

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 July 2021

Public Authority: Sheffield City Council
Address: PO Box 1283
Town Hall
Sheffield
S1 1UJ

Decision (including any steps ordered)

1. The complainant requested information from Sheffield City Council (the Council) relating to Community Triggers meeting notes.
2. The Council refused to comply with the request, citing section 14(1) (vexatious request) of the FOIA.
3. The Commissioner's decision is that the Council has not demonstrated that the request was vexatious and was therefore not entitled to rely on section 14(1) to refuse it. She also found the Council did not comply with its obligations under section 17(5) (refusal of request).
4. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - issue a fresh response to the request that does not rely on section 14(1) of the FOIA.
5. The Council must take this step 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

6. On 7 February 2020, the complainant wrote to the Council and requested information in the following terms:

"A complete set of all Colmunity [sic] Trigger meeting notes from all community triggers made in relation to [Person A and Person B] re [address redacted].

A complete set of all council records in relation to the above in regards to any other multi agency meetings connected to the community triggers. For example council separate to multi agency meetings.

I refer to community triggers made by me".

7. The complainant received an automated response advising that she should expect to receive a reply within 20 working days.
8. Following further correspondence from the complainant, the Council provided its substantive response on 17 August 2020. It refused to provide the requested information, citing section 14(1) (vexatious request) of the FOIA as its basis for doing so.
9. The Council provided an internal review on 19 November 2020 in which it maintained its original position.

Scope of the case

10. Following earlier correspondence regarding the Council's failure to respond, the complainant contacted the Commissioner on 19 November 2020 to complain about the way her request for information had been handled.
11. She disputed that the request was vexatious.
12. During the course of the Commissioner's investigation, the Council revisited its handling of the request. While confirming its position that the request is vexatious under section 14(1) of the FOIA, the Council revised the supporting information it considered relevant to the request.
13. With regard to the subject mater of the request, it explained:

"A community trigger, also known as an Anti-Social Behaviour Case Review, ... provides victims of persistent anti-social behaviour the ability to demand a formal case review where the locally defined threshold is met, in order to determine whether there is further action that can be taken".
14. The analysis below considers the Council's application of section 14(1) to the request for information. The Commissioner has also considered the timeliness with which the Council handled the request.

Reasons for decision

Section 14 vexatious request

15. 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. There is no public interest test.
16. 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*. 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 concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
17. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly 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.
18. 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).
19. The Commissioner has published guidance on dealing with vexatious requests¹. That guidance includes a number of indicators that may apply in the case of a vexatious request. 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 or not a request is vexatious.

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

20. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.

21. In that respect, the Commissioner's guidance states:

"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".

22. Sometimes it will be obvious when a request is vexatious, but sometimes it may not be. On that point, the Commissioner's guidance states:

"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".

23. It is for a public authority 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).

The Council's view

24. The Council told the complainant that it believed that the request was made in order to attempt to re-open a complaint regarding Community Triggers:

"... a complaint which has already exhausted the internal complaints process and which we understand is currently with the Ombudsman".

25. It also told her:

"It is also our belief that this request has been made in order to frustrate this process, in essence to re-open something which has already been dealt with, and we therefore consider that the request is unreasonable".

26. In support of its application of section 14 in this case, the Council told the complainant:

"A very large amount of staff resource has already been allocated to responding to your contacts with us, answering your Subject Access Requests, complaints and correspondence, and it would be

disproportionate for us to allocate more resource in order to answer a request which we believe has no public purpose or value.

Answering this request would cause a disproportionate and unjustified level of disruption and distress for the staff having to complete it when they have already spent many hours answering previous requests and correspondence”.

27. In that respect, it referred to her having made three subject access requests (SARs). It explained that the information regarding the Community Triggers that she was personally entitled to under the Data Protection legislation, and that was within the scope of this FOI request, has already been provided to her via the Council’s responses to those SARs.
28. Following an internal review, and with reference to the four tests considered in Dransfield, the Council told the complainant that it considered that all four are met by her request.
29. With regard to burden, it considered that it would be disproportionate to expend any more staff time on answering a request which it considered has no public purpose or value. It said that answering the request would cause a “*disproportionate and unjustified level of disruption for the authority*”.
30. In respect of motive and value, the Council explained that it considered that the request is unreasonable and lacks value or serious purpose.
31. With regard to distress to its staff, the Council told the complainant:

“We note that following our previous correspondence with you ... you have sent multiple emails directly to the member of staff who dealt with the case, which has caused an excessive level of disruption and distress to those staff.

We also note that in your request for internal review dated 17 August, you stated our communication was “abusive and wrong” and complained about our “non sense and fabricated reply” without stating any reasons or providing any evidence for these views. We believe that we acted professionally and appropriately in our communication with you and we have fully explained our reasoning as to why we have refused your request”.

32. However, with respect to its earlier reference to the complainant’s three SARs, the Council told her:

“I acknowledge that our initial response did state that you have already been provided with some information via our responses to

the three Subject Access Requests you have made, which was not correct as these three requests are still outstanding”.

33. In support of its application of section 14 in this case, the Council told the Commissioner:

“... we did not feel that we could justify dedicating the required effort and resources required to collate and provide this information”.

34. In the context of the request in this case, the Council told the Commissioner it did not consider it a proportionate use of time to respond. In support of that view, it explained:

“Significant administrative burden has already been placed on the Council in responding to [the complainant]’s requests”

and

“Taking into account the pattern of past behaviour of [the complainant] in which she has consistently submitted numerous follow up enquiries, we had anxieties that dealing with correspondence generated following a response to [this request] would have been a significant distraction from our core functions”.

35. In correspondence with the Commissioner, the Council emphasised the need to protect its resources. It told her:

“In reviewing this request, we were cognisant that proportionality is the common theme underpinning section 14(1). We thus weighed the detrimental impact of the request against its inherent value or purpose and the wider public interest in disclosure”.

36. The Council also advised the Commissioner:

“It should also be noted that a high volume of correspondence outside of this specific area of focus has been sent by [the complainant], which has caused an excessive level of disruption and distress to those staff”.

37. The Council provided the Commissioner with details of its engagement with the complainant concerning the issues she has raised in relation to anti-social behaviour.

38. The Council was asked to clarify the extent to which some of the arguments it presented to the Commissioner were relevant, given the specific wording of the request. The Council provided the requested clarification, and also revised the log of evidence which it relied on to support its application of section 14.

39. In its revised submission, the Council told the Commissioner:

"During 2018 and 2019, we investigated anti-social behaviour complaints and Community Triggers. The Housing Ombudsman conducted an independent investigation into our handling of reports of anti-social behaviour. At least 16 separate requests have been fully considered by officers both within the Council and external to it. For this reason we believe that it would not be reasonable to respond to [this request]".

40. The Council told the Commissioner it believed that the complainant was abusing the right of access to information by making requests which relate to a matter that affects her individually.

41. It said:

"Taking into account [the complainant]'s raising of repeat issues which have already been fully considered by the authority, we are not persuaded that fulfilling this highly personalised request of [reference redacted] would achieve these aims of increasing trust and transparency for her.

Therefore, on balance, there is minimal value or purpose in the request and the wider public interest in disclosure is low. In comparison, complying with the request would have a high detrimental impact and would create an unjustified burden on the authority, and therefore we believe that our application of section 14(1) is justified, ..."

42. Furthermore, it considered that the views expressed by the complainant when requesting an internal review exceeded the level of criticism that its employees should reasonably expect to receive.

43. With regard to the ombudsman report, the Council explained that, prior to the date of the request, there had been a housing ombudsman report which had considered:

"Whether there was maladministration by Sheffield City Council in respect of its response to and handling of [the complainant's] reports of anti-social behaviour from the [redacted] address".

44. During the course of the Commissioner's investigation, the Council was asked to clarify the situation with regard to the complainant's SARs. The Council confirmed that it considered that two SARs, rather than three, were relevant to its arguments that the FOIA request in this case was vexatious. It also confirmed that the two SARs, made on 12 July 2019 and 23 January 2020, were responded to on 3 February 2020 and 29 January 2021 respectively.

The Commissioner's view

45. 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.
46. In her guidance on dealing with vexatious requests, 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.
47. 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.
48. The Commissioner 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. Furthermore, these requests can also damage the reputation of the legislation itself.
49. The Commissioner does, however, recognise 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.
50. She also acknowledges that public authorities should be mindful to take into account the extent to which oversights on its own part might have contributed to the request being generated.
51. In her guidance, the Commissioner also accepts that:

"A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context".

Was the request vexatious?

52. The Commissioner considered both the complainant's position and the Council's arguments regarding the information request in this case.
53. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case showed a previous engagement between the parties. Clearly in this case, the Council

considered that the particular context and history strengthened its argument that, at the time of the request, the request was vexatious.

Context and history

54. The Commissioner acknowledges that, in this case, the Council evidenced that there had been long-standing engagement with the complainant. She also accepts that those previous dealings relate to the subject matter of the request in this case and have included escalations and final reviews as well as an investigation by the Ombudsman.
55. With regard to the Ombudsman investigation, the Commissioner recognises that while the Council considered it relevant to its argument, it acknowledged that the handling of the complainant's Community Trigger applications is not within the Housing Ombudsman's jurisdiction to consider. She has also taken into account that the Ombudsman had not provided its findings by the time of the request under consideration.
56. With regard to the context and history, the Commissioner is not satisfied that the Council has demonstrated sufficiently how the wider circumstances add to the vexatiousness of the request.

