

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 January 2021

Public Authority: Sheffield City Council
Address: Town Hall
Pinstone Street
Sheffield
S1 2HH

Decision (including any steps ordered)

1. The complainant has requested from Sheffield City Council (SCC) information, in general terms, about the medical qualifications of staff working in its Adult Social Care Commissioning Team (ASCCT). SCC refused to comply with the request on the grounds that it engaged sections 14(1) (Vexatious requests) and 14(2) (Repeated requests) of the FOIA.
2. The Commissioner's decision is that SCC was not entitled to rely on sections 14(1) or 14(2) of the FOIA to refuse the request.
3. The Commissioner requires SCC to take the following steps to ensure compliance with the legislation.
 - issue a fresh response to the request that does not rely on sections 14(1) or 14(2) of the FOIA.
4. SCC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 9 March 2020, the complainant wrote to SCC and requested information in the following terms:

"Please advise me how many officers in the Adult Social Care Commissioning Service have qualifications in medicine or medical science or allied disciplines not related to Health and Safety at Work. Please advise me how many officers have specific training in identifying diseases of the elderly or any geriatric malady. In the event that officers are suitably trained please provide an indication of qualifications achieved, skills presented and length of time such qualifications or skills have been practiced."

6. SCC responded on 20 March 2020. It refused the request, stating that it was vexatious within the meaning of section 14(1) of the FOIA.
7. The complainant requested an internal review on 20 March 2020. She noted that when she had recently submitted a similar request (FOI 497), SCC had not deemed it vexatious.
8. SCC provided the outcome of the internal review on 19 June 2020. It maintained its application of section 14(1). It also said that the request was a repeated request, in that it was virtually the same as FOI 497, which SCC had responded to on 5 August 2019. It therefore also refused the request under section 14(2) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 22 June 2020 to complain about the way her request for information had been handled. She disputed that the request was vexatious, arguing that there was a clear and serious purpose behind it. She also considered SCC's decision to designate it a repeated request as unreasonable, in the particular circumstances of the case.
10. The analysis below considers whether SCC was entitled to rely on sections 14(1) and 14(2) of the FOIA to refuse to comply with the request.

Reasons for decision

Section 14(1) – vexatious requests

11. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
12. However, 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.
13. The term vexatious is not defined in the FOIA. The Upper Tribunal considered 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 being the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
14. *Dransfield* also considered 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.
15. It explained that these considerations were not meant to be exhaustive and also explained 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).

¹ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

16. The Commissioner has published guidance on dealing with vexatious requests² which includes a number of indicators that may signify that a request is vexatious. However, even if a request contains one or more of these indicators it 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 vexatious.
17. When considering the application of section 14(1), 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".

18. However, the Commissioner would stress that, in every case, it must be the request itself that is shown to be vexatious and not the person making it.

The complainant's position

19. The complainant has explained to the Commissioner that the request was motivated by conflicting information disclosed to her by SCC, about the medical qualifications of staff responsible for commissioning care services. The wider background to the matter concerns the care received by the complainant's late mother, and medical judgements that she believes were made about her, by care staff.
20. The complainant said that, prior to her mother's death in hospital in February 2019, she had been receiving home care from SCC. Following her mother's death, an officer in SCC's Contracts Commissioning Department wrote a report on her late mother's care, stating she had seen no acts of neglect or missed calls which she felt would have resulted in harm.
21. The complainant said she wanted to establish the competence of the officer to make that assertion. On 1 July 2019, the complainant submitted FOI 497 to know the medical qualifications (and qualifications

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-withvexatious-requests.pdf>

in "allied disciplines") of officers in SCC's Contracts Department. Responding to that request, on 26 July 2019, SCC told her:

"None of the officers in the Care Services Team, which provides procurement support for Adults and Children's Social Care, Education and Public Health, are medically qualified and nor are they required to be medically qualified as they deal with the commercial aspects of contracts."

22. However, in January 2020, the complainant received a report written by SCC's Head of Special Educational Needs, which she said contained information which directly contradicted the response SCC gave in FOI 497.

23. Specifically, she said the report contained a statement that the officer referred to in paragraph 20, above, *"has many years' experience in working directly within the care industry overseeing care and is qualified to HNC level in health and social care."*

24. The complainant felt that there was a significant discrepancy between the statement she received in response to FOI 497, and the statement about the named officer's qualifications, in the report. She said:

"SCC have given two diametrically opposed statements on a single topic. The first in answer to a Fol request and both statements cannot be true. Only one can be true..."

