

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 March 2021

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

Decision (including any steps ordered)

1. The complainant requested from Sheffield City Council (“the Council”) information relating to the Council’s use of a specific email header. The Council refused the request under section 14(1) of the FOIA as it considered it to be vexatious.
2. The Commissioner’s decision is that the Council was not entitled to rely upon section 14(1) of the FOIA to refuse to comply with this request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request in which it does not cite section 14(1) of the FOIA.
4. The Council 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 10 October 2020, the complainant wrote to Council and requested information in the following terms:

"With specific reference to the following email

From: Eccleston Steve (CEX)

Sent: 18 February 2020 10:16

To:

Cc: Crofts Michael; Henderson James (CEX);

Subject: trees: possible issue regarding email header 'legal privilege applies etc'

[redacted]

Please Identify and provide the date of the earliest email with the header 'Covered by legal privilege and not subject to FOI' or similar derivations.

Please also provide any information related to the Legal Dept. informing officers of the practice described and detailed by Steve Eccleston in the email above."

6. On 4 November 2020 the Council wrote to the complainant and refused the request citing section 14(1) of the FOIA (vexatious requests).
7. On 8 November 2020 the complainant wrote to the Council and requested an internal review. Following an internal review the Council wrote to the complainant on 13 November 2020 and stated that it maintained its reliance on section 14(1) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 14 November 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 therefore whether 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 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

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

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. When requesting an internal review, the complainant stated that he considers the Council's response to be "*wholly ridiculous*". He also stated that he does not consider his request to meet the indicators of a vexatious request as defined in *the Information Commissioner v Devon CC & Dransfield* tribunal decision.
18. In submitting his complaint to the ICO, the complainant stated that he did not consider his request to be vexatious and added that he considers the information he has requested to be within the public interest.

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.

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

20. The Council provided the Commissioner with its arguments as to why it applied section 14(1) of the FOIA. The Council also provided details of the background and history surrounding this request.
21. By way of background, the Council stated that since April 2019, the complainant has submitted seven information requests to the Council. The Council explained that many of these requests share the same topic matter of tree felling in Sheffield.
22. The Council considers that the complainant is part of a wider campaign by tree activists which intends to divert Council resources. The Council argued that the complainant's reference to another individual's request within the body of his information request serves to evidence this campaign.
23. In its submissions to the Commissioner, the Council makes reference to a number of indicators taken from the Commissioner's guidance on section 14(1) of the FOIA, including:
 - Burden on the authority
 - Disproportionate effort
 - Scattergun approach
 - Frivolous requests
 - Deliberate intention to cause annoyance
24. The Council stated that it has spent a significant amount of time responding to the complainant's previous information requests. The Council considers that complying with this further request will place a significant burden on its limited resources. The Council explained that, as the scope of the request is very broad and it is not limited to a certain topic, in order to identify the requested information, multiple email mailboxes within the legal department would have to be searched. The Council considers that this process would be complex and time consuming.
25. The Council considers the complainant's request to be similar to another request which was submitted to the Council by another individual. In response to the other individual's request the Council disclosed some information which the Council considers to also fall within the scope of the complainant's request. The Council explained that the complainant is aware of this disclosed information as he referred to this information in his request.

