

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2018

Public Authority: West Sussex County Council
Address: County Hall
Chichester
West Sussex
PO19 1RQ

Decision (including any steps ordered)

1. The complainant requested information from West Sussex County Council ("the Council") about the number of times legal advice was provided to a named officer and how this was recorded.
2. The Commissioner's decision is that the Council correctly refused to respond to the request under section 14(1) of the FOIA (vexatious requests).
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 2 September 2017, the complainant wrote to the Council and requested information in the following terms:

"Please confirm the total number of occasions between 1 April 2014 and the present day, that [named legal officer] provided advice to [named Council officer]. Please also confirm the number of these instances that are formally recorded and the number of these that are not, with supporting rationale for records not being kept."

5. The Council responded on 19 September 2017. It stated that it held information falling within the scope of the request but that it considered that it was exempt from disclosure under section 42 of the FOIA (legal professional privilege).
6. Following an internal review the Council wrote to the complainant on 29 September 2017. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 9 October 2017 to complain about the way his request for information had been handled. The Commissioner accordingly wrote a letter of investigation to the Council.
8. The Council responded and stated that it had reconsidered its handling of the request in light of the fact that the complainant had made what it considered to be a very large number of requests during the period leading up to the date of the request and also subsequently. It therefore wished to refuse the request under section 14(1) of the FOIA – vexatious requests.
9. The Council then advised the complainant of its updated position; that it no longer relied on section 42 and instead cited section 14(1).
10. The following analysis covers whether the Council correctly refused the request of 2 September 2017 under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – vexatious requests

11. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
12. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of *Information Commissioner vs Devon County Council & Dransfield* (GIA/3037/2011) ("the *Dransfield* case") and concluded that the term could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's decision establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

13. In the *Dransfield* case, the Upper Tribunal found it instructive to assess the question of whether a request is 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 of, or distress to, staff. The Upper Tribunal did, however, also caution that these considerations were not meant to represent an exhaustive list. Rather, the Upper Tribunal 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).
14. The task for the Commissioner, therefore, is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal, and she has therefore taken into account the representations of the Council and the complainant, as well as the evidence that is available to her.
15. In this notice the Commissioner will also refer to her published guidance¹ in defining and dealing with vexatious requests.

The Council's arguments

16. The Council has provided evidence to the Commissioner that it received a large number of requests from the complainant during the period leading up to the request and immediately afterwards. Specifically, the Council received 13 separate requests for information from the complainant during the three months leading up to the request of 2 September 2017. It also received a further five on the same day, two days later.
17. The Council has provided a spreadsheet to the Commissioner. This details the complainant's requests and the responses given by the Council. The Council has also set out its reasons for applying the exemption at section 14(1) in a letter to the complainant which it copied to the ICO. This letter explains that the Council considers that the complainant has developed an obsession with the named councillor, and that his requests have placed a disproportionate burden on the Council, and had an adverse impact on it being able to conduct its day to day

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

business, having required input from up to 16 officers who may have expended as many as 50 hours' work in responding to him.

18. The Council acknowledges that the complainant's requests initially had a serious purpose, but considers that the frequency and nature of the requests has begun to demonstrate *"an obsessive and unreasonable campaign"*. The Council considers that some of the requests have been repetitious and have at times been *"trivial and petty."*
19. The Council considers that complying with the request under consideration in this notice, in particular, would have a disproportionately detrimental impact, as a senior legal officer would have to *"examine records and search for data in relation to which there is little or no public interest; namely the number of times he has provided legal advice to a named councillor and confirm whether on each occasion there was a record kept and if not to justify that decision."*
20. The Council explains that it considers that there is very little, if any, wider public interest in the information being requested. It points out that the councillor may have needed advice from the senior legal officer about a wide variety of different issues over the relevant period, and that there is very little interest in disclosing the number of times that advice has been sought, or how these occasions have been recorded.
21. The Council also sets out that the complainant has been afforded the opportunity to speak to senior officers, including the Chief Executive, over the telephone and in person in order to address his concerns. It considers that he has had the opportunity to engage with it in a conciliatory manner rather than continuing to make information requests.
22. The Council also expressed concern to the complainant that responding to his requests, as it had consistently done, simply led to further requests being made. It states that in many cases requests have led to requests for reviews and, at times, escalation to the Information Commissioner, as with this case.

