

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2022

Public Authority: Stockport Metropolitan Borough Council
Address: Town Hall
Edward Street
Stockport
Cheshire
SK1 3XE

Decision (including any steps ordered)

1. The complainant has requested information about the Covid-19 pandemic funding that Stockport Metropolitan Borough Council ('the Council') received from central government. The Council cited section 14 (Vexatious request) of FOIA to refuse to comply with the request.
2. The Commissioner's decision is that the Council was not entitled to rely on section 14 of FOIA to refuse the 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, which does not rely on section 14 of 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 FOIA and may be dealt with as a contempt of court.

Background

5. Prior to making the request under consideration here, the complainant corresponded with the Council regarding its decision to temporarily reduce the frequency of garden waste bin collections during the Covid-19 pandemic. She was dissatisfied with the explanation she received for the decision and she made a formal complaint about the conduct of a named councillor with whom she had corresponded. The complaint was considered under the Council's corporate complaints procedure and also under its Code of Conduct for Members. As part of that process, the complainant was given a detailed account of the reasons for the temporary changes to bin collections and a timeline of the decision making. In neither case was the complaint upheld.
6. When informing her of its approximate timescale for dealing with the complaint, the Council said:

"As you will appreciate all council officers are under increased work pressure at the moment undertaking additional work during the pandemic without any additional resource being provided."

Request and response

7. On 8 May 2021, the complainant wrote to Stockport Council and requested information in the following terms:

"Can you please clarify your comment about no additional resource being provided? Government money has been provided to Councils. Please detail the amount provided to Stockport and how this has been spent."
8. The Council responded to the request on 28 May 2021. It refused the request, on the grounds that section 14(1) (Vexatious request) of FOIA applied.
9. The complainant requested an internal review of the Council's response on 17 June 2021. Following the Commissioner's intervention, the Council provided the outcome of the internal review on 1 September 2021. It upheld its decision to refuse the request, for the reasons given in its email of 28 May 2021.

Scope of the case

10. The complainant contacted the Commissioner on 1 September 2021 to complain about the way her request for information had been handled.
11. The analysis below considers whether the Council was entitled to rely on section 14 of FOIA to refuse to comply with the request for information.
12. The Commissioner has also commented on the Council's delay in providing the internal review in the 'Other matters' section, at the end of this notice.

Reasons for decision

Section 14 – vexatious request

13. Section 1(1) of 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.
14. However, section 14(1) of FOIA states:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.
15. 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.
16. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
17. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a public authority.

18. In his published guidance on dealing with vexatious requests¹, the Commissioner considers 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.
19. In that respect, his guidance advises public authorities that:

“A useful starting point is to assess the value or purpose of the request before you look at the impact handling the request would have on you”.
20. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC), (28 January 2013).
21. 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.
22. The Upper Tribunal did, however, caution that these considerations were not meant to be exhaustive. It emphasised that:

“...all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

The complainant's position

23. The complainant objected to her request being labelled as 'vexatious' and opined that the Council could provide her with the requested information "...within days". She believed the Council was using section 14 of FOIA to avoid corresponding with her about legitimate concerns she held about the service it was providing and the conduct of councillors and staff.

The Council's position

24. The Council saw the request as the latest in a long line of correspondence it had engaged in with the complainant, stemming from the temporary change to green bin collections. It said that the central part of her discontent (regarding information she had been given by the councillor about the garden waste policy) had twice been considered under its formal complaints procedures and dismissed. It said that her request for information was an attempt to reopen these matters, when it was entitled to consider them concluded.
25. The Commissioner explained to the Council that when determining whether section 14(1) has been applied correctly, he will primarily look for evidence that the request would have an unjustified or disproportionate effect on the public authority.
26. With that in mind, he asked the Council to explain why it had relied on section 14(1) to refuse the request. He said that its response should include details of the detrimental impact of complying with the request and why that detrimental impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value. He provided the Council with links to his guidance on section 14 and decision notices showing its practical application, in order to assist it to compile its response.
27. The Council's response was as follows:

"Our decision to refuse the request ... has been made following a long series of correspondence between [the complainant] and Stockport Metropolitan Borough Council which we consider to be unreasonably persistent in nature.

The request referenced was received following the decision to take no further action with regards to a complaint lodged by [the complainant] ... She was referred to the [Local Government and Social Care Ombudsman] ... should she wish to take the matter further as she has exhausted the council's corporate complaints procedure. It is the council's position that following that decision, this request is intended to continue to disrupt council business regarding a subject which has

already received a huge allocation of time and resources, and therefore is considered vexatious under section 14(1) of the FOIA.”

28. It continued:

“It is the council’s position that [the complainant’s] concerns have already been dealt with under the corporate complaints procedure and have been separately formally considered by the Deputy Monitoring Officer. Neither complaint was upheld.

