

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 August 2021

Public Authority: Mid and East Antrim Borough Council

Address: 1-29 Bridge Street
Ballymena
BT43 5EJ

Decision (including any steps ordered)

1. The complainant requested information relating to procurement, IT, Press Office and Communications Team activities and spend over specified years.
2. Mid and East Antrim Borough Council (the Council) refused to comply with the requests, citing section 14 (1) (vexatious request) of the FOIA.
3. The Commissioner's decision is that the Council correctly applied section 14.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 26 February 2020 the complainant wrote to the Council and made the following request for procurement information:

"Under the Freedom of Information Act I would like Council to provide full details of the following, for the period 1 April 2017 to 31 March 2018:

Please provide full details of all Procurement activity (procurement spend, contracts arranged) arranged or conducted by the Head of Service (HoS) that has not been conducted or managed by the Procurement Team below the HoS.

If there was no Procurement Activity conducted/arranged outside of the Procurement Team below the HoS then answer "All Procurement contract/spend activity arranged/conducted via the Procurement Team below the HoS within Mid & East Antrim Council".

If there was procurement activity conducted/arranged outside of the Procurement Team below the HoS then, please provide the following:

- *Name of the Procurement activity (Procurement spend or name of contract)*
 - *Details what the Procurement Activity was for*
 - *The indicative budget for the procurement / amount being spent (not the contract value)*
 - *Date(s) the procurement was for, from & to*
 - *The name(s) of the contractor the contract(s) was awarded to*
 - *Details of how the procurement(s) were agreed. For example Date of Senior Management Team meeting or Date of Council Committee meeting*
 - *Details why the procurement(s) were not managed by the Procurement Team*
 - *Position name that arranged / conducted the Procurement activity, e.g. Head of ICT and Procurement".*
6. On 26 February 2020 the complainant wrote to the Council requesting the same information relating to procurement, for the period 1 April 2018 to 31 March 2019.
7. On 26 February 2020 the complainant wrote to the Council requesting the same procurement information, for the period 1 April 2019 to date/ 31 Jan 2020.
8. Also on 26 February 2020, the complainant wrote to the Council making the following request for information related to IT:
- "Under the Freedom of Information Act I would like Council to provide full details of the following, for the period 1 April 2017 to 31 March 2018:*
- Please provide full details of all Information Technology (IT) activity (IT spend, contracts arranged) arranged or conducted by the Head*

of Service (HoS) that has not been conducted or managed by the IT Team below the HoS.

If there was no IT Activity conducted/arranged outside of the IT Team below the HoS then answer "All IT Contract/Spend activity arranged/conducted via the IT Team below the HoS within Mid & East Antrim Council".

If there was IT activity conducted/arranged outside of the IT Team below the HoS then, please provide the following:

Name of the IT activity (IT spend or name of contract)

Details what the IT Activity was for

The indicative budget for the IT activity / amount being spent (not the contract value)

Date(s) the IT activity was for, from & to

The name(s) of the contractor the contract(s) was awarded to

Details of how the IT activity was agreed. For example Date of Senior Management Team meeting or Date of Council Committee meeting

Details why the IT activity was not managed by the IT Team

Position name that arranged / conducted the IT activity, e.g. Head of ICT and Procurement".

9. On 26 February 2020 the complainant wrote to the Council requesting the same IT related information, for the period 1 April 2018 to 31 March 2019.
10. On 26 February 2020 the complainant wrote to the Council requesting the same information, for the period 1 April 2019 to date/31 January 2020.
11. Again on 26 February 2020 the complainant wrote to the Council and made the following multi-part request for Press Office information:

"Under the Freedom of Information Act I would like Council to provide full details of the following, for the periods 1 April 2017 to 31 March 2018, 1 April 2018 to 31 March 2019 and 1 April 2019 to-date / 31 Jan 2020:

Please provide full details of all Press Office / Communications Team spend, showing:

Internal Staff numbers and staff costs.

Internal Non-Staff costs.

External / procured staff numbers and staff costs.

External / procured non-staff costs.

Any other related costs should be provided and explained.

If costs have increased by more than 10% please justify the reason(s) for the increased costs / staff numbers".

