

**Freedom of Information Act 2000 (FOIA)**  
**Decision notice**

**Date:** 30 November 2021

**Public Authority:** Reigate and Banstead Borough Council  
**Address:** Town Hall  
Castlefield Road  
Reigate  
Surrey  
RH2 0SH

**Decision (including any steps ordered)**

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1. The complainant has requested evidence relied upon by the council to support a view that her tenants could not afford to pay to heat the property it was renting from her. The council applied section 14(1) to refuse the request (vexatious requests).
2. The Commissioner's decision is that the council was correct to apply section 14(1) to refuse to respond to the complainant's request for information.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 5 September 2020 the complainant wrote to the council and requested information in the following terms:

*"I am requesting the written evidence that [Name redacted] and/or [Name redacted] have to support [Name redacted]'s claim to the CIEH that the tenants renting the property, [address redacted] at the time of [Name redacted]'s decision to impose an Improvement Notice on said property, were not able to afford to operate the heating system provided so as to keep the flat so warm that there wouldn't be any condensation on the large single glazed windows.*

*In addition I am requesting the correspondence between the council and the owner of the property regarding the tenants alleged inability to afford the heating and the evidence that RBBC even considered the compromise of allowing the landlady to contribute to the heating cost rather than having to spend thousands of pounds installing unwanted secondary glazing."*

5. The council responded on 29 September 2020. It applied section 14(1) of the FOIA and refused the request on the basis that it was a vexatious request.
6. Following an internal review, the public authority wrote to the complainant on 17 November 2020. It upheld its previous decision.

## Scope of the case

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7. The complainant contacted the Commissioner 22 November 2020 to complain about the way her request for information had been handled. She argues that her request is not vexatious.

## Reasons for decision

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8. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
9. 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 (GIA/3037/2011). 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.

10. 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.
11. 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).
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests<sup>1</sup>. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.
13. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
14. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.

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

15. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.

The council's position

*Background to the request*

16. The council provided a background to the request. The council issued the complainant with a home improvement notice relating to a property which was occupied by a third-party tenant. The notice was appealed, but the Residential Property Tribunal found in favour of it being upheld. The Commissioner understands that part of the notice was subsequently complied with, but a remaining part has not. She understands, however, that the council said that it would not seek to actively enforce the remaining requirement of the notice if the occupation status of the property reverted to owner occupation.
17. In addition to appealing the notice, the complainant made two complaints to the Chartered Institute of Environmental Health (CIEH) alleging professional misconduct by a council officer. These complaints were considered by the CIEH, but it found that there was no case to answer.
18. A further complaint was made to the Local Government and Social Care Ombudsman (the LGSCO), however the Ombudsman declined to investigate as he found that the scope of the investigation would relate to the requirements of the Improvement Notice and this had already been appealed and addressed by the Tribunal.
19. The council highlighted a previous request made to it by the complainant relating to the above. On 17 November 2019 the complainant made a request for "*Please provide Correspondence between RBBC and CIEH in relation to [address redacted]. I have documentation that RBBC sent a letter to CIEH regarding this property*".
20. This was refused on the basis that section 40(2) of the Act applied (personal data of a third party). The Commissioner issued a decision notice relating to this request, and decided that the withheld information was also personal data belonging to the complainant (case ref IC-44362-H0T7)<sup>2</sup>.

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617959/ic-44362-h0t7.pdf>

21. The complainant then made a subject access request under the Data Protection Act 2018 (the DPA 2018) for her own personal information. On receipt of the council's response to this, she then made the current FOI request.

