

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 February 2020

Public Authority: Slough Borough Council
Address: 51 Bath Road
Slough
SL1 3UF
(email: foi@slough.gov.uk)

Decision (including any steps ordered)

1. The complainant has requested information contained in email correspondence to and from named councillors and officers of Slough Borough Council about two named council-owned properties.
2. Slough Borough Council refused the request relying on the section 14(1) FOIA (vexatious or repeated requests) and section 12(1) (cost of compliance) FOIA exemptions. The Commissioner decided that the requests were a manifestly unjustified, inappropriate and improper use of a formal procedure and so were vexatious.
3. The Commissioner does not require Slough Borough Council to take any steps to comply with the legislation.

Request and response

4. On 30 July 2019, 1 August 2019 and 19 August 2019, the complainant wrote to Slough Borough Council (SBC) making nine separate, but connected and near identical, requests for information under FOIA ("the requests") in relation to two council-owned properties in Slough ("the properties"). The individual requests took the form:

"As per [FOIA], I hereby do formally request you to provide me (the public) with the following information:

(1) Provide me with all e-mail communications from Dec 2017 to the date I receive the FOI request, by [name redacted] in relation to [property name redacted]?"

5. SBC responded on 19 August 2019, and again, following internal review, on 10 October 2019. On each occasion SBC refused to provide the requested information relying on the exemptions in sections 12(1) (cost of compliance) and 14(1) (vexatious or repeated requests) FOIA.
6. SBC told the Commissioner, by way of background information, that it owned two residential tower blocks which together comprised one of the named properties. The residents of that property were a mixture of council tenants and leaseholders. SBC had previously decided to demolish those existing tower blocks and redevelop the land. The council's tenants had been rehoused and all but one had accepted offers from SBC and moved out. SBC said that the dissenting tenant had refused all offers from SBC and had refused to engage constructively with it. Negotiations had broken down such that SBC now intended to apply for a compulsory purchase order.
7. The Commissioner noted, during her investigation, that the second of the named properties was for commercial use and would include new offices for SBC. This was an issue which the complainant said was of concern to him.

Scope of the case

8. The complainant contacted the Commissioner on 10 September 2019 to complain about the way his request for information had been handled. He said it would not take SBC anywhere near the 18 hours available to it under statute to collate the emails he had requested. He denied that his requests had been vexatious. He said that he had no personal grievance with SBC; his requests had been justified.
9. The Commissioner considered the application by SBC of the section 14(1) and section 12(1) FOIA exemptions to the three related requests. She received, and took into account, representations from both parties. She has noted the parties' earlier relevant correspondence and the background to the dispute.
10. The Commissioner first considered the application of the section 14(1) FOIA exemption.

Reasons for decision

11. Section 14 FOIA says that:

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

The term "vexatious" is not defined within FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC)*. The Tribunal commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's approach was subsequently upheld by the Court of Appeal.

12. The *Dransfield* definition established that the concepts of proportionality and justification are relevant in considering whether or not a request is vexatious. In *Dransfield*, the Upper Tribunal considered four broad issues:

- (1) the burden the request imposed 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.

13. The Tribunal explained that these considerations were not meant to be exhaustive and also pointed to 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 Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the

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

case of a vexatious request. However, even if a request contains one or more of these indicators, it will not necessarily follow that it must be vexatious.

15. When considering the application of section 14(1) FOIA, 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*".
16. However for section 14(1) FOIA to apply, it is the request itself which the Commissioner must consider and find to be vexatious, not the person making it.
17. A key question for the Commissioner to consider is whether the request has already caused, or is likely to cause, a disproportionate or unjustified level of disruption, irritation or distress.

Evidence from the complainant

18. The complainant said that his requests were reasonable and that SBC knew he would be challenging in Court its decision in relation to one of the properties. His requests were not vexatious as he was an affectee / interest holder in one of the properties. He said that he was about to bring '*landmark cases*' against SBC in respect of both properties.
19. The complainant added that he had no personal grievance with SBC. He said that the sole purpose of his requests was to ensure SBC openness and transparency. His requests were, he said, justified by legal challenges he was mounting against SBC. He also told the SBC's FOI officer that he believed she had misconducted herself whilst in public office as a result of her actions in relation to his numerous FOI requests.
20. The complainant pointed to his concern at SBC's plans to use space in one of the properties for its own business purposes.