I require that SCC either process Fol 1873 [the current request] or separately confirm the truth of the qualifications of named staff member averred by [redacted] (Head of SEN)."

25. She argued that the request in this case was necessary in order to clarify the position. Viewed in this context, she argued that the request clearly had a serious purpose and value, which weighed heavily in favour of it not being considered vexatious.

"The ICO needs to be fully aware that I have had no comprehensive explanation of the actions of SCC immediately before, on and subsequent to my mother's death."

...

My motive is – and always has been – to understand the circumstances of my mother's death. That death occurred whilst she was receiving domiciliary care from SCC – it is thus a matter of import not only to me but I would hope to SCC in order than any repetition be avoided.

...

They fail to acknowledge – once again – that I am seeking to clarify which of two statements made by them is correct. The simple, cheap and quick answer would be for SCC to tell me but the Council is determined to avoid that and to hypocritically claim that I am a burden whilst voluntarily (and with brio) imposing that burden on itself.

- *My request is justified – because I cannot gather the information elsewhere*
- *It is appropriate that a daughter should understand the circumstances of her mother's death*
- *Were my request to be considered improper then it is behoven on a Public Body to advise me where I might satisfy my enquiry given that it is centred on their performance."*

SCC's position

26. SCC set out its view on the request in its refusal notice dated 20 March 2020:

"We do not think it is reasonable to ask about healthcare qualifications for adult social care commissioning staff who do not provide direct care themselves.

We appreciate that there has been a long and contested correspondence between you and council staff. We don't believe it is an appropriate use of Freedom of Information to pursue these issues. We aren't confident that an answer will help, and that it is likely to trigger additional requests requiring effort and time that is a disproportionate use of our resources."

27. SCC described the detrimental impact of complying with the request, to the Commissioner. It said compliance would impose an unreasonable burden on it. The request asks for the number of officers in the ASCCT who have specific training in identifying diseases of the elderly, as well as information about the qualifications achieved by those officers, the skills they have, and the length of time the qualifications have been held or practiced. However, officers in the ASCCT are not required to hold a medical qualification as this is not a medical role; rather, the job involves management of contracts and commissioning of services.
28. SCC said that the only way to find this information, if it is held, would be to search through the original job application forms submitted by the individual officers who are currently in post. Based on the organisation

chart for the service, SCC calculated that there are forty officers whose job application forms would need to be searched.

29. Although SCC believed that it would be possible to comply with the request without exceeding the appropriate limit of 18 hours work (the upper limit established in the fees regulations, under section 12 of the FOIA), it said it would nevertheless be a time-consuming, onerous task.
30. Referring the Commissioner to *Dransfield*, it noted that the Upper Tribunal commented that: "*The purpose of section 14... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA.*"
31. In this case, SCC considered that the amount of effort and resources required to collate the requested information would be disproportionate to the value that would flow from any disclosure of it, because it would be unreasonable for it to search through historic job applications to find out whether officers possess qualifications which they are not required to hold in order to perform their current roles.
32. SCC said the request was especially onerous when considered alongside its history of correspondence with the complainant. It acknowledged that, at face value, the request appeared to be a benign request for information about the medical qualifications of staff. However, it considered that when viewed in the context of the complainant's previous correspondence, the request was being used as a means to pursue the complainant's dissatisfaction with the care provided to her late mother, and SCC's decision not to refer her mother's death to the Adults' Safeguarding Board.
33. SCC said that it has already responded to the complainant's complaints on these points. It considered the request was an attempt to reopen issues which had already been comprehensively addressed by SCC in previous correspondence, and also by the Local Government Ombudsman.
34. SCC noted that in *Dransfield*, the Upper Tribunal concluded that 'vexatious' could be defined as the: "manifestly unjustified, inappropriate or improper use of a formal procedure." SCC argued that the complainant was abusing the general right of access to information by making requests which relate to a matter that affects her individually and which had already been addressed on numerous occasions by the Council.
35. When considering whether to apply section 14(1), SCC said it had weighed the detrimental impact of the request against its inherent value or purpose and the wider public interest in disclosure. Its view was that

there was limited objective public interest in disclosing the information and that the request lacked inherent value.

