

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 August 2018

Public Authority: City of York Council

Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant has made a number of requests relating to an investigation into the procurement of certain external contracts by the City of York Council (the council).
2. The Commissioner's decision is that two of the three requests which have been considered within this Decision Notice are not vexatious and the council is not entitled to rely on section 14(1) in relation to these specific requests.
3. The Commissioner has also concluded that the council can no longer rely on its current reasoning for the application of section 14 in respect of the third request.
4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to Request 2 and 3 set out in Annex 1 of this Decision Notice that does not rely on section 14(1) of the FOIA.
 - Following consideration of Request 2 and 3, a fresh response should then be issued in relation to Request 5 set out in Annex 1 of this Decision Notice.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

6. In 2016 a number of FOIA requests were submitted to the council for information held about certain costs for work carried out by external contractors.
7. Following the disclosure of information in response to these requests, an objection was submitted to Mazars, the council's external auditors, in relation to the 2015/16 statement of accounts.
8. In addition, concerns were raised with the council's Audit & Governance Committee about the procurement of contracts for 'Consultant B' and 'Company C'. The matter was then referred to Veritau, the council's internal auditors, for investigation.
9. Veritau completed its investigation in November 2016 and set out its findings in a report (the Veritau Report)¹. The council has advised that the report was not disclosed to the public at that time because the Chief Executive had referred the matter to the police and believed it to be appropriate to await the outcome of this police investigation.
10. On 22 February 2017 the Veritau Report was presented at an Audit and Governance Committee meeting. It would appear that members were initially asked to consider excluding the public and press from that part of the meeting where the findings of the Report were to be discussed. The reason given for this was that there may be a duty of confidentiality to certain individuals who could be identified from the Report. A vote was then taken which went in favour of the public remaining in attendance during the debate.
11. The Veritau Report confirmed that it had identified some evidence that work had been undertaken for the council by Consultant B and Company C. However, it went on to say that other work referenced on invoices and documentation had been more difficult to evidence. Given that certain information relating to the procurement of contracts could not be

¹ <http://democracy.york.gov.uk/documents/s113220/Annex%20-%20Veritau%20Report%20redacted.pdf>

located, the report stated that there was a lack of clarity regarding the process in which the contracts and work had been awarded.

12. The Veritau Report concluded that there had been a number of breaches of Contract Procedure Rules and Financial Regulations by the council in relation to Consultant B and Company C. It made a number of recommendations to the council in order to prevent the occurrence of any similar failures in the procurement process in the future.
13. A report prepared by Mazars (the Mazars Report)² about the procurement issues was also presented for consideration at the meeting held on 22 February 2017. This stated that a comprehensive review had been undertaken by Veritau and that the conclusions that had been reached were reasonable based on the evidence that was available.
14. The Mazars Report also confirmed that it did not intend to issue a Report in the Public Interest in this instance primarily because steps had already been taken to '*strengthen control measures*' and further improvements were planned.
15. It was also confirmed at the meeting that no further action was to be taken by the police in relation to the matter.
16. A number of concerns were subsequently raised about how the meeting of 22 February 2017 was conducted. The council referred the matter to the Local Government Association (the LGA) who procured the services of a solicitor to carry out a review of '*the governance and decision making processes together with the overall conduct of the meeting*'. In September 2017 the solicitor set out their findings in a report³ and made recommendations for improvement.