26. In addition, the Council explained that its use of the email heading *"Covered by legal privilege and not subject to FOI"*, which this request concerns, has been covered at length within local media³. It explained that the Council has provided various statements to the media regarding its use of the *"Covered by legal privilege and not subject to FOI"* email header. As a result of this, the Council considers some information within the scope of the request to already be within the public domain.
27. The Council argued that as the request is for the dates of emails sent in relation to the Council's use of the email header, or for evidence of the volume of emails sent using the header, the only information which would be disclosed in response to the complainant's request would be metadata which would be of "very little or no value to the public".
28. Furthermore, the Council explained that the request deviates from the usual subject matter of the complainant's information requests. The complainant's previous information requests have all concerned tree felling in Sheffield. This request, however, does not in the Council's view follow the pattern. As such, the Council does not consider that disclosing information within the scope of the request would benefit the complainant's aims as understood by the Council.
29. The Council considers that in submitting this request, the complainant is attempting to uncover information that may cause scandal, or harm the Council's reputation. The Council views the request as a "fishing exercise" as the complainant made the request without knowing what information the Council holds. As such, the Council does not consider the request to have any serious purpose other than to be disrupting or damaging.
30. Ultimately, the Council argued that complying with the request would not be in the public interest. The Council explained that in order to comply with the request, it would have to divert its limited resources away from other service areas. The Council stated that very little information, that is not already in the public domain, would be disclosed as a result of the request. The Council considers that complying with the request would *"create a very heavy burden for very little added value"* and as such, it has applied section 14(1) to the request.

³ <https://www.thestar.co.uk/news/politics/council/we-are-committed-being-open-and-transparent-sheffield-council-responds-criticism-over-attempts-block-release-emails-controversial-tree-felling-plans-2444917>

The Commissioner's position

31. 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.
32. 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. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance held by the requester or alleged wrong-doing by the authority.
33. 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 complying with 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.
34. However, the Commissioner is also keen to stress that in every case, it must be the request itself that is vexatious, and not the person making it.
35. The Commissioner acknowledges that the complainant has submitted multiple requests to the Council. However, whilst this is a fairly large number, the requests were made over several months. As such, the Commissioner does not consider this to be a convincing argument which demonstrates that this request is vexatious.
36. The Commissioner acknowledges that the Council considers the complainant to be a part of a wider campaign by tree activists to divert Council resources. However, the Council has not provided sufficient evidence to demonstrate its argument. The fact that the complainant refers to another individual's information request in the body of his own information request is not conclusive evidence that the two individuals were working together as part of a wider campaign. Both requests were submitted to the Council via the What Do They Know website. As this is a public website, the Commissioner considers it possible that the complainant simply viewed the other request online rather than having any greater connection to it.

37. The Commissioner understands that the Council considers some information within the scope of the complainant's request to already be within the public domain. However, the Commissioner does not consider this to be a convincing reason to refuse the request in its entirety as the Council may hold further information within the scope of the request that has not previously been disclosed.
38. Furthermore, the Commissioner contends that if the Council considers the requested information to already be within the public domain, the Council should have considered applying section 21 (information accessible by other means) rather than section 14.
39. Furthermore, whilst the complainant's request is similar to this other individual's request as both requests concern the Council's use of the wording "*Covered by legal privilege and not subject to FOI*" as an email header, the requests are not identical. The scope of the complainant's request is considerably broader than the previous information request. As such, the Commissioner considers that the Council may hold further information within the scope of the complainant's request which may not have already been disclosed.
40. The Commissioner does not accept the Council's argument that the request has no serious purpose other than to disrupt the Council or harm its reputation. Whilst the subject of the request differs from the complainant's previous information requests, this does not suggest that the requested information is of no value to the complainant. In making the point about the difference in the subject matter of this request, the Council also seems to have undermined its own argument that the request was part of a campaign involving the complainant.
41. Furthermore, the Commissioner does not accept the Council's argument that the requested information would be of little or no value to the public. The fact that the Council's use of the "*Covered by legal privilege and not subject to FOI*" email header has been widely covered in local media suggests that there is wider public interest in this subject. Therefore, the Commissioner considers that the requested information is of value to not only the complainant but also the wider public.
42. The Commissioner agrees that the scope of the complainant's request is quite broad. She therefore accepts that it will likely take the Council a significant amount of time to determine what information it holds within the scope of the request. However, the Commissioner does not consider the scope to be so broad that the request can be considered grossly oppressive under section 14(1) of the FOIA.
43. 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 finds that the Council has failed to provide sufficient evidence or arguments to support its assertion that the request was vexatious. Therefore, she concludes that the request does not engage section 14(1) of the FOIA.

Right of appeal

44. 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

45. 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.
46. 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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