

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2018

Public Authority: Rotherham Metropolitan Borough Council

Address: Riverside House
Main Street
Rotherham
S60 1AEX

Decision (including any steps ordered)

1. The complainant has requested information about the expert guidance that has been sought by Rotherham Metropolitan Borough Council ("the Council") in making a decision. The Council refused to comply with the request under section 14(1).
2. The Commissioner's decision is that the Council has correctly applied section 14(1). However, the Council breached section 17(1) by providing its refusal notice outside of the time for compliance.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 6 April 2017, the complainant wrote to the Council and requested information in the following terms:

On 14 September 2015 David McWilliams wrote in an email:

"I know that much earlier on in the year you, Chrissy and I had discussions about the potential for a more systematic approach to distribution through a planned workforce development programme. However, before I took this any further I shared this with DLT and it was agreed that we should seek some independent, expert guidance on the content and after consideration Commissioner Newsam and Ian agreed to keep further distribution limited to those already mentioned (above) and or any individuals that we feel should be sighted on the publication."

This FOI Request is for a copy of any information relating to the highlighted comment "I shared this with DLT and it was agreed that we should seek some independent, expert guidance on the content".

5. The Council responded on 8 June 2017. It refused to comply with the request under section 14(1).
6. On 14 August 2017, the complainant asked the Council to undertake an internal review.
7. Following an internal review the Council wrote to the complainant on 13 September 2017. It maintained that its earlier response was correct.

Scope of the case

8. The complainant contacted the Commissioner on 11 October 2017 to complain about the way his request for information had been handled, and specifically that section 14(1) had been incorrectly applied.
9. The Commissioner considers the scope of the case to be the determination of whether the Council has correctly refused to comply with the request under 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

12. The complainant has informed the Commissioner that the request seeks information relating to the Council's decision to not purchase a book titled 'Voices of Despair, Voices of Hope' ("the book"), of which the complainant is a co-author. The subject of the book is:

Listening to the Voices of victims, survivors, their family members and others adversely and directly affected by Child Sexual Exploitation (CSE) in Rotherham.

13. The complainant has explained that the book was produced in close consultation with Council officers, and that from December 2014 onwards he engaged with the Council in respect of it purchasing copies of the book for staff development. In March 2015 the Council indicated that it would purchase 1500 copies, but subsequently (in September 2015) confirmed that it no longer intended to do this.

14. The complainant subsequently made an information request (on 16 September 2015) for information relating to this matter. The complainant did not consider that the Council complied in full with that request, and therefore made further requests in order to seek access to specific information that he believed was held.

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

15. The Commissioner understands that the information sought by the request in this case is that relating to the "*independent, expert guidance*" on which the Council decided not to purchase the book.
16. The complainant has explained that he has requested this specific information following the Council's disclosure of information to a previous request, as part of which he was provided with copies of emails dated 14 September 2015 that refer to "*independent, expert guidance*" having been sought by the Council.

The Council's position

17. The Council has informed the Commissioner that it originally engaged with the complainant between December 2014 and September 2015 in respect of purchasing copies of the book to use as a staff training resource. However, during this time the Council sought an independent appraisal of the book, and following the outcome of this, the Council made the decision to not purchase copies. The Council considers that the requests subsequently made by the complainant relate specifically to his dissatisfaction with the Council's decision to not purchase the book.
18. The Council considers that the request in this case seeks information that would fall within the scope of previous requests, and that all relevant recorded information has been considered in responding to these previous requests. The Council acknowledges that it has failed to comply with the statutory time timescales in respect of some of the requests, but argues that the scope of these were significantly broad.
19. The Council has explained that it attempted to address the complainant's specific concerns and information needs by providing an alternative 'Business as Usual' approach (outside the FOIA regime) for part of 2016, which was agreed by the complainant. However, the Council considers that this resulted in a large number of enquiries to individual officers, and did not lead to a resolution of the complainant's concerns.
20. The Council considers that the request relates to an issue that has already been comprehensively addressed, and that it has been made in order to express anger at the Council's decision. The Council has referred the Commissioner to an online petition that the complainant has created in relation to this matter:

<https://www.change.org/p/sharon-kemp-chief-executive-ask-david-mcwilliams-and-ian-thomas-rmbc-officers-to-tell-the-truth>

The Commissioner's analysis

21. 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.
22. 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.