² <http://democracy.york.gov.uk/documents/s112941/Annex%20A%20-%20Mazars%20Procurement%20Issues%20Report.pdf>

³ <http://democracy.york.gov.uk/documents/s122557/Appendix%201%20Redacted%20LGA%20Report.pdf>

Request and response

17. On 5 March 2017, the complainant contacted the council by email on three different occasions, using three separate email addresses, to request information about the Veritau Report and related matters. The requests are set out in Annex 1 of this Decision Notice. For the purposes of this Decision Notice they are to be referred to as 'Request 1', 'Request 2' and 'Request 3'.
18. Request 1 asked for that information which had been redacted from the Veritau Report before it was published. Such information appears to have consisted primarily of the names of officers at the council.
19. It should be noted at this point that the Commissioner has not received a complaint about how Request 1 was handled by the council. However, the details have been included within this Decision Notice as the Commissioner is of the view that this request is of some relevance to her consideration of the case as a whole.
20. Request 2 asked for information that related to the Chief Executive's investigation which the complainant states was referred to at the Audit and Governance meeting held on 20 December 2016.
21. Request 3 asked for information relating to the investigation which was carried out by Veritau, including the '*terms of reference*' of that investigation.
22. The council responded to all three requests in one letter on 5 April 2017. It acknowledged that the requests of 5 March 2017 had been sent separately but advised that it considered that they related to '*substantially the same information*' and therefore it was to collate them into the one response.
23. The council advised the complainant that it regarded the information that had been requested to be exempt from disclosure under section 40 and section 14 of the FOIA.
24. The council stated that it accepted that there is a public interest in individuals being able to hold public authorities and senior officers to account but then went on to say the following:

'However, prior to your request being made, information was made public, which confirmed no evidence of criminal behaviour or wrong doing had been found. This included the outcome of an independent audit report and a Police investigation the Chief Executive referred to in the Audits & Governance Committee of 22 February 2017. In addition to this the council's response to the independent audit, the action to be

taken, the reason redactions were made to the Veritau report, the number and grade of officers involved and the advice taken regarding this decision had been made public prior to your request being made.

Following appropriate independent investigations it is therefore clear no evidence of individual wrong doing has been found and the information in the public interest has already been released.'

25. The council also advised the complainant that as the information appropriate to the public interest had been released, future requests or correspondence relating to the matter would not be responded to, or acknowledged.
26. On 7 April 2017 the complainant sent three separate emails to the council in response to its letter of 5 April 2017. The complainant advised that whilst he understood that the issues were related, he believed the requests for information that he had submitted were separate and distinct. He therefore asked for an internal review in respect of all three of his requests.
27. With regards to Request 1, the complainant argued that the identities of certain individuals (that had been withheld from the published Veritau Report) should be disclosed to the public.
28. With regards Request 2, the complainant stated that any report commissioned by the Chief Executive was distinct from the investigation and Veritau Report produced in agreement with the S151 Officer and the Chief Executive of Veritau. He states that as the Veritau Report has been published, it was reasonable to expect the same degree of openness to apply to the Chief Executive's Report. He states that *'she is our most senior officer, and her report must be an important document in this affair of procurement failings.'*
29. The complainant goes on to say that as the Veritau Report was agreed with the Section 151 Officer he was concerned that this may have resulted in a significant conflict of interest in the *'procurement failings'*. He argued that there should be a more independent view placed in the public domain by the Chief Executive.
30. With regards to the council's response to Request 3, the complainant argued that there was no reason why the terms of reference for the published Veritau Report should be withheld. He states that if it is not disclosed *'it is impossible for residents and councillors to evaluate the conclusions of the report. We do not know what Veritau was asked to investigate: but more importantly, we do not know what was omitted from their brief.'*

31. He further supports his arguments for requesting the information set out in Request 3 by stating the following:

'The scope of Veritau's report had been agreed by the Chief Executive of Veritau and the S151 officer. However, the S151 officer had a significant but undeclared conflict of interest in the matter of the procurement failings, and as a director of Veritau itself. Consequently, residents and councillors are entitled to see evidence that this conflict of interest did not influence the terms of reference of the report by making them unreasonably restrictive.'