There has been extensive correspondence between the requestor and Senior Officers in the Council, in fact senior members of the Legal Team have spent in excess of 60 hours on the matter. The cumulative burden in dealing with these requests is disproportionate and continuing to process such requests would cause a disproportionate or unjustified level of disruption, irritation and distress to the council and its staff.

It is also reasonably considered by the council that, bearing in mind previous experience of dealing with the requestor and the belief that this subject has become a personal point of contention for her, continuing to engage will simply result in further requests and/or complaints being received.”

29. The Council provided the Commissioner with copies of correspondence it had had with the complainant, and a table of what it described as 20 FOIA requests it had received from the complainant between September and December 2020.

The Commissioner’s decision

30. As discussed in the Commissioner’s guidance on dealing with vexatious requests, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it.

31. The Commissioner’s guidance considers that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

32. When considering this issue, the Upper Tribunal in Dransfield asked itself: “Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?” (paragraph 38).

33. In his guidance, the Commissioner recognises:

“The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:

- holding public authorities to account for their performance;
 - understanding their decisions;
 - transparency; and
 - ensuring justice.”
34. The complainant has asked for information about government funding received by the Council to support it during the Covid – 19 pandemic.
35. The Council said the request was made by the complainant in response to its decision “...to take no further action with regards to a complaint lodged by [the complainant]”. However, having read the correspondence it provided, it is apparent to the Commissioner that the request was in fact prompted by the Council having warned the complainant that it could not guarantee to keep to its normal response times when dealing with her formal complaint under the Code of Conduct for Members, due to resourcing issues caused by the pandemic. The Council did not give its decision on that complaint until 14 May 2021, which was eight days **after** the complainant submitted this request for information.
36. The matter which underpinned the formal complaint was the complainant’s concern that the pandemic was being cited as a reason for service cuts, without proper justification. Disclosing the requested information would therefore enable her to consider the Council’s decisions regarding the reduced green bin collections and the possible delay to her formal complaint in the context of the resources available to it. More widely, disclosure would inform the public’s understanding of how much additional funding the Council was in receipt of to support it during the pandemic, and how it had been allocated by the Council. The Council’s statements about reduced service provision could then be weighed up against that information.
37. The Commissioner also acknowledges that the requested information is of a nature that he would expect a public authority to routinely publish. In general, transparency instils greater public confidence in public authorities.
38. Although the Council has argued that the request is merely an attempt by the complainant to reopen matters which have been properly dealt with, the Commissioner places little weight on that claim. Rather, he finds that the request has value and a serious purpose beyond the complainant’s individual concerns. He therefore finds there to be an objective public interest that would be served by the information being disclosed.
39. Having reached this view, the issue for the Commissioner to determine is whether complying with the request would impose a grossly

oppressive burden on the Council which outweighs its value and serious purpose.

The negative impacts of the request

40. As in many cases which give rise to the question of whether a request is vexatious, the evidence in this case shows a history of previous engagement between the parties. The Council considers that the particular context and history of this engagement strengthens its position that, at the time of the request, it was vexatious. The Council's arguments referred to the cumulative burden of dealing with previous approaches for information on related subjects, combined with the burden imposed by this request, and the likelihood of further requests.
41. In other words, the burden in this matter arises from the resources and staff time that it has already spent on dealing with the complainant's correspondence and the likelihood that this pattern of behaviour will continue. The Council considers it unreasonable to have to expend further resources on dealing with a request when it considers the central issue from which it stems, closed. It presumably considers that the public interest in disclosure is sufficiently low to outweigh the oppressive burden that it claims compliance would cause to its resources.
42. 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, he 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.
43. In support of its position, the Council provided a table which contained 20 entries, each of which it described as being an FOIA request made by the complainant between September and December 2020.
44. The Commissioner notes that many were questions about green bin collections which were easily and quickly answered as normal course of business enquiries during an ongoing exchange of correspondence (and it appears that the Council took that pragmatic approach in the early stages of their correspondence). He also notes that the complainant was happy not to have her questions dealt with as FOIA requests, and that she objected when the Council said it was going to treat them as such.
45. The Council also appears to have included in its table, communications from the complainant which are not FOIA requests: a blank email with 'Test' in the subject line, a request to lodge a complaint, and several throw away comments about individual Council staff.

