1. The complainant has requested information relating to a contract held between Mid Suffolk District Council and SLM Ltd for the management of Mid Suffolk Leisure Centre. The Council responded, applying section 14(1) of the FOIA to the complainant's requests and stating the he had already been supplied with a copy of the contract and relevant committee report.
2. The Commissioner's decision is that Mid Suffolk Leisure Centre has correctly applied section 14(1) to the complainant's requests.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 28 February 2017 the complainant wrote to Mid Suffolk District Council (MSDC) and requested information in the following terms:

"In the Bury Free Press dated Fri Oct 2005 there is a press briefing re The above contract.

It stated that SLM Ltd Had agreed to pay close to £5 million over the next 10 years to manage The centre and to invest up to £750.000 (sic) immediately in the complex.

Would you please provide me with council documentation which shows this and how and when it was approved".

5. MSDC responded on 6 March 2017. It said that the contract and associated committee report had previously been supplied to the complainant under the Freedom of Information Act, and that due to continuing similar requests it was refusing the request as it deemed it to be vexatious under section 14(1) of the FOIA 2000. It also said that section 14(2) does not require a public authority to respond to identical or substantially similar requests.
6. On 7 March 2017 the complainant sent an email to the Council clarifying his request stating that the information he sought was two confidential reports provided to members and referred to in a Leisure Management report presented to the Executive Committee on 10 October 2005.
7. The Council undertook a review of its initial response and on 15 March 2017 confirmed its classification of the request as vexatious.
8. On 16 March 2017 the complainant responded to the Council's review. He requested that the Council confirm if the contract between it and SLM was draft version and not a legally signed and sealed one.
9. In a letter dated 21 March 2017 the Council reiterated its position of 6 and 15 March 2017 to the complainant.
10. On 28 March 2017 the complainant sent the Council a letter requesting a review of its letter dated 21 March 2017, and outlined several concerns about the contract between MSDC and SLM Ltd.

11. On 12 April 2017 the Council asked for clarification about which requests the complainant wanted it to review, and on 13 July 2017 the Council sent a review response, based on the points in the complainant's review request dated 28 March 2017. It maintained its position of classifying the requests regarding MSDC and SLM Ltd as vexatious under the FOIA.

Scope of the case

12. The complainant contacted the Commissioner on 28 April 2017 to complain about the way his requests for information had been handled. The Commissioner wrote to the Council asking it to undertake a review of its responses to the complainant, based on the contents of his letter dated 28 March 2017. When the Council upheld its application of section 14(1) to the requests as vexatious, the complainant again contacted the Commissioner.
13. The Commissioner considers the scope of the case to whether the Council was correct to apply section 14(1) of the FOIA to the requests made by the complainant between 28 February and 23 March 2017.

Reasons for decision

Section 14(1)

14. 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'

The Council's View

15. The Council has been receiving correspondence and complaints from the complainant stretching back several years. This has covered a range of issues and concerns including parking, recordings at council committee meetings, the Council's disability equality scheme, his designation as an unreasonable and persistent complainant and the management of the Council's leisure centres by SLM Ltd, in particular that of Mid-Suffolk Leisure Centre (MSLC), also referred to in correspondence as Stowmarket Leisure Centre.
16. The Council maintains that this is just a sample of the issues about which the complainant has been corresponding with the Council. Unfortunately, the integration of services and staffing structures between Mid-Suffolk District Council and Babergh District Council has

resulted in ongoing staff changes and therefore records and copies of correspondence is somewhat fragmented. However, in response to the Commissioner's investigation the Council has supplied a substantial, if not complete, set of correspondence with the complainant, the majority of which relates to the management of MSLC by SLM Ltd.

17. In the context of the requests which are the subject of this decision notice, the Council has supplied correspondence dating back to October and November 2006 when the complainant asked about the decision to refurbish MSLC, in particular the removal of the whirlpool and sauna. The Council responded in the normal course of business, rather than formally under the FOIA. It explained the background and reasoning for the change, and stated the decision was made by SLM Ltd and the Council's Portfolio Director of Leisure services.
18. It is unclear whether further communication occurred between the complainant and the Council on this matter following the Council's response, but the Commissioner has sight of correspondence on MSLC starting again in 2013. The Council has supplied correspondence on matters prior to this date, largely on the issue of procedures used to change parking charges. This correspondence shows a sustained pattern of detailed communication by the complainant, which took him through the Council's complaints process, representation to the District Auditor and finally to the LGO who refused to investigate the complaint.
19. On 19 May 2013 the complainant wrote to the Council about crime rates at leisure centres. He made reference to a local newspaper report but acknowledged that MSLC wasn't mentioned in it. Instead he went on to seek the figures out separately and included them with his letter. He seemed to think that the crime rates were directly linked to the way SLM Ltd managed the centre.
20. The Council responded on 30 May 2013 in a letter saying:

