

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2018

Public Authority: Knowsley Metropolitan Borough Council
Address: Municipal Buildings
Archway Road
Huyton
L36 9YU

Decision (including any steps ordered)

1. The complainant has requested from Knowsley Metropolitan Borough Council (the Council) information in regards to Mark Harden, Chief Executive (CEO).
2. The Commissioner's decision is that the request is vexatious and the Council has correctly applied section 14(1) of the FOIA to refuse the request. Therefore, the Commissioner does not require the Council to take any further steps.

Request and response

3. On 23 March 2017 the complainant wrote to the Council and requested information in the following terms:

"Can you confirm how long Mike Harden, currently in the position of CEO, has been employed by KMBC and in what capacity has he been employed."
4. On 28 March 2017 the Council responded. It refused to disclose the information as the Council considered the request to be vexatious in accordance with section 14 of the FOIA.
5. On 9 April 2017 the complainant expressed her dissatisfaction with the Council's response and asked for an internal review.
6. On 21 April 2017 the Council responded. It maintained its position to not comply as it deemed the request vexatious under section 14.

7. On 25 April 2017 the complainant wrote to the Council and requested a full internal review of her request.
8. On the same day the Council responded and explained that it had consulted with the CEO regarding the internal review.
9. On 28 April 2017 the complainant wrote to the CEO directly and asked him for confirmation that he refused to carry out an internal review.
10. On the same day the Council replied and informed the complainant that it had allocated her request for an internal review to the Council's Monitoring Officer.
11. On 3 May 2017 the Council provided the complainant with its internal review outcome. It maintained its decision to treat the request as vexatious under section 14 was correct.

Scope of the case

12. The complainant contacted the Commissioner on 21 June 2017 to complain about the way her request for information had been handled.
13. The Commissioner considers the scope of the case is to determine whether the request is vexatious and if the Council is entitled to rely on its application of section 14(1) of the FOIA.

Reasons for decision

Section 14 – vexatious requests

14. 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. The term "vexatious" is not defined in the FOIA.

The Upper Tribunal (Information Rights) though considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*.^[1]

15. The Tribunal commented that 'vexatiousness' 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.

16. 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.
17. 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).
18. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
19. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests. ^[2] The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
20. The Commissioner considered the representations received from both the complainant and the Council in order to understand the circumstances surrounding the request.

^[1]GIA/3037/2011

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

The Council's position

21. The Council considers the request for information was targeted towards a specific employee or office holder against whom the complainant appears to have some personal enmity. The Council said that the request was part of an ongoing issue which it had dealt with in regards to the complainant's behaviour and targeted correspondence initially against the Council and then increasingly against the CEO.
22. The Council reported frequent correspondence which was aimed towards the CEO over the last year prior to the request, and with the CEO directly. It said that the complainant had demonstrated personal hostility to the CEO at a local by-election court in October 2016 and that subsequent complaints and correspondence had been generated by this incident.
23. The Council also reported the complainant's ongoing persistence and singular focus on the CEO. In particular, her insistent correspondence regarding a Subject Access Request that she made and the complainant's lack of willingness to refine the request when asked by the Council.
24. The Council said there had been spurious allegations of intimidation and harassment made by the complainant against the CEO and the Council's Monitoring Officer. The Council referred to numerous emails which the complainant had sent directly to the CEO that it considered evidences hostility and rancour towards him.
25. Within the Council's internal review outcome, it referred the complainant to the ICO's guidance on vexatious requests and explained why the Council considers the request matches the criterion described as frivolous requests:

Frivolous requests

26. The Council quoted a line from the ICO guidance on dealing with vexatious requests:

"The subject matter is inane or extremely trivial and the request appears to lack any serious purpose."

27. The Council is of the view that the request does not have anything to do with what is in the public interest. It believes that the request has been made to reignite previous grievances which the complainant has raised against the CEO and to encourage further engagement from the Council about this matter.

28. It added that this is a frivolous request as it is solely targeted at the CEO and that it stems from his biography page on Twitter. The CEO states on his Twitter account his interests outside his role with the Council. The complainant had drawn the Council's attention to the statement on the page which says:

"Chief Executive of @Knowsley Council. Husband and father. Part time footballer and rock star."