Burden

57. The Council told the Commissioner that complying with the request would have a high detrimental impact and would create an unjustified burden on the authority.
58. The Commissioner recognises that 'Burden on the authority' can be a useful indicator of a vexatious request. This is described in her guidance as follows:

"The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester".
59. The Commissioner is mindful that the evidence provided to her by the Council confirms that, prior to the request in this case, there had been ongoing contact between the parties for a period of time.
60. She acknowledges that the Council considers that the details it provided about the complaints, Community Triggers and ombudsman investigation since October 2018 are all relevant and provide context to its stated position in this case.
61. The Commissioner accepts that the request in this case, although not obviously vexatious in itself, does form part of a wider interaction the

complainant has had with the Council and that the Council considers it could not justify dedicating the required effort and resources to respond to the request. It argued that there is minimal value or purpose in the request and the public interest in the requested information is sufficiently low to outweigh the oppressive burden that compliance would cause to its resources.

62. However, it provided no indication as to the amount of information within the scope of the request, and no evidence of the effort and resources required to collate and provide the requested information. Nor did the Council provide any quantitative information about what it described as the '*high detrimental impact*' of responding, such as the impact on its ability to deliver an FOI service to other requesters, or the delivery of its core services.
63. 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.

Motive/value or serious purpose of the request

64. The request in this case concerns matters relating to anti-social behaviour.
65. In its submission to the Commissioner, the Council argued that prior investigations and disclosures have already served to offer openness around how the Council deals with anti-social behaviour.
66. The Council considered that the request in this case was an attempt to re-open issues which it has already fully considered. It described the request as relating to matters that affect the requester individually, as a result of which it argued that, on balance, there is minimal value or purpose in the request and the wider public interest in disclosure is low.
67. The Commissioner acknowledges that, rather than being about anti-social behaviour in general, the requested information is very specific. She therefore accepts that the wider public interest in the request is likely to be limited. However, the Commissioner considers that the request in this case does have a value, to the complainant at least.

Harassment/distress

68. The Commissioner accepts that the complainant's request for an internal review was critical of the Council. It stated:

"With regards to the below I find the communication abusive and wrong.

For a start my complaints have been ignored and I have not received my Subject Access requests made this year and am still missing information from a Request last year.

I find the communication typical of Sheffield Council.

So therefore I appeal your non sense and fabricated reply”.

69. However, the Commissioner does not consider that this can be classed as 'harassment'. She does not accept that a reasonable employee would suffer from anything that might be termed 'distress' in response to this correspondence. She also recognises the complainant's frustration at the Council's delays in responding to previous correspondence, notably SARs.

Conclusion

70. In reaching a decision in this case, the Commissioner has taken into account that section 14(1) of 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.
71. She has also considered, in light of the nature, and degree, of the previous dealings between the complainant and the Council, whether, at the time, the request crossed the threshold of what was reasonable.
72. The Commissioner accepts that there has been previous engagement between the two parties relating to matters concerning anti-social behaviour. She also accepts that the parties hold different opinions as to whether matters have been addressed satisfactorily.
73. In her view, the Council's failure to respond promptly to other requests, notably SARs, made by the same complainant adds weight to the argument that the requester had a reasonable justification for making their request.
74. The Commissioner accepts that compliance with the request in this case will involve the Council in absorbing a certain level of disruption.
75. However, on the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner is not satisfied that the Council has demonstrated that the request was a manifestly unjustified and improper use of the FOIA such as to be vexatious for the purpose of section 14(1).
76. Accordingly, she was not satisfied that, at the time of the request, the Council was entitled to apply section 14(1) of the FOIA.

Section 17 refusal notice

77. Under section 17(5) of the FOIA a public authority that is relying on section 14 to refuse a request must give the applicant a notice stating that fact promptly and within 20 working days following the date of receipt of the request.
78. The Council acknowledged that while the request was made via its online form on 7 February 2020, due to a technical error it was not aware of the request until the complainant contacted the Council on 16 July 2020 asking for a response.
79. As the Council failed to confirm that it was relying on section 14(1) of the FOIA within the time for compliance, the Commissioner finds that it breached section 17(5).

Other matters

Timeliness of internal review

80. 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. However, the Commissioner has issued guidance in which she has stated that internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
81. In this case, the complainant requested an internal review on 17 August 2020 but the Council did not respond until 19 November 2020.
82. The Commissioner expects the Council to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

Right of appeal

83. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

84. 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.

85. 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

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