*'I very much regret that you are persisting in your criticism of Stowmarket Leisure Centre's achievement in the Fitness Industry Association award it won last year...
In the meantime, I am afraid that I fail to see the connection between the crime figures that you have mentioned in your latest letter...I am not aware of any serious criminal activity during the last twelve months and nor have the police drawn our attention to issues at our leisure facilities.
May I now respectfully request that you desist from pursuing this unhelpful, solitary campaign against what you and I have already discussed should have been a good news story for Stowmarket last year, so that we can divert our energies more productively*

towards future successes for the town and the wider district?'

21. The complainant replied to the Council's letter on 3 June 2013, with a detailed explanation of his interest in crime figures, the Fitness Industry Association awards and criticism of a council officer's portrayal of leisure centre users' experience of the changing rooms.
22. On 31 July 2013 a meeting was held between the complainant and senior Council staff regarding facilities at MSLC, and the relationship between SLM Ltd and the Council. In the letter sent to the complainant following the meeting, the Council made reference to the complainant's disparaging remarks about an officer's integrity and allegations that the Council failed to take seriously health and safety matters at the centre. The letter goes on to say:

'I am completely at a loss now to see any meaningful or practical way in which continued dialogue could resolve the various issues you have raised. You were not able to offer anything positive or productive, not to suggest anything reasonable nor within our powers to do to resolve anything at all, other than to criticise and denigrate almost every action of the Council and its officers. If I had any sense that any further discussion or correspondence would help you to understand the service provision at our Leisure Centres or lead to any form of useful outcome then I would willingly continue to engage with you. As it is, I asses that:

- 1. Your interaction with the Council makes unnecessarily excessive demands on the time and resources of staff to no positive purpose.*
- 2. You persist in introducing irrelevant information at almost every turn which you expect to be taken in to account and commented on. You also raise large numbers of detailed but unimportant questions and insist they are fully answered.*
- 3. You are refusing to accept that the issues raised are not within the remit of the complaint's procedure.*

Regrettably, I have no further recourse than to refuse to engage with you and on the basis of all the above, I can no longer justify the time and resources that are being used to deal with your various enquiries and correspondence.

Therefore, and with reluctance, having given you a formal warning at our meeting that I would treat you as an unreasonably persistent complainant if you could offer no constructive response, I now give you notification that I have

taken the decision to treat you as an unreasonably persistent complainant. This means that any complaint or correspondence from you on any matters relating to Mid Suffolk Leisure Centres will not be responded to other than to confirm receipt.'

The letter also stated that the designation would last for 2 years and provided a Strategic Director as a single point of contact (SPOC) for any communication between the complainant and the Council.

23. Despite the complainant's designation as an unreasonable and persistent complainant, he continued to send several letters to the Council regarding the contract and management of MSLC. These have included, amongst other things, concerns about the carrying of hot drinks in the reception area, and in the same letter (dated 19 May 2014), reference to a newspaper article from 2004 about someone videoing people in changing rooms (although not at MSLC). In keeping with its position in the letter dated 31 July 2013, the Council informed the complainant that letters would be placed on file but not responded to.
24. In 2014 the Council says that, after considering a further request for information regarding the leisure centre, the complainant was then 'categorised as making vexatious FoI requests regarding the leisure centre and SLM'. As this matter was investigated by the Commissioner and a decision notice issued, the Commissioner can confirm that the request was refused in February 2014 under section 14 of the FOIA (vexatious). The complainant had asked for a copy of the contract between the Council and SLM Ltd entered into in October 2006 (according to the Council's 2012/13 Statement of Accounts). Following an internal review the Council issued a redacted copy of the contract, which started in 2005.
25. The complainant believed that the Council held a contract dated October 2006. The Council confirmed to the Commissioner that the only contract it had within the scope of the complainant's requested had been agreed before 30 September 2005. It explained that the reference to 2006 in the Statement of Accounts was a typographical error from a previous set of accounts that was never amended. The Commissioner concluded that, on the balance of probabilities, no second contract existed.
26. The Council has supplied documentation that shows in 2014 the complainant approached the LGO to investigate the paying of a management fee by the Council to SLM Ltd for a service that he believed didn't exist. The Commissioner assumes this relates to the removal of the sauna and Jacuzzi from MSLC (see Complainant's View for further detail). The LGO told the complainant to first exhaust the Council's internal complaints process.