32. The complainant goes on to say that without knowing what the council paid for, it cannot be known whether wrongdoing has taken place. He has advised that if the Report fails to answer this question, then it is *'deliberately and substantially flawed'* and therefore the terms of reference should be made public.
33. On 13 April 2017 the council responded to all three separate internal review requests in one response.
34. The council advised that it was *'not considered necessary or appropriate for the council to complete an internal review'* in this instance. It went on to explain that this was because the officers from the Complaints and Feedback Team who would complete the review had worked with senior managers to provide the original response.
35. The council went on to say that, given this, it was considered to be the case that an internal review would not lead to a different outcome.
36. The Commissioner notes that, on 26 March 2017, the complainant then submitted a further information request to the council. This is set out as Request 4 in Annex 1 of this Decision Notice. This was primarily for information held about the referral made by the council to the LGA about the conduct of participants at the meeting held on 22 February 2017.
37. The council responded to the complainant to advise that it believed section 14 to be engaged.
38. On 9 July 2017 the complainant made another request to the council. This is set out as Request 5 in Annex 1 of this Decision Notice. This was for information relating to the police investigation into the procurement of contracts issue. The council did not provide a response to this request.
39. The Commissioner views Request 4 to be distinctly different to the previous requests made by the complainant on 5 March 2017, and Request 5 made on 9 July 2017. This is because, unlike the other

requests, Request 4 was not for information held relating to the procurement of contracts and the various investigations carried out in relation to this. It was primarily for details held regarding the conduct of the meeting itself (where such issues were discussed). Given this, she does not intend to consider how this particular request was handled within this Decision Notice.

Scope of the case

40. The complainant originally contacted the Commissioner on 28 November 2017 to complain about the way his requests for information had been handled.
41. The Commissioner is of the view that it is appropriate to take a more holistic approach to matters in this particular instance. Whilst she does not regard Requests 1, 2, 3 and 5 to be 'more of the same', and acknowledges the reasons given by the complainant for the submission of separate requests, it is her view that they are so intrinsically linked in terms of theme and subject matter that it is appropriate for them to be considered as a whole and within one Decision Notice.
42. The Commissioner has therefore gone on to consider how the council has handled Request 2, Request 3 and Request 5 and whether it is correct to determine that they are vexatious under section 14(1) of the FOIA. She would add that her decision does not extend to Request 1 given that she has not received a complaint about how this particular request was handled.

Reasons for Decision

Section 14-vexatious request

43. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
44. Whilst the term 'vexatious' is not defined in the FOIA, in the case of the Information Commissioner v Devon CC and Dransfield⁴ the Upper

⁴<http://administrativeappeals.decisions.tribunals.gov.uk/judgmentfiles/j3680/%5B2015%5D%20AACR%2034ws.rtf>

Tribunal commented that the term could be defined as the '*manifestly unjustified, inappropriate or improper use of a formal procedure*'. The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

45. 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 authority 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.
46. 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).

47. The Commissioner's guidance⁵ on dealing with vexatious requests sets out a number of indicators that may apply in the case of a vexatious request. 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious, including the context of the request and the history of the public authority's relationship with the requester, when this is relevant.
48. In this instance, the Commissioner has considered the views set out by both the council and the complainant in the correspondence they have sent to each other, as well as the representations that they have provided directly for her consideration.

⁵ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The council's representations

