

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2020

Public Authority: Folkestone and Hythe District Council
Address: Civic Centre
Castle Hill Avenue
Folkestone
CT20 2QY

Decision (including any steps ordered)

1. The complainant has requested information on Folkestone and Hythe District Council's freedom of information Publication Scheme. The Council refused the request as vexatious.
2. The Commissioner's decision is that Folkestone and Hythe District Council is entitled to rely on section 14(1) of the FOIA and refuse the request as vexatious. She also finds that the Council breached section 10 of the FOIA – time for compliance – by failing to respond to the request within 20 working days.

Request and response

3. On 24 August 2019, the complainant wrote to Folkestone and Hythe District Council and requested information in the following terms:

'The ICO set out a "model publication scheme" which can be found at - https://ico.org.uk/media/for-organisations/documents/1262/definition_document_local_authorities.pdf

I have searched your websites but could not find all the information that is set out in the model publication scheme.

The Request

Please provide me with any information on:

- *Capital programme*
- *Spending reviews*
- *Procurement procedures*
- *Financial statements for projects and events*
- *Internal financial regulations*
- *Annual reports*
- *Strategies and business plans for services provided by the council*
- *Best value local performance plan*
- *Internal and external organisation performance reviews, including external audits*
- *Strategies developed in partnership with other authorities (eg East Kent Housing)*
- *Facts and analyses of facts considered when framing major policies*
- *Internal communications guidance, criteria used for decision-making, internal instructions, manuals and guidelines*
- *Major policy proposals and decisions*
- *Economic development action plan*
- *Forward plan*
- *Capital strategy*
- *Best value performance indicators*
- *Comprehensive performance assessment*
- *Inspection reports*
- *Local Area Agreements*
- *Statistical information produced in accordance with the council's and departmental requirements*
- *Impact assessments*
- *Privacy impact assessments (in full or summary format)*
- *Service standards*

- *Fileplans (high level, for current records management systems)*
- *Public service agreements*

As this should be published by your authorities I see no reason any exemption of the act can be engaged. However, if my request is denied in whole or part I ask that you justify any redaction or blanket refusal by reference to specific exemptions of the act. I will also expect all non-exempt material to be released.

4. The Council responded on 1 October 2019, refusing to comply as it deemed the request vexatious under section 14(1) of the FOIA.
5. The complainant requested an internal review on the same day. The Council responded on 6 November 2019, maintaining its original position.

Scope of the case

6. The complainant contacted the Commissioner on 6 November 2019 to complain about the way his request for information had been handled. He did not consider that the Council's publication scheme was adequate, or reviewed regularly.
7. The Commissioner therefore considers the scope of the case to be whether the Council is entitled to rely on section 14(1) of the FOIA by classing the request as vexatious.

Reasons for decision

Section 14(1)

8. Section 14(1) of FOIA states that:

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

The Council's View

9. The Council states that it has received over 390 requests over the last 7 years from the complainant and has provided responses and information for the vast majority of these. Of these requests, over 70 had been made between April 2019 and the Council's response to this request, constituting 11% of the team's caseload (number of requesters = 686). For the fiscal year 2018/19, the complainant made 91 requests,

constituting 8% of the Governance Team's caseload (number of requesters = 423). The figures provided clearly demonstrate a disproportion to the number of overall requests, and requestors. Between September 2018 and October 2019, the Council received 309 emails from the complainant, predominantly relating to information access requests, and issued 367 emails in response, largely relating to the same.

10. In addition to the volume of requests, the Council has explained that requests are frequently unnecessarily complex in their use of case law, public interest arguments and with reference to legislation that are of dubious relevance. Nonetheless these elements still require thorough analysis by staff in order to respond.
11. This volume of correspondence has at times been accompanied with a range of obstructive behaviours that have resulted in the Council imposing conditions on contact earlier this year. These include limitations on the complainant's access to Council premises and restricting correspondence to a single point of contact. Examples of these behaviours have included:
 - Harassing Council Officers both before and after public meetings by demanding answers to questions that could otherwise be put to the Council at a more appropriate time and through more appropriate channels, causing alarm and distress to a number of Council Officers, some of whom have feared for their personal safety;
 - Staying in public spaces outside the Council offices after public meetings have concluded in order to watch Council Officers leave the building and walk to their cars;
 - Taking photographs of Council Officers before public meetings have commenced;
 - Engaging senior officers, junior staff and Councillors with voluminous amounts of correspondence on a variety of matters. This would frequently be conducted in parallel with FOI requests for the same information;
 - Making allegations or complaints about current or former Council staff, while failing to provide substantiating evidence;
 - Consistently lodging formal objections to the Council's financial accounts each year since 2015. None of these objections have been upheld by external auditors as being materially relevant. This has resulted in the accounts' sign-off being routinely

delayed, with additional costs incurred in order for the external auditors to investigate the submitted complaints;

- Filing a request for erasure upon receiving the first s14 refusal based on his prior behaviour, in an attempt to delete evidence relied upon for that refusal.
12. Processing the complainant's enquiries has placed 'an extraordinary strain' on the resources of the information governance team, finance officers, and other departments and staff holding information relevant to the requests. The perception that these requests form part of an obsessive campaign relating to the Council is demoralising for staff members, who do not believe there is any reasonable prospect of the requests abating, regardless of any assistance or responses offered.
 13. The pressures associated with processing the complainant's enquiries and requests previously resulted in staff sickness from stress and anxiety. This has been a contributing factor to previous staff turnover, with a member of the team resigning earlier this year, and another officer taking substantially reduced hours in response to stress related health concerns. The Council has struggled to recruit internally to the team, at least in part due to the widespread knowledge of these issues.
 14. The Council considers that the nature of this particular request, and similar to others, is scattergun in its nature, and designed to fish for information without any idea of what might be revealed. The request for 'any information' on the requested documents would also encompass associated / peripheral documents, adding to the volume of information falling within scope, and as no timescale is attached it would cover information over several years. Again, this indicates that the request has no focus in terms of the information it is seeking to find.
 15. The all-encompassing nature of the request would impose a significant burden on the Council's already stretched resources and would involve sifting and extracting masses of information across all services to either disclose to the complainant, or signpost him to where it can be found.
 16. The Council notes that the request was sent to all of Kent's local authorities. Although the complainant has said he has attempted to locate relevant documents on each authority's website, the Council explained that authorities choose which documents to publish and many of the headings within the request are already partially or fully published on the Council's website in various formats.
 17. The Council has explained that the complainant writes for a blog that comments on local matters. In this capacity he has identified himself as a 'citizen journalist'. Historically this site has been predominantly but not exclusively focused on the District Council and its staff. The Council

accepts the inherent value in information requests to promote transparency and accountability in public services, but in this particular context continued engagement with the complainant to respond to this request would be likely to result in protracted, ongoing communication with little or no public value or interest.

The Complainant's View

18. The complainant has argued that the Council's use of section 14(1) is inappropriate. Had the Council considered the request to be too voluminous, it could have engaged with him and offered advice and assistance under section 16 of the FOIA to make suggestions. Instead it has made the 'blunt assumption' that his approach is scattergun.
19. The complainant has drawn attention to the legislation that requires public authorities to adopt and maintain a publication scheme. He points out what he considers are shortcomings in the Council's publication scheme, including a lack of datasets and reasons for decisions; and a failure to adequately review published information.
20. The complainant highlights the requirements under regulation 4 of the EIR to progressively '*make information available to the public by electronic means which are easily accessible*', and that a good publication scheme under the FOIA should follow this requirement.
21. He believes that if the Council was to make information available proactively it may result in fewer requests, but also potentially provoke more requests for from people wanting to 'dig behind' published information, thereby supporting information rights.
22. The complainant references section 21 of the FOIA, where an authority does not have to comply with a request for information if it is reasonably accessible by other means. A good publication scheme would reduce the burden on public authorities to comply with requests in a specific format if it can demonstrate the information is already reasonably accessible.
23. Finally, the complainant considers that publication schemes can assist FOI officers and other employers in managing the impact of FOI and other legislation.

The Commissioner's View

24. Section 14(1) of the FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a *disproportionate* or *unjustified* level of disruption, irritation or distress.

25. Despite the complainant's history with the Council, it is important to remember that for the purposes of FOIA, it is the request that may be deemed vexatious, and that requests are motive and applicant blind. 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.
26. Whilst there is no definition of the term vexatious in the FOIA, Tribunal decisions have provided insight and guidance in determining a request as vexatious. In *'IC v Devon County Council & Dransfield'*, the Upper Tribunal took the view that the ordinary dictionary definition of vexatious is of limited use, as deciding whether a request is vexatious depends on the circumstances surrounding that request. The Tribunal commented that vexatious could be defined as the *'manifestly unjustified, inappropriate or improper use of a formal procedure'*. This definition clearly establishes that the concepts of proportionality and justification are relevant considerations in deciding whether a request is vexatious.
27. In the Dransfield case, the Tribunal also found it instructive to assess whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment or distress of and to staff. However consideration of a request as vexatious is not a tick box exercise and the Tribunal noted *'there is, however, 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.'*
28. The Commissioner has issued guidance on dealing with vexatious requests¹. The guidance includes a number of indicators that may help to identify a request as vexatious. However, these indicators are neither exhaustive nor definitive, and all the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious. Congruous with the Tribunal comments in the Dransfield case regarding circumstantial consideration, the Commissioner's guidance states: *'The context and history in which a request is made will*

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

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.'

29. The Council has supplied the Commissioner with a spreadsheet detailing the range of requests made by the complainant this year, as well as a reasonable sample of its responses to previous requests. This has provided her with evidence of the Council's thorough and proper response to many of the complainant's requests, as well as serious consideration of matters the complainant raises in his requests for internal reviews.
30. The Council has also provided the Commissioner with statistical information over several years that shows an increasing number of requests made by the complainant, which constitute a significant percentage of the IG Team's caseload.
31. The burden imposed on the Council of responding to the complainant's requests, along with a sustained and continuous stream of communication on associated issues, has taken its toll on the service, affecting both the retention and recruitment of staff. Whilst managing public expectations and demands is a core business of public authorities, the Commissioner considers that in this case, the all-encompassing nature of the request would simply add to the burden stress already experienced by the team with no real value or purpose.
32. The request itself centres on the Council's publication scheme, and what the complainant considers to be information deficits. The Commissioner has produced a model publication scheme that public authorities must adopt, and which identifies seven categories of information². She has issued further guidance on the types of information that these categories should contain³. However, where and how an authority makes this information available will vary depending on local circumstances. An authority's publication scheme is designed to readily promote access to a range of information, thereby avoiding requests for information such as that from the complainant. The Commissioner notes that the list of information requested by the complainant has

² <https://ico.org.uk/media/for-organisations/documents/1153/model-publication-scheme.pdf>

³ https://ico.org.uk/media/for-organisations/documents/1262/definition_document_local_authorities.pdf

simply been lifted from her guidance. It is so wide and indiscriminating that she is unable to see that it has any real purpose.

33. The complainant has questioned why the Council did not respond to him under section 16 – a duty to provide advice and assistance, in order to reduce the scope of the request. The Commissioner does not consider that in this case, this would have been possible, primarily because she believes this would have been likely to result in further communication with the complainant adding to the burden already experienced by Council staff, and without any satisfactory outcome. She also considers this would be the case with section 21 – information already available by other means. Had the Council responded to the complainant citing section 21, the request is so broad and information within it so extensive, that sourcing and signposting to all this information would require unjustified effort with little public gain.
34. The Commissioner is satisfied that, given the context and history of the complainant's FOIA and EIR requests, along with the exceptionally broad and scattergun nature of this particular request, responding to it would cause a disproportionate and unjustified level of disruption and distress, and she considers it a disproportionate and improper use of the FOIA. She therefore concludes that the Council is entitled to refuse it under section 14(1) of the FOIA.

Section 10 – Time for compliance

35. 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.'

36. The complainant submitted his request on 24 August 2019 and the Council responded on 1 October 2019. This was outside the 20 working day limit and therefore the Council breached section 10(1) of the FOIA.

Right of appeal

37. 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

38. 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.
39. 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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