27. The Council wrote to the LGO in response to this, outlining the history with the complainant regarding the leisure centre and informing the LGO that the complainant had written over 100 letter to council officers and members and the Information Commissioner about the same or very similar issues. It went on to say that it could not see how else it could help the complainant as he had already been supplied with a copy of the contract, and had met with him to discuss matters. The Council stated that it did not consider elevating the complaint through its formal processes would achieve anything.
28. On 15 March 2015 the LGO issued a final decision on the matter. The decision stated that the complaint from the complainant had been considered, along with the Council's representations, and concluded that the LGO could not investigate the *'complaint about the Council's use of public money. This is because the issue affects all or most of the people in the Council's area.'*
29. On 11 May 2015, the Council wrote to the complainant after receiving a complaint from him about his unreasonable and persistent complainant status. The Strategic Director, also the complainant's SPOC, made the following remarks:

'I am obviously disappointed that you have continued with your correspondence on essentially the same issues about the contract, management and running of Stowmarket Leisure Centre as you have now been doing for over two years...

I have since counted over 100 copies of letters on the file from you to members, the Chief Executive, [an additional council officer, whose name is redacted], and me, plus Freedom of Information requests about contracts, the management and running of the Leisure Centre, which in essence all amount to essentially the same subject. I am also aware that you took your case to the Ombudsman who chose not to investigate the matter. It seems to me that you are continuing to ignore your designation, and I consider your ongoing behaviour still unreasonable.

Our Complaints process states that

1.2 It should be noted that the complaints procedure is not intended to cover:

....

- Complaints made more than 12 months after the event unless there are exceptional circumstances as to why the complaint could not have been brought within this time

I take your point that you did not, in the period you specified in your written submission, specifically "complain", but I assessed that you were nevertheless consuming an inordinate degree of council resources in pursuing what amounted to the same complaint. I remain of this view, and to this end, since you are not bringing to our attention any significant new information on the matter, to that end I cannot uphold your complaint and you will continue to be so designated as a Persistent / Unreasonable complainant.

Your initial designation was for 2 years, due to expire in August 2015, as you have chosen to ignore that and have continued to send communications to the Council I am extending your designation by another two years, until August 2017.'

30. Following the complainant's re-designation as an unreasonable and persistent complainant by the Council, he continued to submit letters about MSLC and other issues. On 19 December 2016 the complainant wrote to the Council about the conduct of a Strategic Director and other Council officers. The Strategic Director in question was the complainant's SPOC and the person who had written to the complainant about his unreasonable and persistent complainant status and MSLC matters on many occasions. The complaint centred on the decision to remove the sauna from the leisure centre and any appropriate adjustment in the management fee.
31. It is unclear to the Commissioner whether the Council replied to this specific letter, but on 3 January 2017 the Council sent a letter to the complainant regarding another complaint submitted about his exclusion from a Council meeting. The Council maintained that the exclusion in question was appropriate as it related to a confidential item, and applied to all media, press and public. The Council reminded the complainant of the SPOC process until August 2017.
32. On 7 January 2017 the complainant responded with a letter referencing the complaint he made in December 2016 and the removal of the sauna. The Council responded on 11 January 2017 advising the letter had been placed on file (which was in-line with its position on responding to the complainant about SLM Ltd and Council matters).
33. On 16 January 2017 the complainant responded to the Council's 7 January letter, asking for a response to his complaint about 'a range of officers and the SLM Contract Manager regarding the management of Mid Suffolk Leisure centre', and asking questions about the SPOC process and associated decision making. The Council responded on 23

January 2017, acknowledging the complainant's letter and placing it on file.