Context

23. The Commissioner is aware that the request in this case relates to previous requests that have been made to the Council; some of which have been referred to the Commissioner. The Commissioner will summarise what known about these requests here.
24. The complainant's first request was made on 16 September 2015 (and managed under the Council reference of '600'). In response, the Council disclosed held information.
25. The complainant's second request was made on 26 October 2015 (and also managed under the Council reference of '600'). In response, the Council disclosed held information. The Commissioner issued a decision notice (FS50683351) on 19 February 2018 that found the Council had disclosed all held information within the scope of the request.
26. The complainant's third request was made on 18 January 2016 (and managed under the Council reference of 'FOI 989').
27. The complainant's fourth request was made on 30 September 2016 (and managed under the Council reference of 'FOI 740-16'). In response, the Council disclosed held information. The Commissioner issued a decision notice (FS50677230) on 7 December 2017 that found the Council had disclosed all held information within the scope of the request.

28. The complainant's fifth request was made on 2 February 2017 (and managed under the Council reference of '1124-16'). In response, the Council disclosed some held information, and withheld some under the exemption provided by section 42. The Commissioner is currently considering the Council's application of section 42, and will shortly issue a decision notice (under the reference of FS50708047).
29. The request under consideration in this case was made on 6 April 2017 (and managed under the Council reference of '21-17').

The purpose and value of the request

30. The Commissioner understands that the complainant holds concerns about the completeness of the Council's disclosure to previous requests, and that the purpose of the request in this case is to seek specific information that he believes is held.
31. However, in reviewing the context to this matter, the Commissioner has noted that the request in this case is significantly similar to the request made by the complainant on 30 September 2016. That request sought the following information:

On 15 September 2015, I received an email from David McWilliams which stated:

I know that much earlier on in the year we had discussions with ... about a more systematic approach to distribution through a planned workforce development programme. However, before I took this any further we sought independent, expert guidance on the content and after consideration Commissioner Newsam and Ian agreed to keep any further distribution limited to those already mentioned and or any individuals that we felt should be sighted on the publication. I thought you might find it helpful if I shared some of the feedback we received;

I referred to the email on 15.9.15 in the information I sent to the Information Commissioner's Office on 25.5.16 as Document 2.

Please can I have a copy of any email exchanges that led to David McWilliams receiving the so-called independent expert guidance.

If there were no email exchanges, please can an explanation be provided as to how David McWilliams received the so-called independent expert guidance.

32. The Commissioner considered that request in decision notice FS50677230. In that decision, the Commissioner considered whether the Council held relevant information about how the Council received the expert guidance, and subsequently concluded that no relevant information was held.
33. Having considered the wording of both requests, it is reasonable for the Commissioner to conclude that the requests are significantly similar, and are likely to seek the same information (i.e. information about how the Council received the expert guidance). As discussed in decision notice FS50677230 (and specifically paragraphs 11-20), there is no evidence available to the Commissioner that indicates any relevant information is held.
34. In addition to the purpose of the request, the Commissioner has also considered the value of it.
35. The Commissioner understands that the complainant has submitted the request in order to understand the basis of why the Council has declined to purchase the book.
36. The Commissioner is aware that the subject of the book is a matter of considerable public importance and concern. However, it is understood that the subject of the request is the Council's decision to not purchase the book for the purposes of staff development. It is further understood that the book has been written and published in a private capacity by the complainant as co-author, and that whilst the authors may have consulted with Council officers in its creation, the book has not been commissioned by the Council under any statutory duty, or else created under the auspices of any other public authority. As such, it is reasonable for the Commissioner to conclude that there is no known requirement for the Council to purchase the book, and that any business decision to do so rests with the Council.
37. In this context, it is reasonable for the Commissioner to consider that compliance with the request is unlikely to resolve the complainant's concerns, and that any disagreement with the Council's decision could be submitted to the relevant process for review (e.g. the Council's complaints process).

The burden upon the Council

38. The Commissioner is aware that at least five previous information requests have been made by the complainant, of which three have been referred to the Commissioner.

39. It is reasonable for the Commissioner to consider that significant public resources have been applied to responding to these previous requests, and that compliance with the latest request would, of necessity, consume further public resources.

Conclusion

40. The Commissioner recognises that the complainant remains dissatisfied with Council's decision to not purchase the book, and therefore wishes to understand the basis for this.
41. However, the Commissioner has previously considered a significantly similar request made by the complainant, and concluded that no relevant recorded information was held. In addition to this, the Commissioner recognises that whilst the book relates to a serious matter; the request under consideration relates specifically to the Council's decision to not purchase the book for the purposes of staff development. These factors significantly lessen the public value in the request being complied with.
42. It is also recognised that significant resources have already been expended by the Council in responding to the previous information requests made by the complainant on this subject. Compliance with the request in this case would of necessity consume further public resources, and limited value has been evidenced that would justify this.
43. Having considered the above factors, the Commissioner has concluded that section 14(1) has been correctly applied.

Section 17(1) – Refusal of request

44. Section 17(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
45. In this case the Council issued its refusal notice outside 20 working days, and therefore breached section 17(1).

Right of appeal

46. 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

47. 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.
48. 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