49. As the Commissioner wrote to the council about each of the complainant's requests separately, it has responded in the same manner. However, the council's representations are, in the main, similar in respect of each request. Given the Commissioner's decision to consider Requests 2, 3 and 5 within one Decision Notice she has set out the council's arguments without specific reference to any one request, unless it is of relevance to do so.
50. The council has advised that the complainant's requests are not the only requests and correspondence that it has received on substantially the same issues and with the same purpose.
51. The council believes that it is appropriate to consider the complainant's requests in the context of the other repeated requests, comments on social media and correspondence relating to certain council officers, whom it describes as having been subject to a prolonged and unjustified campaign which has been ongoing for a number of years. The council states that whilst it accepts that the complainant is not the main instigator of such a campaign, it is satisfied that his requests can be related to it.
52. The council has argued that continuing to provide responses to each of the requests it has received, some for slightly different information, will not prevent further comments, requests and correspondence being made. It also believes that it would have a significantly detrimental impact on the ability of officers to carry out their day to day duties and would result in an unjustified level of damage and distress. The council states that it has a duty of care to its officers who should be protected from having to continue to respond to requests in such circumstances.
53. The council has advised that it believes that the information which was already in the public domain at the time of the complainant's requests would have been sufficient to satisfy any member of the public with a reasonable interest in the relevant issues. It suggests that, given this, the inherent purpose of the complainant's requests was not to understand the issues which are accepted as being in the public interest, but to support the 'ongoing campaign' against the council and its officers.
54. With specific reference to Request 2 (for information relating to the Chief Executive's investigation) the council believes that there was already sufficient information in the public domain for a member of the public who had a reasonable interest in the issues relating to the procurement concerns to understand that the Chief Executive's investigation was the referral that was made to the police. The council

goes on to say that the public had also been informed that the police had confirmed that there was no evidence of criminal activity and that the internal and external audit reports which had been published also reached the same conclusions. It argues that there is no other information held that would add any further value to the transparency of governance, or the public interest.

55. With regards to Request 3, the council reiterates the point that prior to its receipt, a significant amount of information, including the internal and external audit reports and the outcome of the police investigation had already been made public. It states that the points of investigation had been clearly documented in the reports and minutes of the meetings and that, given this, the terms of reference, findings and conclusions were already in the public domain prior to the request being made.
56. The council has also commented that it believes that any doubts that may have existed amongst individuals that the scope of the Veritau Report was limited by officers would have been dispelled when details of the report and the investigation that was carried out were made public.
57. The council goes on to argue that, in addition, the public would be aware that the council could not have limited the scope of any police investigation that was carried out into criminal activity.
58. With regard to Request 5, the council has advised the Commissioner that it viewed the exemption applied to Request 1, Request 2 and Request 3 to be relevant as it viewed these to be about the same issues. It states that as section 14 was applied to a previous related request and the complainant had already been advised further correspondence on the same matters would not be responded to, it did not view it to be appropriate, or necessary, to provide any further response to Request 5.
59. The council has confirmed that, when taking the decision to apply section 14 to the complainant's requests, it did take into account the purpose and value to the wider public interest of releasing the information he had requested.
60. It states that it recognises that there is a genuine public interest in making information available which allows people to understand how public money has been managed, and spent. It goes on to say that it understands that there is a strong and genuine public interest in making information available to explain any problems that have arisen in relation to the management and spending of public money, what went wrong, how this will be put right, and how it can be avoided in the future. The council also accepts that information needs to be available to identify if there has been any criminal wrongdoing so that senior officers can be held to account.

61. However, the council has explained that it remains of the opinion that all relevant information in the public interest has already been made available and that no amount of information, explanations or assurances would satisfy the purpose of the request in relation to the ongoing campaign.
62. The council goes on to say that a significant amount of information has been made public and this makes it clear that there had been a weakness identified which related to the documentation of the procurement procedures. It refers to the internal and external audit reports in particular as providing the details of such findings. In addition, as well as the reports and outcome of the police investigation, the council has said that information about the actions the it had taken, and intended to take, to ensure documentation would be maintained appropriately in the future, was made public prior to the complainant making his requests.
63. The council has also confirmed that it was important in its consideration of the requests that all the investigations concluded that there was no evidence of criminality and the findings were related to the failure to document the procurement process which had been followed. It states that had there been evidence of wrongdoing, this would have significantly weakened its ability to apply section 14(1).
64. The council has advised that it regards the application of section 14(1) to be necessary and appropriate to protect officers from having to continue to respond to requests which will clearly cause unjustified damage and distress.

Other exemptions

65. The council has advised the Commissioner that it could have considered aggregating requests and issuing exemptions under section 12 of the FOIA but believes that this would have left the council open to having to respond to further requests made for the purpose of pursuing the same campaign. It states that it therefore maintains that section 14(1) was appropriate given all the information to satisfy a member of the public with a reasonable interest in the issues had already been provided. It goes on to say that this meant it could protect officers and resources by advising further related requests would not be responded to, or acknowledged.
66. The council has also provided some further detail in relation to the consideration that it gave to the application of section 40(2). It considers that a number of exemptions may have applied, had section 14 not been viewed appropriate after its consideration of the requests. With regards to the reference to section 40(2) in the responses to the

complainant, the council has advised that this was to show that personal data rights had been taken into account when deciding whether section 14(1) could be applied.

67. The council goes on to say that identifying individuals whose actions had been investigated and those who had contributed to the investigation would only have been likely to leave them open to further unjustified contact and comments on social media. The council considers that this would be a breach of their personal information rights under the Data Protection Act and section 40(2) was applied only to show this had been considered in the application of section 14(1) and that section 14(1) either would not have been applied, or applied to far more limited information, had there been any evidence of wrongdoing.

The complainant's representations

68. The complainant's representations to the Commissioner indicate that he believes that there should be further openness and transparency about how relevant matters have been handled to ensure that the processes followed were appropriate. He states that whilst he accepts that some of the details of the investigation are in the public domain, he is not satisfied that this provides a full picture. He states that in the interests of openness and transparency the council should provide the information requested.
69. The complainant suggests that the mishandling and breaches of procurement procedures by senior officers is a matter of great public interest and there is a need for further transparency and openness about the issues to which his requests relate.
70. With regards to Request 2, the complainant argues that it is important that the public is able to have access to the Chief Executive's report which he states was referred to, and used, by her at the meeting of 22 February 2017. He states that the public should be made aware of what information she held to form the conclusions that she presented to the Committee.
71. With regards to Request 3, the complainant has voiced his concern that the scope of the report may have been restricted to conceal further wrongdoing or to protect certain officers from criticism. Without being able to see the information that he has requested, it is not clear what Veritau was specifically asked to investigate.
72. The complainant had already submitted his complaint to the Commissioner about how his requests of 5 March 2017 had been handled when he submitted Request 5 to the council on 9 July 2017. He subsequently complained about how this latter request was handled. He

advised that whilst the Chief Executive had referred matters to the police, and assured the Committee at the meeting of 22 February 2017 that no criminal behaviour had been uncovered, no further information about the decision made by the police was disclosed, including what details were included in the referral and the basis for which the police had made its decision.

The Commissioner's view

73. The Commissioner has viewed it to be pertinent to consider a number of factors when considering whether the council was correct to apply section 14 to the requests that are under consideration.

Part of a campaign

74. The council has placed a great deal of emphasis on its belief that the complainant's requests can be linked to an ongoing public campaign against certain officers and councillors. It goes on to say that the campaign, which predates the publication of the Veritau Report, is prolonged and unjustified.
75. The council has provided some persuasive evidence in support of its argument and the Commissioner has given careful consideration to whether the complainant's requests can be linked to such a campaign.
76. The Commissioner accepts that a number of individuals submitted requests for information about matters relating to the procurement of contracts. Social media and other public forums have also been used by certain individuals to communicate with each other and provide comment on both this, and other, matters. The Commissioner acknowledges that, on occasions, the views expressed are personal and very critical of particular officers at the council.
77. The Commissioner also notes that there is some evidence that the complainant has been in direct communication with one individual who has been publicly vocal about their opinions and criticism of the council, both in relation to the issue of the procurement of contracts, and other matters. There have been a number of brief exchanges of communication between the complainant and the relevant individual on the 'whatdotheyknow' website.
78. In addition, the Commissioner is also aware that the complainant has copied the same individual into certain emails which he had sent to the council raising concerns about the conduct of the council meeting held on 22 February 2017.
79. This extent of any links between the complainant and any other individual who has shown an interest in matters relating to the council

appears to be limited. The Commissioner has found no evidence that the complainant has participated in any of the group discussions described above, or that he has used any public forums for the purpose of criticising the council and or any officers prior to, or after the publication of the Veritau Report.

80. The Commissioner also notes that a considerable amount of the supporting evidence provided by the council to support its argument the complainant's requests form part of an 'ongoing campaign' post-date his requests and also do not relate directly to him.
81. With regard to the council's argument that several other requests were received relating to substantially the same issues and with the same purpose as the complainant's requests, the Commissioner has not found any requests that have been published on the 'whatdotheyknow' website to be the substantially the same as those under consideration. Whilst she does accept that certain other requests made directly to the council may be seen to be similar, at least in part, to the complainant's requests, she regards it to be pertinent to note that no evidence has been provided which would indicate that at the time that the complainant submitted his requests, he was aware of such requests.
82. The Commissioner does not consider it to have been unreasonable for a number of individuals to have independently asked for information about the procurement of contracts and related matters, particularly given the media and local interest which had been generated both before, and after, the official publication of the Veritau Report.
83. The Commissioner fully appreciates the concerns raised by the council about the level of scrutiny and comments made by some individuals and why it may have viewed this to be inappropriate and unacceptable. However, she is currently of the view that this concern cannot be extended to the complainant, or his requests.
84. Given that the Commissioner has not been persuaded by the evidence currently available to her that the complainant, or his requests, can be regarded to form part of the ongoing campaign, she has gone on to consider whether the requests could still be deemed vexatious in isolation.

Purpose and value

85. The Commissioner's guidance confirms that serious purpose and value will often be the strongest argument in favour of the requester when a public authority is deliberating whether to refuse a request under section 14(1). It goes on to say that the key question to consider is whether the purpose and value of the request provides sufficient grounds to justify

the distress, disruption or irritation that would be incurred by complying with that request.

Purpose

86. The guidance states that authorities should be careful to differentiate between cases where the requesters are abusing their information rights to engage in a campaign of disruption, and those instances where the requesters are using the FOIA as a channel to obtain information that will assist their campaign on an underlying issue.
87. With regards to the purpose of the requests, the Commissioner has considered whether, as the council suggests, there is any evidence that the complainant has used the FOIA to further personal antipathy against particular officers at the council. When doing so, she has taken into account whether there is any substantive evidence to show that he is attempting to cause disruption, harassment or distress, rather than making a genuine effort to obtain information.
88. It is the Commissioner's view that when circumstances such as those described in this case arise, then it is to be expected that, to some degree, the actions or accountability of certain more senior officers who were involved in any part the process may be questioned or scrutinised further by members of the public.
89. The complainant has explained to the council that he wants to understand the level of involvement of certain senior officers who were involved in the investigations as he had concerns about potential conflicts of interest.
90. The Commissioner accepts that the complainant questions the impartiality of certain officers in correspondence he has sent to the council. However, she is of the view that his comments are not sufficient to suggest that his requests are a deliberate attempt to further any personal grudge against any particular officer at the council, or to cause distress to those officers to a level that is unacceptable.
91. The Commissioner has also considered the council's arguments that the complainant has asked for information that was already in the public domain and therefore the purpose of his requests was to cause disruption and detriment to the council and its officers. She is of the view that the evidence is not sufficiently substantive to form such a conclusion.
92. For example, with regard to Request 2 the council states that any individual who had a reasonable interest in relevant matters would have known from the information available that the reference to the Chief Executive's 'investigation' was the referral to the police. It goes on to

say that the outcome of this was already in the public domain at the time of the complainant's requests and this information was already known to him.