34. On 24 January 2017 the complainant wrote to the Council again. The letter focussed on the removal of the health suite at the leisure centre and exactly when this one done in relation to the timing of the contract with SLM Ltd. On 2 February the Council replied, acknowledging the complainant's letter and placing it on file.
35. On the 13 February 2017, shortly before the complainant made the requests that are the subject of this decision notice, he wrote to the Chief Executive of the Council to make a further complaint about the Strategic Director who was the complainant's SPOC. Again the complaint concerned the removal of the sauna, the date of the SLM Ltd contract and whether the Council is still paying a management fee to the contractor for the sauna. On 2 March 2017 the Council responded with its standard letter to the complainant on matters relating to the leisure centre.
36. On 28 February 2017 the complainant submitted the first FOI request that relates to this decision notice. In it he made reference to a news article from 2005 about the decision to award SLM Ltd the contract to manage the leisure centre, including the contract value, and asked for all associated documentation held by the Council in relation to the decision.
37. The Council responded on 6 March 2017. It said that the contract and associated report had previously been supplied to the complainant under the Freedom of Information Act, and that due to continuing similar requests it was refusing the request as it deemed it to be vexatious under section 14(1) of the FOIA 2000. It also said that section 14(2) does not require a public authority to respond to identical or substantially similar requests.
38. On 7 March 2017 the complainant sent an email to the Council clarifying his request stating that the information he sought was two confidential reports provided to members and referred to in a Leisure Management report presented to the Executive Committee on 10 October 2005.
39. The Council undertook a review of its initial response and on 15 March 2017 confirmed its classification of the request as vexatious.
40. On 16 March 2017 the complainant responded to the Council's review. He requested that the Council confirm if the contract between it and SLM was draft version and not a legally signed and sealed one.

41. In a letter dated 21 March 2017 the Council reiterated its position of 6 and 15 March 2017 to the complainant.
42. On 28 March 2017 the complainant sent the Council a letter requesting a review of its letter dated 21 March 2017, and outlined several concerns about the contract between the Council and SLM Ltd.
43. On 12 April 2017 the Council asked for clarification about which requests the complainant wanted it to review. After receiving a complaint from the complainant about the handling of his request, the Commissioner wrote to the Council on 2 June 2017 requesting it to complete a review of its responses to the complainant as she believed the complainant had made his review request clear in his letter dated 28 March 2017.
44. On 13 July 2017 the Council sent a review response (under Step 2 of its Corporate Complaints Procedure), based on the points in the complainant's review request dated 28 March 2017. It made reference to correspondence sent by the complainant as far back as 2006 about the relationship with SLM Ltd, and said that the complainant had written to the Council on more than 80 separate occasions since 2013. It went on to say that:

'It is clear that (complainant's name) is taking an unreasonably entrenched position in this matter, makes frequent requests for further information and has made unsubstantiated accusations against the Council / and or specific employees of the Council all of which has placed a burden on the Council in terms of the strain and time on resources in considering and responding to his correspondence.'

It maintained its position of classifying the requests regarding MSDC and SLM Ltd as vexatious under the FOIA.

45. The complainant continued to submit letters about the leisure centre after the requests he sent in February and March 2017. The Council reports having received 15 such letters between January and June 2017, but due to records management difficulties has been unable to provide a specific chronology and evidence of this.
46. In its response to the Commissioner, the Council noted that in addition to the letters sent to specific staff and the Complaints Department over the years, the complainant habitually sent copies of his letters to other employees, council members, and other organisations. It told the Commissioner:

'(Complainant's name) entrenched position and refusal to accept

the council's position has a detrimental impact on the Council by the very nature of the number of repeated requests made and the scattergun approach in sending copies of the same letters to various officers of the council and elected members.'

47. During the course of the Commissioner's investigation, the Council twice reviewed the complainant's unreasonable and persistent complainant's status. Although this post-dates the requests that are the subject of this decision notice, it demonstrates both a pattern of behaviour on the part of the complainant and a commitment from the Council to be fair and transparent. On 17 September 2017 the Council wrote to the complainant advising that its position remained unchanged:

'My present assessment is that you have not moved on from the position you held at the time (in August 2013 – almost 4 years to the day) and:

- 1. Your interaction with the Council makes unnecessarily excessive demands on the time and resources of staff to no positive purpose;*
- 2. You persist in introducing irrelevant information at almost every turn which you expect to be taken in to account and commented on. You also raise large numbers of detailed but unimportant questions and insist they are fully answered;*
- 3. You are refusing to accept that the issues raised are not within the remit of the complaint's procedure.'*

48. On 28 February 2018 the Council wrote again to the complainant, and in addition to reviewing the unreasonable and persistent complainant status, it also addressed the redactions from the contract between it and SLM Ltd for the management of MSLC. In its letter it referred to the following correspondence from the complainant:

August 2017: A letter making accusations against officers of the Council regarding the contract with SLM

August 2017: An email asking for confirmation of the Council's definition of reasonable and unreasonable.

