

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 August 2021

Public Authority: Harrow Council
Address: Civic Centre
Station Road
Harrow
HA1 2XF

Decision (including any steps ordered)

1. The complainant has requested information about the calculation of Harrow Council's legal costs arising out of a matter before the Magistrates Court.
2. Harrow Council relies on section 14, asserting that the request is vexatious, not to comply with the complainant's requests for information.
3. The Commissioner's decision is that Harrow Council correctly relied on section 14 not to provide the complainant with the information she had requested.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Background

5. The complainant was successfully prosecuted before Willesden Magistrates Court in 2019, for her child failing to attend school regularly, contrary to the Education Act 1996. The complainant was ordered to pay Harrow Council's costs of prosecution.

Request and response

6. On 21 January 2020, the complainant wrote to Harrow Council ("the public authority") and requested information in the following terms:
 - "In council's court case prosecution costs bill, how is the 'investigating officer' role's hourly rate calculated?
 - What were the investigating officer's hourly rates of harrow council between september 2018 and july 2019?
 - Please share with me the policy that is used to determine hourly rate of investigating officer?
 - Who authorises the hourly rate of 'investigating offer' [sic] in a court case initiated by harrow council?
 - Is it correct that 'investigating officer' is a normal salaried permanent employee of harrow council's school attendance team?
 - How is council authorised to charge hourly rate for 'investigating officer' in council's court prosecution legal costs - when a normal salaried permanent employee of harrow council discharges these duties as part of their routine responsibilities?"
7. On 24 February 2020, the public authority responded. It refused to provide the requested information and cited the following exemption for doing so.
 - Section 14 (vexatious)
8. Following an internal review the public authority wrote to the complainant on 30 March 2020. It stated that it upheld its original position by saying as follows.

"We have now had the chance to consider your request for an internal review of our refusal decision, dated 24 February 2020, in response to your Freedom of Information Act request (ref: 5479011), originally received on 21 January 2020 ('Request').

It is clear that your Request is the latest in a line of requests relating to the Council's decision to prosecute you and the Magistrates' Order

requiring you to pay the Council's costs of taking the case. Your Request, and your follow-up request for this internal review of our 24 February decision on your Request, is part of your ongoing personal campaign, unrelated to wider matters of public interest.

We have already spent significant time and resource answering your earlier requests on the same subject, and we are not prepared to spend further time and resource answering your Request, or any further requests, especially as these are accompanied by unfounded repeat allegations of maladministration and wrong-doing by the Council.

Therefore, taking into account the context and history of your Request, and your previous contact with the Council, I uphold the Council's refusal decision of 24 February on the grounds set out in that decision, including that your Request has no real serious purpose or value and has no wider public interest; that it is an unreasonable and improper use of the Act to pursue a personal grievance; that it is causing us a disproportionate and unjustifiable level of disruption, and is imposing a significant burden and distraction on the Council".

Scope of the case

9. The complainant contacted the Commissioner 8 May 2020 to complain about the way her request for information had been handled.
10. The Commissioner considers she has to determine whether the public authority correctly relied on section 14 not to provide the complainant with the information she had requested.

Reasons for decision

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). 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). 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.

Public authority submissions

15. The public authority determined the request to be vexatious, in that:
 - There has been long, detailed and overlapping correspondence from the complainant that has been unreasonably persistent, abusive and aggressive;
 - The complainant has made (and continues to make) a large number of overlapping Freedom of Information requests, in that they relate to the public authority's legal costs in prosecuting the complainant;
 - The complainant's present request is identical or substantively similar to previous requests, previous requests where the Council provided information; and
 - There is no value in the information the complainant seeks to the general public.
 - The request is the result of a personal campaign against the Council, arising out of the Council's decision to prosecute the complainant and the Magistrates' order requiring her to pay the Council's costs for so doing.
16. The public authority explained that the complainant had made the following requests for information, relating to or connected to her prosecution.
 - 31 May 2019, policies guidelines for Harrow primary schools' council attendance department
 - 31 May 2019 handling of prosecutions for school attendance court action