36. SCC's rationale for making this decision was that, even if it carried out a search of the individual application forms of the forty officers and found out that some officers do hold medical qualifications, these would not necessarily still be valid medical qualifications. There is no obligation for officers in that service to hold an up to date medical qualification or to register annually as medical practitioners, as, for example, nurses must do, as this is not necessary for performance of the role. It felt the wider public interest in disclosing the information was very limited, as disclosure could be misleading and could lead to the public believing that officers are not suitably qualified to perform their roles when this is not actually the case.
37. Noting again that the request appeared to be made in furtherance of the complainant's own personal grievance, SCC considered that it lacked inherent value in terms of the objective public interest in the information sought, as the request relates to a matter which affects the complainant individually. Therefore, on balance, SCC said there was minimal value or purpose in the request and that the wider public interest in disclosure was low.
38. SCC provided some information on its wider interactions with the complainant, which it felt should be recognised when considering the question of burden.
39. Since April 2018, SCC has dealt with two requests for information which the complainant has submitted under the FOIA, FOI 497 and this request, FOI 1873. SCC has also dealt with seven subject access requests under the Data Protection Act 2018, including one which was very wide-ranging, the response to which was approximately 2500 pages in length. It has also dealt with five requests under the Access to Health Records Act 1990 and has dealt separately with various complaints received from the complainant about the same issue, including one complaint which was considered by the Local Government Ombudsman. SCC has received a significant amount of correspondence from the complainant involving numerous officers at differing levels of seniority.
40. SCC commented that the complainant's correspondence has sometimes contained unfounded and unsubstantiated allegations about SCC (for example, her internal review request said: "*typical of the SCC mantra - lie, deny, ignore*"). It said her comments sometimes went beyond the level of criticism which it considered appropriate to be directed to its employees, who were often quite junior and were simply following instructions.

41. With regard to the discrepancy the complainant had highlighted, between its response to FOI 497 and the later report stating that a named officer in the ASCCT held an HNC in health and social care, SCC admitted its response to FOI 497 "*gave rise to a misunderstanding*". It said that while an HNC was not a medical qualification, it accepted that it did fall within the definition of the related term "health qualification".

42. It said:

"Our FOI team had not seen the [report by the Head of SEN] at the time that we issued our response to FOI 497, because it was not in the scope of the request. However, we would like to apologise for any confusion that the statement has caused."

The Commissioner's conclusion

43. In the Commissioner's view, section 14(1) of the FOIA is designed to protect public authorities by allowing them to refuse requests which have the potential to impose a disproportionate or unjustified level of burden, disruption, irritation or distress. Balancing the impact of a request against its purpose and value can help to determine whether the effect on the public authority would be disproportionate.

Was the request vexatious?

44. The Commissioner has considered both the complainant's position and the SCC's arguments regarding the information request in this case. In reaching a decision she has balanced the purpose and value of the request against the detrimental effect on SCC of responding to the request.

45. It is for a public authorities to demonstrate to the Commissioner why the exemption at section 14 applies and the Commissioner considers there to be a high threshold for refusing a request under section 14(1). SCC has argued that the request is vexatious because a disproportionately high cost would be incurred for any minimal public benefit that would flow from disclosure, in terms of the value of the information that would be disclosed and the underlying purpose of the request.

46. The request in this case was for information on the medical (and related) qualifications of ASCCT officers. The Commissioner recognises that the complainant had clear reasons for requesting such information from the SCC. She also accepts that such qualifications are not a requirement for working in the ASCCT.

47. Regarding whether or not the request was burdensome, SCC has firstly argued that a large amount of information would have to be consulted to

locate any information falling within scope of the request, and that there would be a cost to it of doing so.

48. The Commissioner has considered this argument and has concluded that the request itself has not specified a large amount of information. It is simply the case that a large amount of information is likely to be retrieved in the course of complying with the request. However, this is not the concern of the complainant, who merely made a request for information in which she has an interest.
49. Furthermore, SCC has acknowledged that compliance with the request would not be expected to exceed the 18 hours' work allowed for before the provisions of section 12 (cost of compliance exceeds appropriate limit) are engaged. Rather, it has referred to the cumulative burden of dealing with the request, when considered alongside the costs to it of its other interactions with the complainant.
50. The Commissioner considers that, in most cases, public authorities should deal with FOIA requests without reference to the identity or motives of the requester. Their focus should be on whether the information is suitable for disclosure into the public domain, rather than the effects of providing the information to the individual requester. However, she also accepts that a public authority may take the requester's identity and motivation for making a request into account when determining whether a request is vexatious.
51. In that respect, the Commissioner noted that the request in this case, although not obviously vexatious in itself, does form part of a wider interaction the complainant has had with SCC on the subject of her late mother's care. SCC considers it unreasonable to have to expend further resources on a matter which it considers closed. It argues that the public interest in any information it might hold which falls within the scope of the complainant's request is sufficiently low to outweigh the oppressive burden that compliance would cause to its resources.
52. However, SCC has not provided any quantitative information about the effect of that burden, such as the impact on its ability to deliver an FOI service to other requesters, or the delivery of its core services. Consequently, the Commissioner does not consider that it has clearly demonstrated that compliance with the request would constitute a grossly oppressive burden in terms of the strain on its time and resources.
53. As to the motive of the requester, SCC expressed the view that the complainant's concerns about her late mother's care had been comprehensively dealt with and that the request was essentially a vehicle for the continuation of her grievances against it. It says the