August 2017: An email asking for whether the review of information requests was a legal documentation / explanation of status.

October 2017: An email asking for copies of correspondence about placement on the vexatious complainants' list.

December 2017: A complaint asking for data which showed placement as a vexatious complainant had ended, including removal from the list and an apology.

December 2017: A complaint about the redacted contract with SLM Ltd that had been provided in 2013.

49. Due to the ongoing volume and nature of the correspondence, the Council reiterated that it would not respond to any further communication regarding the contract with SLM Ltd as the complainant refused to accept the Council's position, continued to *'submit repeated complaints and make groundless and unfounded complaints against members of the staff who engage with you. This places an unnecessarily demand (sic) on staff resources in considering and responding to your complaints.'*
50. The letter went on to note that the redacted information from the contract was that of the signatures of those involved and that it was appropriate to withhold this information under section 40(2) of the FOIA – third party personal data. The Council did however supply the names of the signatories.

The Complainant's View

51. By way of background, the complainant began volunteer work with a disability organisation at the leisure centre in April 1998. He was active in representing the organisation, including at a consultation meeting about the centre held in September 2002.
52. As can already be seen, the complainant's history with the Council and the SLM contract goes back at least 11 years. In November 2006 the complainant asked about the decision to remove the whirlpool and sauna from the leisure centre. This issue emerges repeatedly through the years, as the complainant believes that he has been given different responses and 'lied to' by council officers. This is linked to the complainant's belief that contracts have been manipulated to provide cover for when the whirlpool and sauna were removed and allow inappropriate payments for the management of these facilities to the contractors SLM Ltd.
53. In the complainant's first letter to the Commissioner dated 24 April 2017, he maintained that he considered his *'request was reasonable unless the council had something to hide'* and stated *'For the record my view is that the Council is simply using the vexatious section of the FOI Act to ensure that the two reports and the contract (if it exists) signed*

by the Chief Executive remains confidential and thus not open to public scrutiny.'

54. On 17 August 2013 the complainant wrote to the district auditor raising concerns about the financial arrangements between SLM Ltd and the Council. He was particularly concerned about relationship between 'Everyone Active' and the Council. The Council had previously explained to the complainant that 'Everyone Active' was a brand used by SLM Ltd. The complainant remained concerned at what he considered to be an 'informal arrangement' between the 3 parties (SLM Ltd, the Council and 'Everyone Active'), and 'sealed with a golden handshake behind closed doors'.
55. On 21 October 2013 the complainant wrote to a Strategic Director in the Council, raising concerns about its approach to the contract with SLM Ltd. His concern focussed on the Council's insistence that the contract was entered into on 1 October 2005. He referenced committee meetings held in November and December 2008, where he believes that services listed under the Partnership Agreement included the spa and sauna with a contract start date of 1 October 2005. The complainant points out that the sauna and spa no longer exist, and that there was no formal approval of the change or alteration to the contract as a result. He goes on to allege that the Council deliberately stated that the start date for the contract was 1 October 2006 rather than the actual start date of 1 October 2005 to sweep the changes made in that year to the facilities under the carpet and ensure the council audit focused on changes after 1 October 2006 as seemingly up until that point no contract existed within the accounts.
56. The complainant wrote to the Council's auditors about this matter on 16 October 2016, expressing concern that the letter sent to him in 2006 by the Council regarding the decision to refurbish MSLC and removal of facilities did not mention whether the management fee had been adjusted accordingly. He goes on to cite a review posted in January 2009 on a website that states there is a gym, steam room and Jacuzzi, but as the steam room and Jacuzzi had been removed by this date, they could not have been seen by the reviewer. The complainant suggests that this is deliberate to make it appear that SLM Ltd were still managing these facilities, and requests that the auditors look at the matter more closely. The complainant also includes a copy of a local area guide from 22 October 2015 showing reference to a spa bath and sauna.
57. The complainant makes another complaint to the Council about the leisure centre in December 2016. In it he states:

'This of course raises a serious issue as to what happened to the money set aside for the management of the Athena Health Suite year on year.

