

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 June 2020

Public Authority: Stockport Metropolitan Borough Council

Address: Stopford House
Piccadilly
Stockport
SK1 3XE

Decision (including any steps ordered)

1. The complainant has requested information relating to an Employment Tribunal hearing. Stockport Metropolitan Borough Council did not comply with the request, citing section 14(1) (Vexatious requests) of the FOIA.
2. The Commissioner's decision is that Stockport Metropolitan Borough Council has applied section 14(1) appropriately. However, she considers that it has breached section 10(1) (Time for compliance) of the FOIA.
3. The Commissioner does not require Stockport Metropolitan Borough Council to take any steps as a result of this decision.

Request and response

4. On 20 May 2019, the complainant wrote to Stockport Metropolitan Borough Council (the council) and requested information in the following terms:

"1. Can the Respondent confirm if they will contribute towards [name redacted] braille bundle and if they are willing to comply with [name redacted] case management order? She has decided the case will not be struck out.

- 2. Cost breakdown of the £95,000 paid to DWF for conducting litigation in accordance to without prejudice letter of 24 January 2019.*
- 3. Cost breakdown of the £35,000 paid to Counsel for the full hearing 15 days, in accordance to without prejudice letter of 24 January 2019.*
- 4. Cost breakdown of the flight and accommodation paid for the Respondent witness.*
- 5. Statistics of inhouse Solicitors working in Respondent Legal team from 2015 - 2019, information to be provided in this format, Racial ethnicity, Nationality and senior position*
- 6. Statistics of all inhouse management employed by the Respondent from 2014 - 2019, all council departments, information to be provided in this format Team Manager, Head of Service, Director of service, Deputy Chief Executive and Chief Executive. information to be provided in this format, Racial ethnicity, Nationality and senior position.*
- 7. Statistics of all management of Business Support(Department I worked in) as from November 2014 - December 2016. Information to be provided as from Team Supervisor (line Manager) to the highest ranking the director. Also include, information to be provided in this format, Racial ethnicity, Nationality and senior position.*
- 8. Statistics of all the 22 employees of Business Hub, where I worked. information to be provided in this format, Racial ethnicity, Nationality, scale of employment and departments they came from. In addition, include all employees, employed on fixed term contract.*
- 9. Channel Panel Prevent team - Statistics of all management involved with Channel Panel Prevent Programme as from 2011 - 2019, who work with Counter Terrorism and chair Channel Panel. In addition, include all employees, employed on fixed term contract. Also include, information to be provided in this format, Racial ethnicity, Nationality, training provided (Year and Month) and senior position.*
- 10. Channel Panel Prevent team - Can any documents including meeting minutes or notes written in meetings held by [name redacted] as from 2015 with any of the employees including [name redacted], [name redacted], [name redacted]. [name redacted] witness statement she admits secret meetings took place. I requested for all this information in October 2015 via subject access, no information was disclosed only for pieces to be provided in the joint bundle and witness statements 3 years later. Should the Respondent fail to provide, the Independent individuals will consider the options they have. As Respondent is legally aware*

allegations of radicalisation, the onus is on the Respondent to provide not me.

11. I requested [name redacted] on 29 June 2015 to provide allegations of radicalisation, still waiting until now. Can the Respondent provide evidence of the alleged Radicalisation?. In accordance with without Prejudice letter of 24 January 2019, Respondent have admitted allegation 1 was not well founded, but allegation 2 and 3 were well founded as a result was sacked. Independent individuals have informed me that allegation 2 and 3 were not well founded, I've not been given the information."

5. The council responded on 20 June 2019. It explained that it was not complying with the request, citing section 14(1) (Vexatious requests) of the FOIA.
6. The council did not provide an internal review. The Commissioner contacted it about this. This council confirmed that if it had carried out an internal review, it would have upheld its application of section 14(1).

Scope of the case

7. The complainant contacted the Commissioner on 18 November 2019 to complain about the way her request for information has been handled. She raised issues concerning her dispute with the council, which are outside of the Commissioner's remit.
8. The complainant also explained that she considered that the request was not vexatious and that the information should be disclosed, as it would be in the public interest to do so. Additionally, the complainant explained that her latest Employment Tribunal hearing, which is dealing with the costs awarded against her, had been postponed until October 2020.
9. The Commissioner notes that section 14(1) is not subject to any public interest considerations.
10. The Commissioner will consider the council's application of section 14(1).

Reasons for decision

Section 14 – Vexatious requests

11. Section 14(1) of FOIA provides 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 (UT) considered the issue of vexatious requests in the *Information Commissioner v Devon CC & Dransfield* (UKUT 440 (AAC), 28 January 2013).¹ The UT commented that “*vexatious*” could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The UT’s definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
13. The Commissioner considers the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests (the guidance).² 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, or is not, vexatious.

Evidence from the parties

15. As explained above, the complainant raised issues relating to her dispute with the council that are outside the remit of the Commissioner. However, the complainant has explained that the request is not

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

²http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

vexatious, that the information should be disclosed to her and that it would be in the public interest to do so.

16. The council explained that the complainant is a former employee. She instigated proceedings, relating to her employment, against the council, which was heard by an Employment Tribunal in 2014. The complainant's claim of unlawful discrimination was dismissed.
17. The Employment Tribunal made an award of costs against the complainant in accordance with rule 76(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended:
"76.—(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success."
18. The council also explained that the Employment Tribunal judgment made it clear that the decision to award costs against her was in respect of rule 76(1)(a), thereby confirming that the complainant had acted vexatiously, abusively, disruptively or otherwise unreasonably.
19. Additionally, the council explained that since then, the complainant made several further applications to the Employment Appeal Tribunal and the Court of Appeal, none of which have been allowed to progress. The council explained that the complainant has attempted further litigation on several occasions and lodged further Employment Tribunal claims; she has requested a postponement of the current claim on at least three occasions, over the last two years, despite the Employment Tribunal having to list the case for 15 days each time. She has also recently applied to strike out the defence and has asked for her case to be moved to a different Tribunal as she has no faith in the Manchester tribunal. The council confirmed that this was refused.
20. The council explained that this has resulted in significant correspondence being received from the complainant. Much of this correspondence requested vast amounts of information and documentation, although the present request was the first request to be treated as a request for information under the FOIA.
21. The council explained to the Commissioner that it considers that it has applied section 14(1) appropriately for the following reasons:

Compliance with the request would create a significant burden in terms of expense and distraction

22. The council explained that the complainant has a long history of correspondence and unfounded allegations against it. The council pointed out that it has limited resources and had expended a significant amount of time and expense defending itself against the claims made by the complainant. In addition, the council explained that it considered that the complainant submitted the present request as a last resort, as she has failed to convince the courts that they should order disclosure of this information.
23. The council also explained that to expend further public resources responding to this request would create an aggregated burden and distract the relevant council services from delivering their core services.

The request is designed to cause disruption or annoyance

24. The council explained that it considers that the purpose behind the request is to assist the complainant in making further allegations against it and that there is no wider value or public interest in making the requested information publicly available. The requested information is very specific and is unlikely to be of any interest to a wider public audience. Additionally, the council explained that the request raises repeat issues which have already been fully considered by it and the Employment Tribunal. It argued that it is evident from the tone of the request that the complainant is continuing to challenge it for alleged wrongdoing, without any realistic prospect of success.

The request has the effect of harassing the public authority or its staff

25. The council pointed to the following, explaining that it was in the same email that contained the present request:

"Considering [name redacted] was employed after I was sacked, he has failed to provide copies of all the vexatious complaints he alleges I made, it appears he has been given a lot of unfounded detrimental bad faith information against me. It's my opinion, he is so arrogant like [name redacted], we all know it's the Deputy Chief Executive giving him the power to use his legal expertise as a weapon as she did with [name redacted] using tax payers' resources."

26. The council pointed out that there were derogatory references to three separate council employees. Furthermore, the council explained that since the submission of the request, the complainant has made a complaint to the Solicitors Regulation Authority regarding [name redacted] and his Head of Service. The council argued that it was clear

that the complainant's use of language was aggressive and she continued to use intimidatory references to pressurise individual members of staff. The council explained it considered that this was tantamount to harassment.

The request can be characterised as obsessive or manifestly unreasonable

27. The council explained that the complainant's history of correspondence with it spans a considerable number of years and relates to the same topic. It also explained that despite the complainant's case being dismissed at the Employment Tribunal, she has persisted in pursuing it.

Whether the request has any serious purpose or value.

28. The council confirmed that it considered that there was no serious purpose to the request. It explained that it considered that the complainant's aim was to cause annoyance and disruption to it and is part of a wider campaign of harassment. In addition, the council argued there is likely to be little public interest in the specific information requested. It explained that the complainant's campaign has, and is having, a detrimental impact on its ability to perform its business as usual.
29. Furthermore, the council explained that the complainant submitted a Subject Access Request on the 31st May 2019. Question 10 of the present request relating to the Channel Panel team, was replicated in the request of 31st May 2019. Any personal data that the council was able to provide had been provided in response to that request.

The Commissioner's view

30. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her 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.

31. As the UT in *Dransfield* observed:

"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to

whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”.

32. In her guidance, the Commissioner recognises that the FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. While most people exercise this right responsibly, she acknowledges that a few may misuse or abuse the FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
33. The Commissioner recognises that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
34. The Commissioner also recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

Was the request vexatious?

35. The Commissioner has considered both the council and the complainant's submissions regarding the present request.
36. Clearly in this case, the council considers that the context strengthens its argument that the request is vexatious.
37. The Commissioner considered that, viewed in isolation, the request in this case may not seem to impose an unreasonable burden and it is arguably not without a serious purpose. However, she notes that the request is related to the issue that is being dealt the Employment Tribunal and therefore considers that the request only has any serious purpose for the complainant.

Whether the request has any serious purpose or value.

38. The council confirmed that it considered that there was no serious purpose to the request and that the complainant's aim was to cause annoyance and disruption to it and is part of a wider campaign of harassment. In addition, the council argued there is likely to be little public interest in the specific information requested. It also explained that the complainant's campaign has and is having, a detrimental impact on its ability to perform its business as usual.

39. The Commissioner has considered the complainant's submission regarding disclosure of the requested information being in the public interest.

Conclusion

40. The Commissioner notes the council's explanation regarding the complainant's own actions having incurred costs against her. The Commissioner considers that there are other avenues for the complainant to pursue if she is unhappy with the costs order against her. She also considers that the request is related to the complainant's own interests, rather than any public interest.
41. The Commissioner also notes the council's submissions regarding the compliance with the request creating a significant burden in terms of expense and distraction. She notes that there has been at least one Employment Tribunal hearings. She considers that a public authority should not have to respond to requests for issues that have already been dealt with. In the present case, the Commissioner notes that there are still ongoing proceedings. She also accepts the council's explanation regarding limited resources and having already expended time and expense defending itself against claims made by the complainant in the past. The Commissioner therefore accepts the council's explanation that responding to the present request would create an aggregated burden and distract the council from delivering their core services.
42. In addition, the Commissioner accepts the council's explanation that the request is designed to cause disruption or annoyance.
43. The Commissioner also considers that the request could be seen as obsessive, given that the complainant's case concerning costs, is still being considered by an Employment Tribunal.
44. Taking all of the above into account, the Commissioner considers that the present request appears to be a means of furthering the complainant's own disagreement with the council. She also considers that the request concerns the complainant's own personal interest. The Commissioner also notes that there are ongoing proceedings and that a judge has previously refused to order disclosure of the requested information in the course of the current proceedings.
45. The Commissioner therefore considers that the council was correct to find the request vexatious.
46. Accordingly, the Commissioner considers that section 14(1) has been applied appropriately in this instance.

Section 10 – Time for compliance

47. Section 10(1) of FOA states that:

"(1) a public authority must comply with section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt."

48. The complainant submitted her request on 20 May 2019 and the council responded on 29 June 2019. The Commissioner considers that the council did not respond to the request within the 20 working day limit provided under the FOIA.

49. She therefore considers that the council has breached section 10(1) of FOIA.

50. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"³ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of EIR enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"⁴.

Right of appeal

³ https://ico.org.uk/media/about-the-ico/documents/2615190/openness_by_-_design_strategy_201906.pdf

⁴ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

51. 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

52. 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.

53. 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

**Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**