*The current request*

22. As regards the current request, the council argues that this appears to refer to the same issue as her FOI request of November 2019. That is, the communication between it and CIEH, albeit that on this occasion she is not requesting the correspondence itself, but requesting the evidence in support of that correspondence. It argued therefore that the request was substantially a repeated request for the same, or similar information.
23. It considers that the second part of the request was dealt with by the Tribunal hearing. The council considered that the request again appears to relate to the council's justification for the original Improvement Notice, and the content of that notice (i.e., the measures that it specified). It highlighted, however, that the notice has already been considered and upheld by the Tribunal.
24. It argues that therefore that the complainant's request demonstrates that she is being overly persistent in seeking to reopen matters which have already been considered in detail by the council, and by a number of different independent bodies.
25. It considers that the complainant's request for information would be overly burdensome to respond given that it has identified no value in providing the information requested due to the independent oversight of its actions which has already occurred.
26. It also said that it that the request was vexatious by reason of:
  - Intransigence; – that the request in the context of the full history of this matter clearly demonstrates an unreasonable entrenched position; and
  - Unfounded accusations against council staff, and in particular, one particular council officer.
27. The Commissioner is aware, from the previous complaint which she has dealt with, that the complainant has made a number of complaints relating to one council officer.

The complainant's position

28. The complainant argues that the council's statement to the CIEH that the complainant's tenant could not afford to heat her property properly is not correct, and that it contradicts her understanding of the tenant's wealth.
29. She argues that the council's statement had an impact on CIEH's response to her complaint, and that it was given to the CIEH without her knowledge.
30. She said that she only found out about the statement from the council's response to her information access request under the DPA 2018, following her previous complaint to the Commissioner.

The Commissioner's analysis

31. When considering the council's arguments, the Commissioner has also relied upon the arguments and the evidence of the council which it provided to her in respect of case IC-44362-H0T7.
32. Taking in turn each of the possible indicators of a vexatious request identified in the case of Dransfield:
  - (1) *the burden imposed by the request (on the public authority and its staff);*
33. The council did not provide details of the burden which responding to the individual request would impose on it. Nevertheless, noting the overall situation, the Commissioner is satisfied the request follows on from a long list of issues and complaints which the council has had to deal with over the issue previously. She accepts therefore, that overall, responding to the request would create an additional burden on top of that which has been created previously.
  - (2) *the motive of the requester;*
34. The motivation of the requestor remains that she is seeking to reopen an issue which has been resolved by the events preceding the request for information, albeit not to her satisfaction.
35. Independent oversight of the notice within the Tribunal found that the Notice had been properly issued. CIEH has also considered and responded to the complainant's complaint about a council officer, finding that there was no case to answer.

*(3) the value or serious purpose of the request and*

36. Given the previous complaints, oversight and decisions, there remains little serious value or purpose behind the request, other than the complainant seeking to reopen the issue. However independent oversight of the notice has already occurred, and her separate complaints have already been considered.
37. The Commissioner would also stress that the tenants have a right to have personal information about their finances protected under the DPA 2018. Whilst there may be an appropriate means by which the complainant might have been able to question this evidence, this would not be via a disclosure to the wider public in response to an FOI request.

*(4) harassment or distress of and to staff.*

38. The complainant has named a specific officer as acting inappropriately in writing to CIEH making statements about the tenant's ability to afford the heating in her property. This follows on from the previous complaints which she has made about the conduct of this officer, which were decided as unfounded by CIEH.
39. The Commissioner notes that targeted complaints of this nature would lead to feelings of harassment and distress by the officer concerned. The Commissioner notes that there is evidence to this effect in the council's response to her investigation in case IC-44362-H0T7. The Commissioner also notes that in that case, the council informed the Commissioner that due the nature of the ongoing correspondence from the complainant it had restricted her means of contact with it.
40. Council officers generally may also feel irritated and harassed by dealing with the same complainant and the same issues when the notice has been issued and appealed, and subsequent complaints about the actions of individual council officers have already been considered by independent bodies.