I can only assume that this was paid to SLM as a sort of 'bonus' and I suspect this could have amounted to a few tens of thousands of pounds' over the life of the contract'

And in a letter dated 24 January 2017:

I believe it is important to point out that at some stage after 2005 the Council's Annual Statement showed that the date for the partnership between MSBC and SLM now read 'in October 2006'...I was told that this was a typing error, but looking at it more closely I believe that the Council may have manipulated the date on the Accounts in order to give the impression that the refurbishment took place before SLM assumed operational control of the centre in line with (council officer's name) response.'

58. The complainant continues his theory in several other letters sent to the Council. In his letter dated 13 February 2017 he states:

'I followed this with my letter of 24.01.17 providing the factual proof that (council officer) had lied and that in order to cover (council officer's) position the Council had manipulated the date of the SLM/MSDC contract on the Councils (sic) Statement of Accounts....

Whilst I have received no correspondence from MSDC as to why (council officer) lied I believe it is connected to questions I have raised as to whether the Council has been and still is paying a management fee to SLM to manage the sauna etc service as detailed in the Oct 2005 contract "if one can be found"...

Could you please confirm whether such a devious approach is covered by the Councils (sic) Constitution'

59. As the Council has designated the complainant an unreasonable and persistent complainant and informed him they will not respond to letters about the Council and the contract between SLM Ltd to manage MSLC, the complainant's letters remain unanswered. However the complainant continued to send letters to the Council about the leisure centre, including the FOIA requests that are the subject of this decision notice.
60. The requests made by the complainant were for documentation held by the Council in connection with the contract entered into with SLM Ltd.

As well as refusing the requests under section 14(1), the Council stated it had already supplied the contract to the complainant. In his representation to the Commissioner, the complainant stated that he wanted the confidential reports referred to in the Report of the Committee Meeting Report held in 2005, and could not understand why this was classed as vexatious as he had previously been supplied with the Committee Report itself. In a letter to the Commissioner received on 19 July 2017 following the Council's internal review of its response to the requests, the complainant says that the Council is classifying his requests as vexatious as it is not prepared to confirm if it holds (and therefore publish) the reports or a legally signed contract. He goes on to say:

'In my opinion...I believe the Council's reason is they (sic) have concerns about incrimination and want everything confidential'

61. The Commissioner received another letter from the complainant on 30 August 2017 raising further concerns about the Council's review response. He believes that *'the Council is determined to hit me with a double whammy by adding a vexatious ruling on top of my complainant restriction.'* He challenges the Council's assertion that he is taking an 'unreasonably entrenched position' and argues that as a council tax payer wanting to see how money is spent, his position is reasonable.
62. On 30 April 2017 the complainant again contacted the Council to complain about its response to concerns over the contract between SLM Ltd and the Council. He takes issue with the fact that he has been provided with copies of 2 versions of the Leisure Management Executive Committee Report dated 10 October 2005. One report has a reference number on it (X/112/05) and the other does not. The complainant asks for the status of each report and the circumstances in which they may be used.
63. The complainant writes again to the Council on 10 May 2017 about the contents of the report X/112/05, where he references confidential information contained in 2.1 and 2.2 This confidential information formed part of his FOIA requests to the Council that are the subject of this decision notice. He asks for the full disclosure of the contract and an investigation as to why it has not been released.
64. On 7 June 2017 the complainant again writes to another Strategic Director within the Council regarding the legality of the contract between MSDC and SLM Ltd. Again he alleges that the contractor is being paid a fee to manage services that do not exist, and believes that the contract is illegal as it refers to services that are no longer available.

65. The complainant considers that by designating him as an unreasonable and persistent complainant and not responding to his questions about MSLC, the Council is violating his human and citizens rights. In a letter dated 7 January 2017, the complainant again raises the issue of being lied to by a council officers and members about when sauna and toning areas were removed from the leisure centre. He says:

'My concerns relate to whether (councillor-redacted, officer-redacted) and yourself have violated not only my Citizens Rights but also my Human Rights...

'Because I doubt that such an approach is covered by the Council's Constitution I consider this to be a violation of my Citizens rights and if such an approach is condoned by the Council it is the finish of democracy at MSDC.'