Evidence from SBC

21. SBC told the Commissioner that, in making his FOI requests, the complainant had been misusing FOIA as a means to pursue a personal grievance and campaign against it. SBC said that his requests had not been about freedom of information but had been an abuse of the FOIA procedure as a means of pursuing a personal interest. SBC said it had discharged its public interest duty to the wider public with regard to the

- properties through information it had published voluntarily in numerous reports, which had been open to public scrutiny.
22. SBC said that the complainant had already appealed to the First-tier Tribunal (Information Rights) (FTT) the determination in a previous decision by the Commissioner, her Decision Notice reference FS50820341 (<https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615785/fs50820341-1.pdf>) .
 23. SBC added that the requests had been consistent with a persistent, unjustified, and disproportionate use of FOIA to pursue personal matters with the Council. This was continuing even in the face of an ICO decision that SBC did not hold any further recorded information falling within the scope of those requests, and that SBC had complied with section 1(1) FOIA for them.
 24. Although the current requests were separate, they were all on the same or related matters. Since March 2018 the complainant had made 59 connected information requests. SBC considered that many of these, including the current requests, amounted to an untargeted 'fishing expedition' approach by the complainant. SBC believed that, no matter how many requests it answered, more would surely follow.
 25. SBC said that the complainant's grounds of appeal showed that his motives and the key focus of his FOIA information requests were to uncover some perceived, but wholly unsubstantiated, wrong-doing by SBC in relation to the properties. He had threatened court proceedings previously but then no proceedings had been issued. He had alleged, without supporting evidence, that SBC was "doing a deal" with suspected criminals.
 26. SBC said it was not possible to resolve the complainant's issues informally as he was just "fishing" for any information which might support his causes in a random, scattergun way, without any idea of what might be revealed. SBC saw as evidence for this the complainant's emails asking for "all e-mail communications" from named councillors and officers. There had been, in his multiple requests, no indication even about the general nature of the information he was asking for, much less any specific content.
 27. SBC added that it saw no proportionality between the information sought, the purpose of the requests, and the time and other resources that would be needed for SBC to respond.
 28. SBC opined that the current request was manifestly unjustified. It was an inappropriate and improper use of a formal procedure by the complainant without any discernible purpose or value to the public.

29. SBC said it had taken into account the context and history of the requests and the very significant amount of time and effort that SBC officers and advisors had already spent on dealing with the complainant's matters, on some of which SBC had needed to take legal advice.
30. SBC said that there had been no proportionality between the information sought, the purpose of the request, and the time and other resources that would be needed to provide it. SBC said it had taken into account the context and history of the requests and the very significant time and effort SBC officers and advisors had already spent on dealing with the complainant, and his associated appeals and complaints to the ICO.
31. SBC added that, in its view, the legitimate public interest in transparency and accountability had been met by its publication of reports and other information regarding the development of the properties; this was available on the SBC website. SBC listed for the Commissioner's reference some seven relevant reports on its website dating between 22 January 2018 and 18 November 2019. SBC said there had, in addition, been significant press publicity about both of the properties.
32. SBC summarised its' position by saying that complying with the current requests would be likely to cause it disproportionate and unjustified disruption, irritation and distress. This, and the associated costs, had to be balanced against the purpose and value of the requests, which were personal to the complainant and had no discernible wider public interest or value. SBC considered that the complainant would be likely to make further connected requests and complaints even if SBC were to commit the necessary time and resources to answer the current requests.

The Commissioner's view

33. The Commissioner considered the Council's submission in respect of this complaint. She also had regard for the supporting evidence that both parties submitted in support of their respective views of the complaint. She considered the content of the requests themselves.
34. The complainant provided in evidence (of his own volition) correspondence which, in the Commissioner's view, had the effect of weakening his own position. This is because it documented the personal and protracted nature of the underlying matter and evidenced an unreasonable persistence in pursuing it.

35. A key question for the Commissioner to consider is whether answering the request would result in anything of value to the general public being disclosed. She found that, while the requested information may be of importance to the complainant in pursuing other related matters, aside from SBC's plans to use space in one of the properties itself, the information requested was of no interest to the wider public.
36. The Commissioner found that the substantive matters at the heart of this grievance had been investigated by SBC. She saw that a considerable amount of information had been made available by SBC, over the past two years or so, and is available to the general public from SBC's website. She found that these disclosures met the public interest in SBC's plans for its own use of relevant space. The Commissioner saw nothing during her investigation to raise concerns that the complainant, or the general public either had, or would be likely to, suffer injustice.
37. The Commissioner concluded that the requests were a manifestly unjustified, inappropriate and improper use of the formal FOIA procedure; they were being used as a device to attempt to advance the complainant's personal cause in other proceedings.
38. In the light of the evidence before her, the Commissioner decided that the requests were vexatious and that section 14(1) FOIA was engaged. It therefore follows that SBC is not obliged to comply with the requests.
39. In the light of her decision on the application of section 14(1) FOIA, the Commissioner did not proceed to consider SBC's application of section 12(1) FOIA.

Right of appeal

40. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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

Dr Roy Wernham
Senior Case Officer

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