- 31 May 2019 complainant's subject access request
 - 25 June 2019 school attendance penalty notices for 2018
 - 25 June 2019 code of conduct
 - 26 June 2019 complainant's subject access request
 - 6 August 2019 Harrow council legal billing
 - 12 September 2019 Harrow council legal department
17. The public authority expanded further on 31 May 2019 request. The complainant requested information from it, to which it responded to her on 13 June 2019. That request (as far as the requested information was said by the public authority to be held) is replicated below.
- "1. Can you share harrow legal team's policy/Code of Conduct under which harrow legal team handle prosecutions for school attendance court action requests from attendance department?
4. Does legal team cross checks details sent to you by attendance department or school, or you base your case solely on basis of details sent to you by school or attendance department?
5. What is harrow legal team's obligation if the details sent to you by school and/or harrow attendance department are wrong and/or exaggerated?
6. What is local authority legal department's obligation if you are informed that the data you are using regarding child's attendance and exceptional leave request is wrong?
7. What is local authority legal department's obligation if you are informed that the attendance department has provided you wrong information/data/calculations?
8. What is local authority legal department's obligation if you are informed that you have failed to follow your duty of care towards tax paying resident by initiating court case based on wrong facts?
9. What is local authority legal department's obligation if you are informed that statement of facts used by your legal team has several wrong facts, and court papers have multiple wrong information?
10. Does legal team revisit the court case proceedings validity if you know that court case was started using wrong data?

11. If resident requests legal team for a delay of hearing date, then what is your obligation and which policy you use for your Code of Conduct?

12. Is it not legal team's obligation to show its duty of care by only prosecuting a resident by using only correct data?

From 1st January 2018, please share 'schedule of costs' of school absence court cases which resulted in trial - if there are too many then most recent 5 'schedules of costs' will be sufficient. if there are too less cases or no cases then 'schedule of costs' of any harrow council court case whose trial lasted half day or full day will be sufficient.

18. The public authority explained to the Commissioner that it dealt with the above request and no complaint of its handling was made to the Commissioner.

19. The public authority states that the complainant's request for information on 12 September 2019, to which it replied on 9 October 2019, is about the same subject matter.

20. In that request the complainant sought specific information about the calculation of the investigation officer's time by saying as follows.

- "Is investigation officer's rate £20.13 per hour or £75 per hour? please provide evidence as to which one of this is valid or why the rates can vary for straightforward case and within same time period (rates get reviewed only April yearly)?"

21. The public authority provided the below information in response to that specific query.

- "We confirm that the Investigating Officer rate is £75 per hour. As previously explained, each borough has a different rate they set for their employees to charge, which also reflects their role/experience. £20.13 was how much one client charges per hour whilst Harrow charges £75 per hour for their investigation costs".

22. The complainant explains her persistence on the fact that she had to pay the public authority's prosecution cost in particular she was charged £75 per hour for the cost of the authority's investigation officer's time accrued as part of the investigation. The complainant maintains that others were only charging £23 per hour for the cost of their investigation officer's time.

23. The complainant has provided the Commissioner with evidence, that supports her above assertion. The Commissioner has a degree of

sympathy with the complainant in this regard and understands her persistence in trying to understand why the public authority feels justified in charging a different rate for its investigation officer's time. However this information request does not seek information to determine why this might be/ is the case.

24. As stated above there are a number of factors for the Commissioner to consider when determining whether the complainant's information request was one that was vexatious for the purposes of section 14 FOIA.

Frequent or overlapping requests

- The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.
25. The Commissioner notes that the complainant has previously made a number of requests for information, concerned with the public authority's investigation and prosecution of her on the grounds that a child had failed to attend school regularly. These are quite clearly requests essentially about the same or similar issue that the public authority has previously answered.

Unreasonableness

- The requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage meaningfully with the authority.
26. The complainant has clearly taken a position that she has been wrongly treated by the public authority by being successfully prosecuted for her child not attending school. Previously the public authority has taken steps to answer her many queries on or connected with the subject, but this does not seem to satisfy her.
27. Overall the Commissioner has come to the view that the complainant is now acting in an unreasonable way towards the public authority, and it is therefore appropriate to view her information request of 20 January 2020, in this context.
28. The Commissioner's view is that the complainant's request of 20 January 2020 is one that in itself is not particularly onerous to comply with and is relatively well focused. However the Commissioner has to consider, in the application of section 14, the complainant's previous behaviour and contact with the public authority.
29. Her prior conduct provides significant evidence that she considers she has been wrongly treated in relation to the conviction she sustained as a

result of her child's absence from school. The Commissioner, based on the evidence and submissions before her, has come to the decision that this information request is properly described as a vexatious request for the purposes of section 14 FOIA in the context of the complainant's interactions with the public authority. The complainant's information request (given the contextual background) has met the high threshold of section 14 as it was a "manifestly unjustified, inappropriate or improper use of a formal procedure".

Right of appeal

30. 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

31. 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.
32. 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

Gerrard Tracey
Principal Adviser FOI
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF