

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2018

Public Authority: Elmbridge Borough Council

Address: Civic Centre
High Street
Esher
Surrey
KT10 9SD

Decision (including any steps ordered)

1. The complainant has requested information about safety planning in a public swimming pool. Elmbridge Borough Council ("the Council") refused to comply with the request under section 14(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the Council has correctly applied section 14(1).
3. The Commissioner does not require the public authority to take any steps.

Request and response

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

I am writing to make a formal request to Elmbridge Borough Council under the Freedom of Information Act 2000 (FOIA). The documents I request relate to Xcel Leisure Centre swimming pool, which is run by your contractors (currently Places for People though previously it was DC Leisure).

Hopefully you will remember that in 2014, I wrote to you saying that Xcel pool is dangerous and it would be much safer if they were to swap over the positions of the swimming groups there. However, at that stage, you did not agree with my case for what I called the 'swap over'. My updated case for it is in the first two attachments, which are information sheets I handed out when I did a petition outside Xcel for a few hours last July. The first attachment is a concise summary and the second contains more detail. These two handouts resulted in 59 people agreeing with my case for the swap over and signing the petition to say that Xcel should bring it in. The petition people signed is the third attachment. People were signing at a rate of about one person every five minutes which I think speaks volumes about the credibility of the case for the swap over.

Under the Freedom of Information Act I request copies of the following:

- 1. All documents and emails from or to any of your members of staff, or your contractors (current and previous), which relate to the idea of swapping over the positions of the swimming groups at Xcel pool.*
- 2. All documents and emails from or to any of your members of staff, or your contractors (current and previous), which relate in any way to any of the matters I have raised.*
- 3. All documents and emails from or to any of your members of staff, or your contractors (current and previous), which relate to any worries or concerns about any safety matter at the pool which have been raised by anyone else (i.e. not me).*
- 4. All documents and emails from or to any of your members of staff, or your contractors (current and previous), to [redacted name] in relation to his IQL pool review.*
- 5. All documents and emails from or to any of your members of staff or your contractors (current and previous), which make any reference to me, directly or indirectly.*

6. All records of any incidents involving safety or danger at the pool. This includes, but is not limited to, records of the following: 'Accidents'; 'Near Misses'; 'Undesired Circumstances'; 'Dangerous Occurrences'; 'Safety Incidents'; or any other 'Incident' of any kind that could be construed as relating to the health and safety of any member of the public. These documents you send me should have any names and addresses of the public (though not staff) redacted so that the public cannot be individually identified. The ages of the public should be left in.

7. All 'Risk Assessments' for the pool.

8. I request under the FOIA that you get the current manager of Xcel, [redacted name], to give me individually numbered answers to every single one of the ten specific questions I put to him in my email dated 29th Oct 2016. His most recent email dated (2nd Dec 2016) shows that he has repeatedly refused to answer even a single one of these ten questions. As a compromise and so that he can focus on the five public safety questions, it would be acceptable to me if he answers questions 5 to 9 inclusive (which relate to his integrity in these matters) with an apology, providing that apology also contains an admission of guilt. All my correspondence with him is in the fourth attachment.

9. I request under the FOIA that you give me a copy of the job description of the manager of Xcel (i.e. the job description that covers [redacted name]).

10. I request under the FOIA that you tell me the name of the individual person who is taking responsibility for not doing the swap over. I request this, as that is the person who will be facing questions from a coroner if there is a death at the pool. And if the coroner decides that not doing the swap over caused the death or was a contributory factor, then that will be the person who is likely to face charges under the Corporate Manslaughter Act 2007. My view is that it is the current manager of Xcel, [redacted name]. However, as you are now aware of the possibility of a death, it could possibly be you as you could easily overrule the manager (as he is your contractor). Therefore, to clarify this vital matter, I request under the FOIA that you tell me the name of the individual person who is taking responsibility for not doing the swap over.

5. The Council responded on 19 April 2017. It refused to comply with the request under section 14(1).
6. On 1 June 2017, the complainant asked the Council to undertake an internal review.

7. Following an internal review the Council wrote to the complainant on 5 June 2017. It maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 21 August 2017 to complain about the way his request for information had been handled, and specifically that the Council was incorrect to apply section 14(1).
9. The Commissioner considers the scope of the case to be the determination of whether the Council has correctly applied section 14(1).