12. It is accepted that the requests were split over seven emails, with each being acknowledged, and given a separate reference number, by the Council.
13. The Council responded to each of the seven requests for information on 13 March 2020. In each case, the Council refused to provide the requested information. It cited section 14(1) (vexatious request) of the FOIA as its basis for doing so. The Council was of the opinion that, taken together, the requests are part of a wider campaign against the Council.
14. Following an internal review, the Council wrote to the complainant on 23 July 2020, maintaining its view that the requests were vexatious.

Scope of the case

15. The complainant contacted the Commissioner on 6 August 2020 to complain about the way his requests for information had been handled.
16. He disagreed with the Council's refusal to provide the requested information. The complainant considered that the Council could, and should, provide the requested information to ensure transparency over how public money has been spent, to ensure compliance with the NOLAN principles¹ and to ensure good governance.
17. The analysis below considers the Council's application of section 14(1) to the requests for information.

¹ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

Reasons for decision

Section 14 vexatious request

18. 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.
19. 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.
20. 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.
21. 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).
22. The Commissioner has published guidance on dealing with vexatious requests². 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.

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

23. 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.

24. 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".

25. Of relevance in this case, the Commissioner's guidance on section 14 also states:

"If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious".

The complainant's view

26. The complainant told the Commissioner that he was not aware of any other multiple requests and that he has not requested this information before.

27. From the evidence she has seen, the complainant did not put forward any arguments to the Council to counter its view that his requests were vexatious.

28. However, the Commissioner notes that it does not fall upon the complainant to explain why the request is not vexatious; rather the burden falls upon the Council to explain why the request is vexatious.

The Council's view

29. In correspondence with the complainant, with regard to each of his multiple requests for information, the Council told him:

"Mid and East Antrim Borough Council are of the opinion that this request, in addition to previous requests are part of a wider campaign against Council".

30. Following an internal review, it told him:

"Taking into account Council's previous interactions with the requestor, together with similar submissions from other requestors that the organisation believes to be connected, this review is of the view that Section 14(1) of the Freedom of Information Act 2000 was applied appropriately and that it is justified in its belief that these repetitive requests are part of a wider campaign against the organisation".

31. In its submission to the Commissioner, the Council explained why it considers the requests under consideration in this case:

"... are part of a wider campaign against MEABC to unjustly use and monopolise council officer's time and resources unfairly".

32. That explanation provided information about how the complainant was known to the Council.

33. The Council also stressed in its submission that section 14 of the FOIA:

"...is not an exemption we use regularly".

34. In support of its application of section 14, the Council told the Commissioner that when the requests under consideration were received, it was aware of almost-identical requests which had previously been submitted to the Council.

35. The Council provided the Commissioner with details of those requests.

36. In summary, it told the Commissioner:

"Given the fact all requests are virtually identical, Council are of the opinion that [the complainant] is involved in some capacity".

37. In addition to the previous, near-identical, FOI requests, the Council provided an analysis of other communications it considered strengthened its argument. It evidenced a number of complaints it had received, and subject access requests (SARs) made under the Data Protection Act 2018 (DPA) by the complainant and others, which it believed were associated with each other and which it concluded were part of a campaign against the Council.

38. Furthermore, it explained why it considers the requests in this case are linked to those complaints and other requests and how, taking everything into account, this amounts to a campaign.

39. It argued that given the nature of the requests, the wording and stylistic similarities, there was a sufficient link between the complainant's requests and the campaign it believes is being waged against the Council.

40. It told the Commissioner:

"MEABC consider the above to be an inappropriate or improper use of a formal procedure".

41. As well as providing evidence in support of its view that the requests are part of a campaign, the Council referred in its submission to the indicators in the Commissioner's guidance that the Commissioner considers may be useful in identifying a vexatious request.

42. For example, with respect to the 'Scattergun approach' indicator, the Council told the Commissioner that it had never received seven requests for information, on the same day, from one individual. It added:

"These seven requests related to three different topics within Council. MEABC believe that submitting seven requests relating to three different topics in one day would constitute fishing for information".

43. With respect to the 'No obvious intent to obtain information' indicator, the Council told the Commissioner it considered that the complainant was abusing his right of access to information by using the legislation as a means to cause distress and vent anger towards the authority.

44. The Council also confirmed it had considered the four broad issues in *Dransfield*.

45. For example, with respect to the burden imposed by the requests, the Council told the Commissioner it believed the complainant was part of a wider campaign targeting Council and its staff and that to continue to comply with his requests "will only continue to burden Council resources and time which are already limited".