29. The Council considers the complainant is unreasonably focussing on what are light hearted comments regarding the CEO's leisure activities, which he used in an attempt to add some individuality to his Twitter account. It said that the complainant had specifically brought this information to the Council's attention within her correspondence stating that her request *"...is pursuing a legitimate interest in the background and the public claims made by the current CEO..."*. Therefore, the Council informed the complainant that her request was frivolous and referred to paragraphs 58 and 59 of the ICO guidance on section 14 (FOIA) and said these are relevant in this case

"A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden."

The requester's past pattern of behaviour may also be a relevant consideration. For instance, if the authority's experience of dealing with his previous requests suggests that he won't be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority."

30. The Council is of the view that the complainant used the CEO's statement (which is publically available information) as the basis for the request as she wishes to illustrate that the CEO has other employment in addition to his role at the Council. It reiterated that it believes the complainant is not pursuing this request in the public interest, but to try to further her own complaint and correspondence with the CEO.
31. The Council has also provided further supporting grounds for finding that the request is vexatious.

Unfounded accusations

32. The Council believes that the complainant is using the FOIA as a means to further her ongoing complaints and issues with the Council and the CEO. It is of the view that the complainant intends to use this request and any proposed response to undermine the CEO and to further imply that he is not respecting both his role and the Council itself.

Public interest

33. As stated, section 14(1) of the FOIA is not qualified by the public interest test. However, the Upper Tribunal in the Dransfield case confirmed that it may be appropriate to ask whether the requested information has a value or serious purpose in terms of the objective public interest.
34. The Council acknowledges that there is a public interest in appointing appropriate staff to all roles within the Council. It said as council tax payers, it believes that the public have the right to know that the Council is being managed by capable members of staff and that due process in appointments to public office has been followed. In this case, the Council considers the complainant is not acting in the public interest and that she has no intention of using the request as an opportunity to further the interest of the public. Its opinion is that the request is to continue a dispute that the complainant has with the CEO with intent to use the information to state publically that the CEO is not a part time rock star or a footballer. This is not in the public interest and the CEO's statement on his Twitter page is written in a tongue-in-cheek manner.
35. Whilst there is a minor public interest in the information being released, the Council believes that the greater public interest is in ensuring that the Council has robust procedures for handling information requests and complaints. Also, to ensure that the Council is managing its resources effectively.
36. Therefore, the Council considers the disclosure of this information would not be in the public interest as it would allow the complainant to pursue her personal grudge against the CEO, which the Council sees as a prominent member of the Council's management structure.

The complainant's position

37. The complainant believes it is in the public interest for the "*highest ranking public servant officer*" (CEO) whose name is publicly available, to divulge how long he has been employed at the Council and also in what capacities. The complainant states that her request is pursuing a legitimate interest in the background and the public claims made by the current CEO. She does not consider such disclosure is vexatious or unwarranted as she believes the information relates to the individual's professional capacity as a high ranking public servant related to the business. The complainant is of the view that the Council's refusal of the information is because of the person asking the question and is not that the request is vexatious.

The Commissioner's position

38. The Commissioner accepts that objectively-speaking the information which has been requested is not trivial and has some value in terms of the public interest. She has however also considered the context in which the request was made and the circumstances of the case.

39. The Commissioner recognises the frequent correspondence of the complainant, a significant proportion of which concerned the CEO. She considers that the request was part of an ongoing issue and that the complainant had targeted correspondence against the CEO. It is noted that the complainant had raised previous grievances against the CEO and the correspondence showed signs of hostility towards him.

40. The Commissioner notes the request stems from the CEO's biography page on Twitter which was brought to the Council's attention by the complainant. The complainant stated that her request is pursuing a legitimate interest in the background and the claims which the CEO had made. However, the Commissioner is of the view that the complainant is trying to pursue her personal grudge against the CEO and that any response from the Council could be used by the complainant to undermine the CEO.

41. The Commissioner also notes that the CEO's statement regarding his leisure activities had been written in a tongue-in-cheek manner. As this was seemingly used to justify the making of the request, the Commissioner considers the request appears to lack any serious purpose.

42. The Commissioner is satisfied that the complainant's request for information is to further her continuous complaints and issues with the Council and the CEO. In this regard, she considers that compliance with the request would be unlikely to resolve her concerns and would instead likely lead to further requests.
43. In conclusion, the Commissioner's decision is that the request is vexatious and the Council is correct to rely on section 14 of the FOIA to refuse disclosure of the information.

Right of appeal

44. 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

45. 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.
46. 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

Alun Johnson
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