93. However, it is the Commissioner's understanding that it was the Chief Executive's decision to refer the matter to the police for consideration, not Veritau, or Mazars. Given this, it does not seem to be unreasonable for the complainant to have believed that the reference to the Chief Executive's 'investigation' meant that they had given separate consideration to matters and held records relevant to this (in addition to the police referral).
94. With regard to Request 3, the council has also argued that the internal and external audit reports, and minutes of meetings, clearly document the points of investigation and therefore the terms of reference requested by the complainant are already in the public domain.
95. However, the Commissioner is of the view that whilst the documents referred to by the council may indeed detail what was investigated by Veritau, this is distinctly different to the terms of reference of the investigation that have been requested by the complainant.
96. The Commissioner has been unable to find any evidence to support the council's assertion that the terms of reference of Veritau's investigation have already been provided.
97. The Commissioner is satisfied that, on balance, the evidence is sufficient to conclude that the complainant's requests are a genuine effort to get further transparency and openness about how matters have been handled, rather than an attempt to cause disruption or annoyance to the council, or any one officer.

Value

98. The Commissioner understands that the matters to which the requests relate concern the expenditure of public money and that this is a matter of public interest. With regards to the level of seriousness of the issue, she has noted the following comment contained within the minutes of the meeting held on 22 February 2017;

'In response to a question from Councillor Steward, Gareth Davies from Mazars said of the situation that he was not sure it could have been any worse.'

99. The council has argued that to disclose any further information to that which was already in the public domain would add no further value. It also states that, when considering the complainant's requests, it had regarded it to be important that the investigations had found that there

had been a breach of procedures only, and that there was no evidence of criminal activity.

100. The council goes on to say that information about the actions the council had either already taken, or would be taking, to ensure documentation would be maintained appropriately in the future had also been made public prior to the requests being made.

101. However, the Commissioner is mindful that there are a number of factors which may have contributed to the level of public interest in those matters which are relevant to this Decision Notice.

102. As the Commissioner understands the case to be, the issues regarding the procurement of particular contracts only came to light following the disclosure of information in response to a number of FOIA requests. An objection was made to the 2015/2016 accounts and the Veritau investigation then followed.

103. Whilst not directly related to the same issue of the procurement of external contracts, the Commissioner believes it pertinent to note that in 2016, Mazars (the council's internal auditors) produced a 'Report in the Public Interest'⁶. This Report concluded that there had been errors in the process adopted by the council for approving the payments to two senior employees. Whilst it does not appear to be an issue of the legality over the payments, there was concern that the process which had been followed 'lacked transparency'.

104. In addition, the Mazars Report considered at the meeting of 22 February 2017 refers to the findings of another internal audit report presented to the Audit and Governance Committee in September 2016 which had identified missing and incomplete contract documentations for certain subcontractors. It goes on to conclude the following:

'The Council has been exposed to allegations of fraud and corruption on this matter. Even though such allegations may be unfounded (and we are not aware of evidence to support them), the Council is unable to fully defend its position because of the lack of supporting records. As well as breaching the Council's rules, this is potentially damaging to the Council's reputation.'

⁶ https://www.york.gov.uk/info/20003/your_council/1831/mazars_public_interest_report

105. The Commissioner is mindful that the various anomalies with the accounts and the processes followed within a short period of time is likely to have heightened public interest in those matters currently under consideration.
106. The Commissioner has also had regard to the fact that at the meeting of 22 February 2017 there was disagreement amongst Members about what should be disclosed to the public about the investigation.

107. The Report which had been commissioned by the LGA into the conduct of the meeting of 22 February 2017 made the following points:

'It is clear that the reasons for the problems that occurred at the meeting are broader and both historical and deep rooted. The issues are a symptom of general difficulties that the Council is experiencing in relation to challenges from protagonists from both inside and outside of the Council. In addition, there is a lack of trust and a perception amongst some that the Council operates within a degree of secrecy. This investigation has found that the Council generally does endeavour to operate in an open and transparent fashion, but there are heritage issues that conspire against this. [REDACTED] My recommendations deal only with the narrow issues that I have been asked to consider, however, they merely scratch the surface. Unless the wider issues are tackled and the Council endeavours to demonstrate improved transparency in order to re-establish trust, then there is a potential for a repeat of this type of incident.'