46. With respect to the motive of the requester, the Council considered that his motive is to cause disruption. It also told the Commissioner that it considered that the requests have no value or serious purpose other than to disrupt Council, arguing that requesters with serious purpose do not submit seven requests in one day covering three different subjects.

47. Summarising, the Council told the Commissioner:

"This campaign has been extremely labour intensive given the work involved within complying with the SARs, complaints and FOI requests".

48. It provided her with details of the amount of work involved, and the cost to the Council of that work, describing it as a significant burden in terms of resources.

The Commissioner's view

49. 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.
50. 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.
51. 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.
52. 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.
53. 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.

Were the requests vexatious?

54. With regard to the scenario whereby a public authority considers that requesters are abusing their information rights to engage in a campaign of disruption, the Commissioner's guidance on section 14 states:

"The authority will need to have sufficient evidence to substantiate any claim of a link between the requests before it can go on to consider whether section 14(1) applies on these grounds".

55. The Commissioner considers that examples of the types of evidence an authority might cite in support of its case are:
 - the requests are identical or similar;
 - they have received email correspondence in which other requesters have been copied in or mentioned;

- there is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time;
 - a group's website makes an explicit reference to a campaign against the authority.
56. The Commissioner recognises that the Council relied on some of the above arguments in support of its belief that the requests in this case were, to a significant degree, associated with other requests it had received. She acknowledges that the Council provided her with evidence to explain why it considers there are links between the various requests.
 57. The Council's conclusions about this linkage came not only from the timing of the requests for information – while acknowledging the small number of requesters involved, it considered the sequence of requests to be significant – but also because of specific similarities in the information being requested and the written style used when making the requests.
 58. The Council considered that it strengthens its argument that previous FOIA requests it considers relevant were made using a pseudonym and/or by an individual who did not provide identification when asked to do so.
 59. The Council believes that the requests in this case are part of a campaign: the issue for the Commissioner is whether these other requests were linked to the complainant's requests such that they should be taken into account in assessing the nature of the latter.
 60. Having seen the evidence, the Commissioner accepts that the wording of the requests under consideration in this case is near-identical to the requests the Council brought to her attention.
 61. The Commissioner acknowledges that some of the requests the Council directed her to were made via the '*whatdotheyknow*' website and are therefore in the public domain.
 62. The Commissioner accepts that it is important to bear in mind that sometimes a number of individuals will independently ask for information on the same subject and that it is plausible that more than one requester may submit a request using similar or identical wording.
 63. The Commissioner is also mindful of the complainant's argument that his requests had a serious purpose and value – namely transparency and accountability.
 64. Taken in isolation, she accepts that each of the seven requests could have been said to display a serious purpose, namely informing the public of how taxpayers' money was spent.

Conclusion

65. In this case, the Commissioner acknowledges the absence of any explicit reference to a campaign, or any evidence that other requesters have been copied or mentioned in the requests.
66. She also accepts that the information falling within the scope of these requests would enable the public to hold the Council to account.
67. However, on the evidence available to her, the Commissioner is satisfied that, on balance, the Council has demonstrated that there is a sufficient link to connect the requests of the complainant and the other requests which it considers to be part of a campaign to disrupt.
68. From the information provided to her, the Commissioner is aware of the burden and distress placed upon the Council by all of the requests put together.
69. She is therefore satisfied that, on the evidence available to her, there is a sufficient link to connect the requests of the complainant and the other requests which the Council considers to be part of a wider campaign.
70. However, quite apart from their links to other requests discussed above, the Commissioner must have regard to the resources available to public authorities for dealing with requests for information.
71. The Commissioner is mindful of the number, and breadth, of the requests in this case, and the fact that they were all made on the same day.
72. While accepting that, in isolation, the requests relate to matters of public interest, namely expenditure, contracts etc, the Commissioner is not satisfied that, given the wider context in which they are made, the purpose and value of the complainant's multiple requests is sufficient to justify the detrimental impact on the Council.
73. In the circumstances of this case, the Commissioner is satisfied that the Council was entitled to consider that the requests were vexatious.

Right of appeal

74. 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

75. 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.
76. 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

**Laura Tomkinson
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