The complainant's position

23. The complainant has not provided any submissions specifically countering the application of section 14(1) to his request. However, the Commissioner is aware of some of the background to his request from information which is in the public domain. She has considered this with regard to assessing the purpose and value of the request.
24. The Commissioner is aware that the request relates to an incident at a particular care home that led both to an investigation by Sussex Police,

and to a Safeguarding Adults Review being commissioned by the West Sussex Safeguarding Adults Board ("the Board"). The complainant's other requests, referred to by the Council as above, also relate to this issue, and to the provision of social care in the county.

25. The Commissioner notes that the outcome of this review has been published very recently, and that a number of recommendations have been made to the Board.
26. The request of 2 September 2017 specifically relates to the provision of legal advice to a named Council officer whose impartiality had been questioned. The review outcome notes that the complainant "*questioned [his] ability... to be impartial when it comes to issues in respect of Sussex Health Care.*" After being addressed in the review, a recommendation regarding 'outside interests' was made to the Board.
27. The Commissioner notes that the complainant was attempting to gather evidence about this issue at the time of the request, and will therefore consider these factors when considering the purpose and value in the request.

The Commissioner's decision

28. The Commissioner, in her guidance, referenced previously, has identified a number of 'indicators' which may be useful in identifying vexatious requests. However, 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.
29. 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 an unjustified level of disruption, irritation or distress which is disproportionate to the purpose and public value of the request.
30. She has first considered the timing of the request under consideration in this notice, in the context of the other requests made by the requester around the same period.
31. As her guidance makes clear, when determining whether a request is vexatious, a public authority "*may take into account any evidence it has about the events and correspondence which preceded or led up to the request being made*" and, in addition, as long as the authority adheres to the statutory time limit when responding, then it "*may also take into account anything that happens within the period in which it is dealing with the request (for example if the requester sends in further requests).*"

32. The Council explained to the Commissioner that the complainant continued to make requests for some months after the date of the request under consideration in this notice. However, as is explained above, further requests received after the statutory time period (20 working days) for responding to the request of 2 September 2017 had elapsed are not relevant to an assessment of whether that request was vexatious.
33. In considering the refusal of the request of 2 September 2017, therefore, the Commissioner is able to take into account the fact that 13 other requests were made during the preceding three months, as well as the five further requests that were made on the following day.
34. She is satisfied that this is indicative of unreasonable persistence on the part of the complainant, which is an indicator that a request may be vexatious.
35. Turning to the question of whether this placed a disproportionate burden on the Council, in this case, the Commissioner is aware that the complainant was seeking to gather evidence about a matter which was both of personal interest to him, and also of wider public interest: the care being provided to a vulnerable section of the community within the county.
36. She also understands that it is a matter of wider public interest if a council officer may have a conflict of interest in carrying out his public duties.
37. However, the Commissioner agrees with the Council that the request of 2 September 2017 is of little value or merit in itself and does not serve to shed much light, if any, on the issues that are of wider public concern.
38. She is also aware that some of these wider concerns are being, or have been, addressed through other channels, including by Sussex Police and by the Adult Safeguarding Review Board.
39. The Commissioner's role in considering the application of section 14 of the FOIA to this request does not require her to carry out a public interest test as such, but rather to weigh the purpose and value of the request against the burden on the authority in complying with it.
40. She considers that the burden that would be placed on council officers to respond to the request of 2 September 2017, as described at paragraphs 16-19 above, would be disproportionate, and therefore has determined that section 14(1) of the FOIA has been correctly applied in this case.

Right of appeal

41. 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

42. 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.
43. 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

Ben Tomes
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