

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 March 2019

**Public Authority:** Guildford Borough Council  
**Address:** Millmead House  
Guildford  
GU2 4BB

#### **Decision (including any steps ordered)**

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1. The complainant has requested any information from Guildford Borough Council ("the Council"), exchanged between a group of named people, containing the words 'livery' and 'meeting' and dated between 1 March 2015 to 31 December 2015.
2. The Commissioner's decision is that the request was vexatious and therefore, the Council was entitled to rely on Section 14(1) of the FOIA to refuse it. However, as the Council did not respond to the complainant's request within 20 working days, section 10 of the FOIA has been breached.
3. The Commissioner does not require any further steps to be taken.

#### **Background to the request**

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4. In December 2015, the Council introduced a Taxi and Private Hire Policy, which included a livery standard, requiring vehicles to be the same colour. Additionally, all changes of vehicles on existing taxi vehicle licences and taxi vehicles licensed for the first time after 9 December 2015 were required to meet the requirements.

## Request and response

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5. On 27 April 2018, the complainant wrote to the Council and requested information in the following terms: *"Any information exchanged between the following people: [six names redacted] that contains the word Livery and is dated between 1 March 2015 and 31 December 2015."*
6. Later the same day, the complainant additionally requested that the word *"Meeting"* be added to the information search.
7. On 5 June 2018, the complainant contacted the Commissioner to advise that he had not received a response from the Council, other than an automated email. The Commissioner contacted the Council to advise it that it needed to provide a response.
8. The Council responded on 21 June 2018. It stated that:

*"We are of the view that this FOI is essentially a repetitive request for minutes of a meeting between councillors to consider the council's livery policy options, held at some point in 2015. We have already advised you that there are no minutes for this meeting. We have evidence from your previous correspondence and collectively these requests appear obsessive and unjustified. Having followed the Information Commissioner's guidance around applying this position we have concluded that your request is vexatious under section 14(1) of the Freedom of Information Act. Your request is therefore refused."*
9. The complainant requested an internal review on 22 June 2018, commenting that he was not making a request for minutes on this occasion. Following an internal review, the Council wrote to the complainant on 19 July 2018. It stated that it upheld its original position and refused the request as being vexatious under section 14(1) of the FOIA. It additionally considered that section 14(2) of the FOIA – repeated requests – may also be applicable to the requests.

## Scope of the case

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10. The complainant contacted the Commissioner on 5 June 2018 to complain about the way his request for information had been handled.
11. The following analysis covers whether the Council is correct to state that the the complainant's requests are vexatious under section 14(1) and/or section 14(2) of the FOIA.

12. It also considers whether the Council met the requirements of section 10 of the FOIA – time for compliance.

## Reasons for decision

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### Section 14 - vexatious or repeated requests

13. Section 14(1) of the FOIA states:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."*

14. The FOIA does not define the term "vexatious". The Upper Tribunal (UT) considered the issue of vexatious requests in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013). The UT decided that the dictionary definition had limited use and that it depended on the circumstances surrounding the request. The UT defined it as a *"...manifestly unjustified, inappropriate or improper use of a formal procedure."* (paragraph 27). The approach in this case was subsequently upheld in the Court of Appeal.
15. The Dransfield judgment also considered 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. It explained that these considerations were not meant to be exhaustive and also explained 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).
16. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the UT when it defined the purpose of section 14 as being - *"...concerned with the nature of the request and ha[ving] the effect of disapplying the citizen's right under Section 1(1)... The purpose of Section 14... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..."* (paragraph 10).

17. The Commissioner's guidance<sup>1</sup> explains that the UT's decision established that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
18. The Commissioner has also identified a number of indicators which may be useful in identifying vexatious requests. They include (amongst others):
  - The burden on the authority.
  - Unreasonable persistence.
  - Unfounded accusations.
  - Intransigence.
  - Frequent or overlapping requests.
  - Deliberate intention to cause annoyance.
19. The fact that a request contains one or more of these indicators will not necessarily mean that it is vexatious. All the circumstances of a case need to be considered in reaching a judgement. Where relevant, public authorities may also need to take into account wider factors such as the context and history of the request.
20. The Commissioner's guidance suggests that if a request is not clearly vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should aim to objectively judge the impact on itself and weigh this against any evidence about the purpose and value of the request.
21. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "*The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies*".

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

22. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.

*The complainant's position*

23. The complainant has explained that he had made requests on behalf of the Guildford Hackney Association, and that he had made several previous requests for different information in the past because the then Manager of Licensing informed him that he would only provide information if a request was made under a FOIA request.
24. The complainant has argued that the request is not frivolous or vexatious, within the normal meanings of the words.
25. He believes that refusal to provide the requested information is unlawful under the terms of the FOIA and is against the Council's own policy of transparency and accountability.