complainant has, at times expressed herself more robustly than it considers acceptable. In that regard, the Commissioner notes that the complainant has corresponded with SCC in frank terms in connection with this request. However, she has not seen anything which crosses the line into being abusive.

54. SCC has made judgements about the complainant's motives for making the request, from which it has determined the purpose and value of the request to be low. However, the Commissioner considers that in this request, the requester is following a genuine line of enquiry. While the Commissioner is aware that the complainant has concerns about the circumstances surrounding her mother's death, the primary reason for the request in this case is to get to the bottom of the apparent discrepancy between the information disclosed in response to FOI 497 and the information subsequently divulged in the report by the Head of SEN.
55. SCC has acknowledged that its response to FOI 497 was misleading, in that it said no staff hold the qualifications specified in the request, and then later stated that an officer holds a HNC in health and social care. The Commissioner considers such a qualification to fall within the scope of the "allied disciplines" which the complainant had specified she wanted information on in FOI 497. That SCC responded to that request without reference to this information is a factor of considerable weight in determining whether compliance with the current request would be reasonable.
56. 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. She also recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. However, there is a public interest in transparency and accountability and this extends in the correct and efficient operation of the FOI process itself. Where a public authority becomes aware that there may have been deficiencies in its handling of a particular request for information, resulting in misleading or inaccurate information having been disclosed, the bar for what is reasonable in terms of rectifying or clarifying that is likely to be a high one.
57. As previously stated, it is for public authorities to demonstrate to the Commissioner why the exemption at section 14 applies. In this case, while she accepts that compliance with the request would require SCC to absorb some costs, the Commissioner is not satisfied that SCC has demonstrated that the burden of compliance would be disproportionate to the value and purpose of the request, or that, in the circumstances,

compliance would be unreasonable, or that the request is a "*manifestly unjustified, inappropriate or improper use of a formal procedure*".

58. The Commissioner therefore finds that the request was not vexatious and that SCC was not entitled to apply section 14(1) of the FOIA to refuse to comply with it.

Section 14(2) – repeated requests

59. Section 14(2) of the FOIA states:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request."

60. The Commissioner's guidance on section 14(2)³ clarifies that a public authority may only apply section 14(2) to a request where it has either previously:

- provided the information to the same requester in response to a previous FOIA request; or
- confirmed that the information is not held in response to an earlier FOIA request from the same requester.

61. If neither of these conditions apply, then the public authority must deal with the request in the normal manner.

62. SCC argued that the request under consideration here was essentially the same as a request submitted by the complainant on 1 July 2019 (FOI 497) which it had responded to.

63. However, SCC has also admitted that its response to FOI 497 was not accurate, in that it did not reflect the fact that at least one ASCCT officer held a HNC in health and social care.

64. That being the case, the Commissioner is not satisfied that either of the conditions set out in paragraph 60, above, are met. It therefore follows that that section 14(2) of the FOIA is not engaged.

³ <https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

65. As the Commissioner has determined that SCC was not entitled to rely on sections 14(1) or 14(2) of the FOIA to refuse to comply with the request, it must take the steps set out in paragraph 3, above.

Other matters

66. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

67. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. Where a public authority chooses to offer an internal review, the Commissioner considers they should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
68. In this case, 61 working days elapsed between the request for an internal review and SCC notifying the complainant of the outcome.
69. SCC apologised for this delay. It said that its response to the current Covid-19 pandemic had impacted multiple business areas. In this case, officers in its Information Management Team, who would normally deal with information access matters, were redeployed to help with the rollout of new IT devices to ensure that staff across the Council had the capability to work from home.

Right of appeal

70. 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

71. 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.
72. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF