

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 June 2020

Public Authority: Bristol City Council
Address: City Hall
PO Box 3399
Bristol
BS1 9NE

Decision (including any steps ordered)

1. The complainant has requested information from Bristol City Council ("the Council") regarding money spent resurfacing an area of road outside the Mayor's home address. The Council refused the request as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the request was vexatious and the Council was therefore entitled to rely on section 14(1) of the FOIA to refuse to comply with the request.
3. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

4. On 10 October 2019, the complainant wrote to the Council and requested information in the following terms:

"Please can you confirm how much was spent resurfacing the area outside the Mayor's house in Easton, and if it was considered to repave the entire road, work orders etc."

5. On 16 October 2019 the Council provided the complainant with its response and refused his information request under section 14(1) of the FOIA (vexatious requests).
6. On 28 October 2019 the complainant requested an internal review. The complainant again wrote to the Council on 7 January 2020 as he had not received an internal review response.
7. Following an internal review the Council wrote to the complainant on 7 January 2020 and maintained its reliance on section 14(1) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 7 January 2020 to complain about the way his request for information had been handled.
9. This notice considers whether the request was vexatious by virtue of section 14(1) of the FOIA and if the Council was correct to rely on this section to refuse to comply with this request.

Reasons for decision

Section 14(1) – Vexatious requests

10. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
11. 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 the *Information Commissioner v Devon CC & Dransfield*.¹ The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the

¹ <https://www.judiciary.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/>

concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

12. In the Dransfield case, the Upper Tribunal also 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 or distress of and to staff.
13. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it 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. 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 a disproportionate or unjustified level of disruption, irritation or distress.
15. 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 requests². 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.
16. The task for the Commissioner is to decide whether the complainant's request was vexatious in line with the approach set out by the Upper Tribunal. In doing so she has taken into account the representations of the Council and the evidence that is available to her. In this decision notice, the Commissioner will also refer to her published guidance on defining and dealing with vexatious requests.

The complainant's position

17. In the complainant's internal review request to the Council, he stated the following:

² <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

"It is of the highest importance to compare the opportunities and services offered to those from various areas and classes in Bristol. In this case I have highlighted a work order that I would like to scrutinise. I have not used Vexatious Language and I have been specific and targeted in my request (no fishing for information).

As a Citizen of Bristol I have an uninterrupted right to compare the services provided from area to area, street to street. My concern that a member of the Political/Social Climber class has organised a higher level of services for themselves than is afforded to the general public. The response to this question would either vindicate or shame the Mayor, but as this information can not be changed by myself and the question itself is not the source of the worry it cannot be considered Vexatious.

For further reference if the SOURCE INFORMATION being made public knowledge is the source of the worry rather than the question itself it cannot be refused as a vexatious request. (for example threatening questions, veiled threats etc are THEMSELVES the cause of the worry and therefore can be legally refused).

The system prevents politicians or other Public Servants (paid for and delegated by us to carry out our will) from making a mistake or taking an illegal action and then refusing to answer FOIs because it 'worries them' that they will be 'caught in the act'. See '[redacted] uses the council legal team to buy himself a council house in a Housing Crisis'"

18. In submitting his complaint to the ICO, the complainant said that the Council could resolve his complaint by, *"releasing the work orders, processes and decision makers behind the work undertaken on the pavement"*. He also stated his belief that *"the Vexatious classification is only to remove the scrutiny of said public official"*.

The Council's position

19. In her correspondence to the Council the Commissioner explained her approach to investigating the application of section 14(1). She asked the Council to provide detailed representations in support of its position that the request in this case was vexatious. In line with her standard approach, she asked the Council to provide:
- details of the detrimental impact of complying with the request,