*Other considerations*

41. The Commissioner has also considered how relevant the issues which are raised in her guidance are to the circumstances of the request. These were highlighted in paragraph 12 above.
42. From the council's response in this case, together with her understanding of the circumstances outlined in both this and in case IC-44362-H0T7 it is clear that the requests follow on from resentment which the complainant has about the imposition of the Improvement Notice. She appears to have a concerns with the actions of the council

officer who was responsible for the work in relation to this, and who also wrote to the CIEH to support the council's position over the notice. The complaints made against the actions of this officer have, however, been investigated by CIEH. It found that there was no case to answer.

43. The council has not said that the complainant's requests have been abusive or the language she has used aggressive. Nevertheless, the tenacity with which she has pursued her arguments, and the individual complaints about the council officer are likely to have been felt as harassing and distressing by the officer. The council took the step of restricting the complainant's means of access due to the correspondence it had received from her previously.
44. The complainant is seeking the evidence which the council holds which it relied upon in its letter to CIEH stating that the tenants of the property were not able to afford to heat her property properly. It is, however, the role of the council to investigate the issue, and of the court or the tribunal to ensure that the council acted appropriately in making the decisions it has, based upon the evidence it had obtained. The issue was considered, and the notice was decided as appropriate by the Tribunal.
45. The complainant has no rights to investigate the claims regarding her tenant's financial situation directly. This would be a highly intrusive investigation, and FOI is not an appropriate medium for doing so. A disclosure of information under the FOI Act is considered to be to the whole world. The evidence submitted by the council in respect of her tenant's financial situation will be personal data belonging to the tenants, and they have rights under the DPA 2018. Their expectation would be that their personal information, obtained by the council purely for the purposes of dealing with their issues over the property, would be protected from inappropriate disclosure into the public domain by the council.
46. In essence, the tenants, and the complainant's assertions have already been considered by the appropriate independent bodies, and the actions it has taken in respect of this has been decided as appropriate by the relevant regulatory authorities. The Commissioner therefore agrees with the council that the new request is an attempt to prolong or reopen issues which have already been considered, and in relation to which the council, and its officers, were deemed to have acted appropriately.
47. The object of the request is also highly likely to be distressing to her tenants, and is an overly obtrusive means by which to seek to continue a dispute with the council's imposition of the Home Improvement Notice.

The Commissioner's conclusions

48. In the Commissioner's view, the request, when seen in context, was vexatious.
49. In the Commissioner's view, there is a clear link between the complainant's refusal to accept the council's Home Improvement Notice and the request.
50. The motive and purpose behind the request relates to the complainant's own private interests and her unwillingness to accept the Improvement Notice being served on her property, despite the Tribunal upholding this notice. There is no wider value in information on the finances of her tenants being disclosed to the whole world.
51. It is clear to the Commissioner that the relationship between the complainant and the council has broken down following the receipt of the Notice. The complainant does not accept the decision of the council; she does not believe that the financial arguments submitted about her tenants, and she does not accept that the council's representations and evidence was accurate. She has disregarded the fact that the council's case has already been considered by an independent body, the Tribunal, and her complaint against the officer already investigated.
52. The Commissioner agrees with the council that the request is seeking to reopen old issues which have been fully considered, and that this would lead to the council and council staff feeling harassed by the complainant's persistence over a closed matter, which has already been considered by a number of organisations which are independent from the council previously. Additionally, the council must take into account that a disclosure of the information requested would be distressing to her former tenants.
53. It is equally clear to the Commissioner that responding to this request (or indeed any other request on this matter) is unlikely to bring about any form of resolution – indeed, the Commissioner considers that responding to the request is only likely to prolong the correspondence, and may result in further issues between the complainant and her tenants/former tenants if she continues to disbelieve that their claims were correct.
54. The Commissioner accepts that, in fact, the request is merely seeking ammunition for the complainant to commence the next phase of her complaints about the council and the relevant council officer.

55. The Commissioner's decision is therefore that the request was vexatious and hence the council was correct to apply section 14(1) in this instance.

## Right of appeal

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56. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

57. 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.

58. 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 .....**

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**