46. Taking the above into account, the Commissioner considers only seven of the communications set out in the table to be valid FOIA requests which would require a degree of research or checking to respond to. In his view, none of them would be particularly time consuming or onerous to comply with. He is also mindful that the request under consideration here is not directly concerned with green bin collections, but with the pandemic funding received by the Council.
47. The Commissioner accepts that the complainant's correspondence was frequent and that it may have been reasonable for the Council to attempt to manage it. Nevertheless, he is mindful that he asked the Council to clearly set out the detrimental impact to it of complying with the request and it has not done so. Rather, it has simply referred to its legal team having already spent 60 working hours addressing the complainant's formal complaints.
48. Those complaints were made under the Council's own formal complaints procedures and not under the FOIA. While it may be relevant to take into account the time spent dealing with them when considering any requests for information by the complainant which concern the same matters, that is not the case here. The Commissioner places no weight on the suggestion that participating in the Council's formal complaints procedure should, on its own, result in FOIA rights being 'timed out' where the matters considered do not directly relate to the request.
49. As the Commissioner does not consider that the time already spent on the complaints process is relevant here, he has considered any other evidence that the request might be unduly burdensome. However, the Council has not provided any information which allows the Commissioner to view the complainant's request in the context of its wider FOIA compliance nor has it argued that compliance with this request alone would be onerous. (The Commissioner conducted a brief search of the Council's website and was able to locate information on pandemic funding from central government in its 2020/21 annual report² with relative ease.)
50. It is unfortunate that the Council did not provide more information on these points as it may have shed light on areas which, currently, have the status of mere assertion. The Commissioner cannot accept assertions that compliance with a request would have a detrimental impact which would be unjustified or disproportionate, without detailed

supporting evidence. Furthermore, were the Council to have received the request from a different member of the public, the Commissioner considers it likely that it would have handled it differently and provided a different response to it.

51. Consequently, the Commissioner does not consider that the Council has clearly demonstrated that compliance with the request would constitute a grossly oppressive or unreasonable burden in terms of the strain on its time and resources. He has therefore placed limited weight on its arguments that complying with the request would have a detrimental impact on its resources which would be unjustified or disproportionate.
52. As to the motive of the requester, the Council has expressed the view that the complainant is using the right of access to try to reopen a matter which has been conclusively dealt with. The Commissioner accepts that it is a request which may not have been made if the complainant was not already in dispute with the Council. However, this request is not directly about that complaint. And, as set out in paragraph 38, the Commissioner is satisfied that there is a distinct, wider, objective public interest that would be served by disclosure.
53. As to the Council's argument that compliance would not be the end of the matter and that it would invite the complainant to make more requests for information which would continue to consume its resources, the Commissioner's position is that every request should be considered on its own merits. The application of section 14 to a hypothetical future request remains a possibility, even if it is not applicable in the current case.

Balancing the value of the request against those negative impacts

54. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental impact (which he considers to be limited) on the Council, of complying with it.
55. The complainant believes it was a reasonable request to know about the Council's use of pandemic funds. In contrast, the Council has characterised the request as a means to pursue a personal grievance about a matter which has been formally considered and dealt with, and believes that it is unreasonable.
56. The purpose of section 14 of FOIA is to protect public authorities and their employees in their everyday business. In his guidance, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.

57. In this case, when balancing whether the objective public interest the Commissioner has identified can justify the negative impact of complying with the request, the Commissioner has paid particular attention to the following:
- the purpose and value of the request (ie, that it goes beyond serving the complainant's own need and serves a wider public interest in transparency).
 - that the Council has not demonstrated that compliance with the request would have a detrimental impact that would be unjustified or disproportionate.
58. Having considered the value of the request against the above factors, the Commissioner is satisfied that any detrimental effect to the Council of dealing with the request is justified by its purpose and value.
59. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that the purpose and value of the request outweigh the negative impact of complying with it. The Commissioner therefore finds that the request in this case was not vexatious and that the Council was not entitled to apply section 14(1) of FOIA to refuse to comply with it. He now requires the Council to take the action set out in paragraph 3.

Other matters

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

Section 45 - Internal review

61. 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 FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
62. The code states that, where offered, internal reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
63. The complainant asked for an internal review on 17 June 2021. The Council did not provide the outcome of the review until 53 working days

after the complainant requested it, and only following the Commissioner's intervention.

64. The Commissioner considers that the Council's handling of the internal review was not in accordance with good practice under the Section 45 code.
65. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"³ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"⁴.

Other requests for information submitted by the complainant

66. The Commissioner acknowledges that he has rejected the Council's application of section 14 of FOIA in this case, when he has reached a different conclusion regarding the application of regulation 12(4)(b) (Manifestly unreasonable request) of the EIR to another request that the complainant also submitted to the Council⁵. In that case, he found that the Council was entitled to consider the request manifestly unreasonable.
67. When dealing with complaints submitted to him, the Commissioner will consider the facts presented to him, on a case-by-case basis. The particular circumstances of each request may vary, according to such factors as the applicable access regime (FOIA or the EIR), the time already spent on dealing with similar matters, the information that has already been provided to the requester and the wider public interest that would be served by the information being disclosed. Any, or all, of these factors may lead to a different conclusion as to whether or not, in a particular case, a request may be considered vexatious (under section 14 of FOIA) or manifestly unreasonable (under regulation 12(4)(b) of the EIR).

³ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁴ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

⁵ Dealt with under reference IC-126988-B0W9

68. The Commissioner will always consider each complaint he receives on its individual merits.

Right of appeal

69. 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

70. 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.

71. 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
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