66. In a letter to the Council dated 16 January 2017, the complainant takes issue with SPOC process. Having checked the definition of SPOC on the Council's website, he observes that it relates to The Regulation of Investigatory Powers Act 2000 and considers this to be:

'extremely serious because it suggests that the Council has me under surveillance one way or another. I have always known that my concerns/complaints are serious but such action as surveillance etc suggest that they are more serious than I thought and may even be council wide e.g. Annual Statement of Accounts. It may even explain why you used a whole raft of officers, councillors and outside bodies to ensure that I was kept on the Persistent Complainants List.'

The Commissioner's View

67. Despite the complainant's history with the Council, it is important to remember that for the purposes of FOIA, it is the request that may be deemed vexatious, and that requests are motive and applicant blind. The FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
68. Whilst there is no definition of the term vexatious in the FOIA, Tribunal decisions have provided insight and guidance in determining a request as vexatious. In ['Information Commissioner v Devon County Council & Dransfield'](#), the Upper Tribunal took the view that the ordinary dictionary definition of vexatious is of limited use, as deciding whether a request is vexatious depends on the circumstances surrounding that request. The Tribunal commented that vexatious could be defined as the 'manifestly

unjustified, inappropriate or improper use of a formal procedure'. This definition clearly establishes that the concepts of proportionality and justification are relevant considerations in deciding whether a request is vexatious.

69. In the Dransfield case, the Tribunal also found it instructive to assess 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) harassment or distress of and to staff. However consideration of a request as vexatious is not a tick box exercise and the Tribunal noted 'there is, however, no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.'
70. The Commissioner has issued guidance on dealing with vexatious requests¹. The guidance includes a number of indicators that may help to identify a request as vexatious. However these indicators are neither exhaustive nor definitive, and all the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious. Congruous with the Tribunal comments in the Dransfield case regarding circumstantial consideration, the Commissioner's guidance states: 'The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(a) applies.'
71. The Council has provided a significant amount of documentation to the Commissioner evidencing a long and sustained communication with the complainant about its contract with SLM Ltd for the management of MSLC. This goes as far back as 2006, and resulted in August 2013 with the complainant being designated an unreasonable and persistent complainant specifically in relation to leisure centre matters. The Commissioner notes that the Council attempted to resolve matters for complainant by meeting directly with him, but this proved unsuccessful.

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

72. In considering the burden imposed by the request, the Commissioner has seen emails between Council staff that indicate a significant amount of time has been spent dealing with the complainant on leisure centre and other matters and in explaining his designation as an unreasonable and persistent complainant. The Council has received over 100 hundred letters from the complainant, the majority relating to the leisure centre and the Commissioner has seen the complainant's routine habit of copying letters to many other people. The Council has told the complainant '*Your interaction with the Council makes unnecessarily excessive demands on the time and resources of staff to no positive purpose*'. The Commissioner draws similarities with the case of *Coggins vs ICO*² (EA/2007/0130, 13 May 2008). The Tribunal found that a "significant administrative burden" (paragraph 28) was caused by the complainant's correspondence with the public authority which started in March 2005 and continued until the public authority cited section 14 in May 2007. The complainant's contact with the public authority ran to 20 FOIA requests, 73 letters and 17 postcards. The Tribunal said this contact was "...long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received....the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions..."
73. Although the FOIA is motive an applicant blind, in the context of determining whether a request may be classed as vexatious the public authority can consider the wider context of the request and its overall purpose and value. The complainant clearly believes that the Council is trying to hide maladministration regarding the contract between it and SLM Ltd and he is determined to expose what he considers a cover up about date the contract was signed to mask illegitimate payments to the contractor for the management of sauna and spa facilities. The complainant has gone as far as to suggest that the requirement for him to utilise a single point of contact (SPOC) within the Council is linked to some sort surveillance of him in an attempt to ensure control of the cover-up is maintained.
74. The Commissioner has reviewed many emails and reports as part of the investigation and has seen no indication of any deliberate or non-deliberate actions by the Council to be anything than less than

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i119/Coggins.pdf>

transparent about the leisure centre. Indeed, the Council provided the complainant with internal communications about the contract as part of a subject access request he submitted. The information provided showed a frustration by Council staff towards the complainant's persistence about contract matters and confirmation that the Council was not attempting to hide anything. As part of a previous FOIA request, the complainant has already been provided with an appropriately redacted version of the contract.