- why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value, and
 - if relevant, details of any wider context and history to the request if the Council believes that this background supports its application of section 14(1), including relevant documentary evidence to support such a claim.
20. The Council provided the Commissioner with its reasons as to why it applied section 14(1) of the FOIA. The Council provided details of the background and history surrounding this request.
21. The Council stated that this request relates to the cost of the resurfacing work which was undertaken outside the Mayor's home following an incident of vandalism in January 2019 where a threat was spray painted onto the pavement. The Council provided a link to a local news article which reported on this incident.³
22. In its submissions, the Council makes reference to a number of indicators taken from the Commissioner's guidance on section 14(1) of the FOIA, including:
- Personal grudge
 - Tone or language of requestor's correspondence
 - Harassment and distress to staff and Council members
 - No obvious intent to obtain information
23. The Council argued that the complainant is pursuing a campaign against the Mayor and Deputy Mayors. The Council stated that the complainant has made a number of online threats targeted at the Mayor and other Bristol Councillors. It stated, "*the complainant has made racist comments about Mayor Marvin Rees and Deputy Mayor Asher Craig on his Facebook account and on Twitter*". It provided evidence to the Commissioner to substantiate this point.
24. By way of background, the Council stated that it has received numerous requests from the complainant via the website whatdotheyknow.com. It argued that many of the complainant's information requests, "*target the Mayor as part of a personal grudge and have no obvious intent to obtain*

³ <https://www.bristolpost.co.uk/news/bristol-news/marvin-must-die-mayor-finds-2434785>

information that would be in the wider public interest." It acknowledged that while these *"information requests don't use obviously abusive language, there are clear references to his personal grudge against the Mayor and Deputy Mayor especially in relation to Stand Against Racism & Inequality (SARI). SARI is a Bristol based agency that promotes equality and provides support and advice to victims of hate"*.

25. It explained that since December 2018 the complainant *"has made other information requests which show that he has a personal grudge against the Mayor and Deputy Mayors"*. It provided details of these other requests, two of which it stated are related to the vandalism incident.
26. The Council also stated its belief that the complainant has published the Mayor's home address online, prior to the vandalism incident in January 2019, via a Twitter account. The Council provided evidence that this Twitter account published the Mayor's home address on five separate dates, although two of these tweets have since been deleted.
27. The Council provided evidence to the Commissioner which suggests it is highly likely that the complainant is involved with this Twitter account. It argued, *"while the complainant's name is not directly associated with this account, it follows similar themes and uses the same language as [the complainant] uses in his information requests to the Council."* The Council explained that a tweet published by this account on 24 November 2018 referred to a potential information request regarding the cost of bollards and suggested that such a request would be submitted. On 25 November 2018, the Council received such an information request from the complainant.
28. The Council argued that in the complainant's request for an internal review, *"his reference to 'the source information' confirmed that the request was vexatious and that the complainant was pursuing his campaign against Mayor Marvin Rees, the Mayor of Bristol."*
29. The Council stated that the complainant, *"refers to his aggressive behaviour in his request for an internal review"* referring in particular to the following paragraph of the internal review request:

"For further reference if the SOURCE INFORMATION being made public knowledge is the source of the worry rather than the question itself it cannot be refused as a vexatious request. (for example threatening questions, veiled threats etc are THEMSELVES the cause of the worry and therefore can be legally refused)."
30. The Council expanded: *"we believe that the complainant's mention of 'the source information' refers to the reason that the work needed to be*

undertaken, ie the threat sprayed outside the Mayor's house [...] the complainant goes on to refer to 'threatening questions, veiled threats etc [that] are themselves a cause of the worry'".

31. The Council argued that the tone and language of the complainant's information requests, *"when combined with public threats made on Facebook and Twitter are beyond the level of criticism that the Mayor or Deputy Mayor should reasonably expect to receive."*
32. It also referenced a comment which was posted on the aforementioned Twitter account on 11 January 2019 which stated that politicians should be held, *"to exceptional scrutiny and bullying, that should be the price of power"*. The Council stated, *"this Tweet was posted on the Friday before the pavement outside the Mayor's home was vandalised"*.
33. The Council acknowledged that while this request in particular, *"does not appear to be vexatious, it is clear from the follow up request for an internal review that [the complainant] is continuing his harassment"*. Ultimately, the Council consider the complainant to be, *"abusing the right of access to information as the request is patently unreasonable and objectionable and qualifies as vexatious"*.
34. The Council asserted that this request and the internal review request raise two concerns. One is that, *"the requester is publicly reminding the Council and the Mayor of the threat sprayed outside his home"*. It also expressed its concern as to how the complainant became aware that any work had been undertaken at the area outside the Mayor's home.
35. The Council stated, *"we believe it is highly likely that there is a connection between [the complainant's] abusive Facebook posts, the publication of the Mayor's address and the threat sprayed outside the Mayor's home. Needless to say the Council is very concerned about the safety of the Mayor and his family in light of these threats and it's clear from [the complainant's] internal review request that he is continuing his campaign by highlighting his reference to 'the SOURCE INFORMATION'."*
36. Ultimately, the Council state that it considers that this request is, *"designed to cause an unjustified level of disruption and distress for the Mayor"* and as such, has applied section 14(1) to the request.

The Commissioner's position

37. The Commissioner would like to highlight that there are many different reasons why a request may be considered vexatious, as reflected in the Commissioner's guidance. There are no prescriptive "rules", although there are generally typical characteristics and circumstances that assist in making a judgment about whether a request is vexatious.

38. A request does not necessarily have to be about the same issue as previous correspondence to be classed vexatious, but equally, the request may be connected to others by a broad or narrow theme. 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.
39. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden of the request upon the public authority's resources.
40. 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.
41. The Commissioner acknowledges that from the background of this case, it is clear that the relationship between the complainant and the Council is strained. From the evidence provided by the Council, it is clear to see that the complainant has made various disconcerting online threats and offensive comments about the Mayor and Deputy Mayors. The Commissioner recognises that several of these comments have been published over a sustained period of time, on either the complainant's personal Facebook account or the Twitter account. The Commissioner also accepts in line with the case made by the Council the likelihood that the Twitter account is linked to the complainant. The publication by that Twitter account of the Mayor's home address online on several occasions also evidences the strained relationship between the complainant and the Council. The Commissioner is satisfied that the evidence provided demonstrates the complainant's personal grievances against the Council.
42. The Commissioner also notes that alongside these offensive posts, some of the complainant's other recent information requests to the Council also build up a picture of a personal grudge and a campaign against the leaders of the Council.
43. It is clear that issues between the Council and the complainant have been ongoing for some time and do not appear to be at a stage where they will be resolved soon. The Commissioner also accepts the Council's argument that the complainant uses the internal review procedure to continue a dialogue about the responses issued to information requests beyond a point that is reasonable.

44. The Commissioner wishes to reiterate that the purpose of the FOIA is to promote transparency and accountability to the general public and it should not serve as a mechanism for addressing personal grievances.
45. The Commissioner appreciates that the information the complainant has requested is of interest to him. However, the Commissioner has to consider whether the request is of sufficient wider public interest or value that it would be reasonable for the Council to comply with it, despite the burden involved.
46. The Commissioner also acknowledges that the Council should expect to be subject to scrutiny from the public, as they have input into publicly-funded spending decisions which may impact the local community.
47. However, taking the history and context of this request into account, and in light of the evidence provided, it is the Commissioner's view that the request is vexatious. In reaching this conclusion, the Commissioner has noted the evidence provided by the Council of the tone and language that the complainant has used in his commentary on the activities of the Council, including the Mayor and the Deputy Mayors. She is of the view that this goes well beyond the level of criticism that the Council, the Mayor and the Deputy Mayors should reasonably expect to receive.
48. Without forming a view on the connection between the complainant and the graffiti to the pavement outside the Mayor's home, the Commissioner accepts the Council's position that the complainant's information request forms part of the furtherance of his grudge against the Council and its representatives. She is also of the view that compliance with the request in question would be unlikely to bring any resolution. Indeed, it appears more likely that compliance with this request would result in more commentary and information requests from the complainant.
49. The Commissioner has given consideration to the findings of the Upper Tribunal in *Dransfield* that a holistic and broad approach should be taken in respect of section 14(1) of the FOIA. Taking into account all the above factors, the Commissioner's decision is that the request was vexatious and the Council correctly relied on section 14(1) in this case. Therefore, the Council was not obliged to comply with the complainant's information request.

Right of appeal

50. 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

51. 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.
52. 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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