Reasons for decision

Section 14(1) – Vexatious requests

10. 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.

11. The Commissioner has published guidance on vexatious requests¹. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requestor when this is relevant.

The complainant's position

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

12. The complainant has informed the Commissioner that the request relates to unaddressed concerns he holds about the safety of a public swimming pool that is located in a leisure centre owned by the Council.
13. The complainant considers that the Council, and the contractor that manages the leisure centre on its behalf, have failed to abide by a duty of care to the public. This is on the basis that the 'general public' group of swimmers are located too far away from the lifeguard. The complainant believes that this issue can be effectively resolved by a 'swap over', and having the general public group use that part of the swimming pool which is currently used for swimming lessons (and which is closest to the lifeguard).

The Council's position

14. The Council considers that the request clearly relates to ongoing concerns held by the complainant, and which were first raised by him in 2013.
15. In response to these concerns, the contractor initially consulted the Royal Life Saving Society, who assessed the swimming pool and found no issues with the lifeguarding arrangement. Since that time, the complainant has continued to escalate his concerns through correspondence to the Council's Chief Executive, the contractor's Board of Directors, and his MP. The Chief Executive for the contractor wrote to the complainant on 7 February 2017 to refer him to the further safety review undertaken in January 2017 (by the Institute of Qualified Lifeguards), and to advise him that the matter was now considered to be closed. Around the same time, the Regional Director for the contractor wrote to the complainant's MP to confirm that the matter had been fully considered with no safety issues found.
16. Since that time, the Council understands that the complainant has continued to raise his concerns by protesting outside the leisure centre with a placard, and organising a petition. Additionally, and whilst post-dating the request, the Council also notes that the complainant has now been banned from entering the leisure centre after an act of unauthorised access.
17. The Council considers that compliance with the request would require a substantial amount of officer time in assembling a response, and would not satisfy the complainant's concerns, or otherwise advance the matter in a meaningful way.
18. The complainant's previous correspondence with the Council and contractor has been persistent and voluminous, and has consumed a significant amount of both parties' resources. The Council has counted

47 separate instances of communications with the complainant, or actions taken in response, between 22 July 2013 and 29 October 2016.

19. The Council further considers that recent correspondence from the complainant has changed from 'reasonable comment' to being immoderate and aggressive through the assertions and language that it contains.

The Commissioner's analysis

20. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
21. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the request

22. The Commissioner has reviewed the circumstances of the request, and recognises that the complainant holds concerns about the placement of 'general public' swimmers at a public swimming pool. The specific basis of this is that the complainant believes the lifeguard is situated too far away from those swimmers who should be deemed most vulnerable.
23. However, the Commissioner also understands that the complainant's concerns have been repeatedly considered by the Council and its contractor since 2013, and that this has included referral to the relevant professional bodies, who have identified no issues in the current lifeguarding arrangements. The Chief Executive of the contractor contacted the complainant in February 2017 (prior to the request under consideration) and advised him that the matter was now considered to be closed.

24. Having considered this context, and the specific information sought by the request, it is reasonable for the Commissioner to conclude that the purpose of the request is to pursue correspondence with the Council about a matter that the Council, and its contractor, considers to have been fully investigated and concluded.

The burden upon the Council

25. The Commissioner understands that the complainant has not submitted any previous requests to the Council about this matter. However, the Commissioner notes that a large volume of correspondence (and associated actions) has taken place since 2013 (numbering 47 instances between 22 July 2013 and 29 October 2016).
26. The Commissioner further notes that the request seeks a significant amount of information that is clearly related to the substantive matter, and that compliance with this request would, of necessity, consume public resources.

Conclusion

27. Whilst the Commissioner recognises that the complainant remains concerned about the lifeguarding arrangements in place at the swimming pool, the evidence indicates that the matter has been fully considered by the Council, the contractor, and independent professional bodies, with no actions deemed as necessary.
28. It is also recognised that the request immediately followed the Council informing the complainant that it considered the matter to be closed, and in this context the Commissioner considers it reasonable to conclude that the request was made to force continued engagement from the Council. The Commissioner must also consider that compliance with the request would consume finite public resources, and limited public value has been evidenced that would justify this.
29. Having considered the above factors, the Commissioner has concluded that section 14(1) has been correctly applied.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group Manager
Information Commissioner's Office
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SK9 5AF