*The Council's position*

26. The Commissioner wrote to the Council requesting its submissions in respect of a number of questions relating to the points raised by the complainant. The questions were focused on the factors that the Council took into account when it decided to refuse the complainant's requests for information
27. By way of background, the Council explained that the complainant has been in ongoing correspondence with the Council since the Council introduced a Taxi and Private Hire Policy in December 2015, which includes a livery standard, requiring vehicles to be the same colour.
28. It has advised the Commissioner that it has taken into account the context and history of the request and the events and correspondence which preceded the request, including the complainant's previous contact with the Council and requests by him which were substantially similar in nature. Although the wording of the requests have differed, it considers that the requests all relate to the same issue.
29. The Council has provided evidence that from 1 January 2018 to the date of the request, the complainant contacted the Council over 50 times. On each occasion, this related to the Council's Taxi and Private Hire Policy.
30. The Council stated that it had considered the ICO's guidance on dealing with vexatious requests, referenced previously. It considered that the requester was attempting to reopen an issue which had already been comprehensively addressed by the Council, or otherwise subjected to some form of independent scrutiny.

31. The Council also considered that the requester was abusing his right of access to information by using the legislation as a means to vent his anger at a particular decision, or to harass and annoy the authority.
32. In the Council's view, the issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation. The Council has advised the Commissioner that the complainant has sought to resolve several of his issues through the courts, including the Magistrates Court, Crown Court and the High Court. On each of these occasions, the complainant's arguments have been rejected and the Courts have advised that the Council's policy can only be challenged by a judicial review.
33. In addition, the Council argued that the complainant's requests were *"obsessive and unreasonable in nature, placing excessive demands on the time and resources of staff."*
34. The Council explained in a letter to the complainant dated 21 February 2018, that it was applying its "Unreasonable Complainant Policy" and stated the following as reasons why:

*"- The frequency of complaints and correspondence, repetitious of themes and/or issues which have been the subject of exhaustive resolution under the Policy or which disagree with a decision of the Council or which are the subject of a legal process and right of challenge and recourse;*

*- The aggressive and personalised tone of the language used, and the attempts to use the complaints policy to develop or present lines of attack or challenge which (if merited and not vexatious) are subject to a defined external legal process, and to make unsubstantiated allegations about the Council and its Officers."*

35. The Council advises that its Corporate Management Team (CMT) concluded that the requests from the complainant were obsessive and unreasonable in nature, placing excessive demands on the time and resources of staff. It states that, in line with its Complaints Policy and Procedure, CMT were satisfied that the requests were unreasonable.

*The Commissioner's decision*

36. The Commissioner has considered the evidence in this case. She notes that the complainant considers that the information he requested should be in the public domain, and that he has explained that he is making the requests on behalf of Guildford Hackney Association.
37. There is no question in the Commissioner's mind that the request itself is not necessarily, in isolation, particularly burdensome. Had it been the

first and only request which the complainant had made, the judgement could have been different, she might have expected the Council to search for and consider disclosing the requested information. However, the Council is entitled to draw the Commissioner's attention to its previous interaction with the complainant.

38. The evidence provided to the Commissioner shows that the requests that the complainant has made are frequent and there is an underlying theme of obtaining information with an overlapping theme. In addition, despite the potentially wide ranging nature of the request, the complainant has made it clear to the Commissioner that the information of principal interest remains the minutes of the meeting that the council referenced in paragraph 8 of the notice.
39. The Commissioner considers that the Council has provided her with evidence to suggest that the complainant is using the FOIA as means to re-open, re-visit and re-litigate matters which have already been closed.
40. She notes that the Council has also provided evidence which shows that the complainant contacted its various departments on over 50 separate occasions during the three months prior to making this request.
41. It is clear that there has been a breakdown of trust between the Council and the complainant and a grievance which stretches back more than three years.
42. In the Commissioner's view, compliance with the requests is likely to result in further correspondence and the Commissioner has seen no evidence to suggest that providing the requested information in this specific request would satisfy the complainant or bring an end to the issue.
43. The Commissioner struggles to see the wider public interest which the complainant believes applies to this information. Whilst the Commissioner is happy to accept that the complainant himself has a particular interest in the information, she takes the view that any wider public interest is negligible and outweighed by the ongoing burden to the Council in dealing with the requests.
44. The Commissioner has considered all the factors in this case and her decision is that the Council correctly refused the complainant's request under section 14(1).
45. As the Council has refused the complainant's request under section 14(1), there is no requirement for her to consider the Council's application of section 14(2) – repeat requests - to the complaint.

## **Section 10 – time for compliance**

46. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt*".
47. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the complainant within 20 working days, the Council breached section 10 of the FOIA.
48. As the Council has correctly applied FOIA to the response, the Commissioner does not require it to take any further steps.



## Right of appeal

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49. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

50. 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.
51. 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**  
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**Wycliffe House**  
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