75. The Commissioner also notes that the information requested by the complainant has in part already been subject to a decision notice issued in 2015, when the Commissioner accepted the Council's explanation that the Statement of Accounts reference to a 2006 contract was a typing error and that on the balance of probability, the only contract that existed was the one effective from October 2005. Despite this, the complainant is still determined to prove the contract and associated dates were manipulated to cover up Council wrongdoing. The complainant has also tried to pursue his concerns with the LGO who have refused to investigate.
76. The Council has confirmed to the complainant on several occasions that it will not respond to matters relating to MSLC and the Council's contract with SLM Ltd (as part of managing the complainant's designation as an unreasonable and persistent complainant). However, the complainant continues to submit lengthy letters and complaints not only about the leisure centre but on exactly the same issues. It appears to the Commissioner that the complainant has developed an obsession with the management of MSLC, and draws a parallel with *Betts vs ICO*³ (EA/2007/0109, 19 May 2008), where the Tribunal noted:

'the Appellant's refusal to let the matter drop and the dogged persistence with which he pursued his requests, despite disclosure by the council and explanations as to its practices, indicated that the latter part of the request was part of an obsession. The Tribunal accepted that in early 2005 the Appellant could not be criticised for seeking the information that he did. Two years on, however, and the public interest in openness had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated

³ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i61/betts.pdf>

requests..."

77. As well as repeated complaints about the facilities at the leisure centre and the contract for running them, the complainant has also sent other spurious letters and tried to link them to mismanagement of the centre, for example crime rates at other leisure centres, video filming in the changing room in an entirely different area and the carrying of hot drinks in reception. On their own, this correspondence might have some merit but taken with the relentless submission of other letters complaining about MSLC, these indicate a pattern of behaviour with no meaningful value or purpose.
78. The Council has taken care not to dismiss all communication from the complainant and has reassured him that *'the Council does not consider you to be vexatious and will continue to provide services to you and answer correspondence with you in order to assist you in your access to such services'*. The Council has provided the Commissioner with evidence of where other complaints have been made by the complainant that have been appropriately responded to in line with Council procedures e.g. parking charges and filming during Council meetings.
79. The complainant has regularly singled out the conduct of one Strategic Director (his SPOC) and other named officers who he considers have colluded with the Council's cover-up of maladministration of the leisure centre. Examples, taken from several different letters include:

'It is clear from these emails that (SPOC) and his colleagues had no intention of addressing my concerns and their only intention was to silence me by using their Unreasonable Persistent Complainants Policy'

'Obviously I am not happy with (SPOC's) actions as it appears that he is prepared to accept that (council officer) can lie in response to the reasonable question I asked...'

'My concerns relate to whether (named Councillor, named officer) and yourself have violated not only my Citizen's Rights but also my Human Rights'

'The basis of my concerns relate to (council officer's) report to the Executive Committee 10 October 2005....Quite why (council officer) took this approach is not clear but it certainly could be considered or misleading'

The Commissioner has observed that the complainant makes reference to and supplies information about staff members going back several

years from the time at which he is writing, indicating that he is harbouring personal grudges that he is not prepared to relinquish.

80. For these reasons the Commissioner is of the view that the complainant's requests demonstrate several of the characteristics as detailed in her vexatious requests guidance, and in particular: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; disproportionate effort; and futile requests. Although some of the correspondence supplied post-dates the requests and the Council's response, it is directly related to the complainant's ongoing obsession with MSLC and its management and provides further evidence of a pattern of behaviour in pursuit of an ongoing campaign. It is apparent to the Commissioner that the complainant began sending his FOIA requests about MSLC after his previous complaint letters had gone unanswered.
81. The Commissioner is satisfied that, given the context and history of the complainant's FOIA requests, they cause a disproportionate or unjustified level of disruption, irritation or distress, and lack any meaningful purpose or value. The Commissioner therefore concludes that the Council is entitled to apply sections 14(1) to these requests.

Other matters

82. Due to significant administrative changes within the Council resulting in the merging of services with a neighbouring Council, the Council has struggled to provide the Commissioner with a clear chronology of events and associated correspondence with the complainant. The Commissioner therefore draws the Council's attention to its wider records management responsibilities and the specific guidance found in the [Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000](#).
83. The Council has, under its own policies and procedures, designated the complainant as an unreasonable and persistent complainant. As part of this it has stated it will not respond to any correspondence in connection with the management of MSLC or the associated contract. The Commissioner reminds the Council that it still has a duty to handle all FOI requests, including those on leisure centre matters, in line with the FOIA 2000.

Right of appeal

84. 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

85. 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.
86. 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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