108. The LGA Report goes on to say that:

'In view of the heritage governance issues and in the spirit of acting in a transparent way in order to rebuild trust, it was entirely appropriate for the reports to be presented to the Audit and Governance Committee for consideration. It is unfortunate that this positive move was tainted by the debate as to whether the report in Annex 1 was to be considered in public.'

109. The Commissioner believes it important to note that the FOIA is not a medium to be used by individuals to reopen issues where matters have been fully addressed, or as a means for them to conduct their own investigation into matters. She accepts that if the complainant, or any other party, is unhappy with the outcome of any of the investigations, then they will have further, more appropriate options available to them to pursue such concerns.

110. However, she has given careful consideration to the original aim of the FOIA⁷ which is to allow for *'more open government based on mutual trust'* and that *'access to information can also improve public confidence and trust if government and public sector bodies are seen as being open'*.

111. In this particular instance, it would appear that there may be some mistrust as to how matters have been handled 'behind the scenes'. The Commissioner is mindful that there are other factors which may have contributed to public concerns that there has not been enough transparency over how matters have been handled.

112. The Commissioner also notes that, in support of the council's argument that the requests have no purpose or value, it states that it was clear that it had received the services it had paid for and there was no question of criminal wrong doing in relation to the spending of public money. It goes on to quote the following extract from the original version of the minutes of the meeting of 22 February 2017 in support of this:

'In response to a question from Members, the Head of Internal Audit confirmed that Veritau was satisfied that sufficient work had been carried out to show that the work that had been paid for had been carried out.'

113. However, the Commissioner has noted that these minutes were amended at a further meeting of 5 April 2017 to read as follows:

'In response to a questions from Members, the Head of Internal Audit ~~confirmed~~ (sic) did not confirm that Veritau was satisfied that sufficient work had been carried out to show that the work that had been paid for had been carried out.'

114. In this instance, a key issue appears to concern the level of openness, accountability and transparency of the council. The Commissioner is mindful that the public interest will have been potentially raised following the failures identified in two consecutive annual accounts.

115. The Commissioner, having considered the complainant's requests, does not agree that the information he has asked for has already been

⁷ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>

provided. She is of the view that it would provide further background to how the investigations were carried out and further clarity on issues where the council has been criticised for showing a lack of transparency. In this particular instance, she is of the view that there is greater value to this than may have been the case, had the circumstances and history been different.

116. The Commissioner does have some sympathy with the council's position. She is also conscious of the need for the council to protect its officers and its resources. As previously stated, the council has provided some compelling evidence in support of its arguments of a campaign against the council and its officers. However, in this instance, she does not accept that there is a sufficient link between the campaign described and the complainant.
117. The Commissioner has also taken into account the fact that the complainant's requests were made shortly after the publication of the Veritau Report where public feeling was likely to be high.
118. Taking account of all the circumstances, the Commissioner has concluded that, whilst finely balanced, Requests 2 and 3, are not vexatious. She therefore requires the council to reconsider these requests and issue a fresh response to the complainant.
119. The Commissioner is aware that the council did not previously respond to Request 5 as it had already applied section 14 to the complainant's earlier requests which it had regarded to be 'on the same matter'.
120. Given the Commissioner's decision that Request 2 and 3 are not vexatious, she has also concluded that the council can no longer rely on the current arguments presented for the application of section 14 to Request 5.
121. The council should therefore also reconsider its position in respect of Request 5 and issue a fresh response to the complainant in respect of this request. Should the council, upon review, conclude that section 14 is engaged in relation to Request 5, it must ensure that it can provide sufficient argument in support of its decision.

Right of appeal

122. 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

123. 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.

124. 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
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF