

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2022

Public Authority: Steyning Parish Council
Address: The Steyning Centre
Fletcher's Croft
Steyning
BN44 3XZ

Decision (including any steps ordered)

1. The complainant requested information from Steyning Parish Council ("SPC") relating to public liability insurance in respect of health and safety issues at specified SPC public areas. SPC refused the request under section 14(1) of FOIA (vexatious requests).
1. The Commissioner's decision is that the request was not a vexatious request.
2. The Commissioner requires SPC to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the complainant, which does not rely on section 14(1) of FOIA.
3. SPC 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

4. On 10 September 2021, the complainant made the following request for information to SPC:

"Please urgently let us all see the terms on which the insurers have reinstated cover and let us see the latest endorsement. It should not be

necessary to deal with this as an FoI. Councillors are entitled to this information.”

5. On 30 September 2021, the complainant followed up their request as follows:

“This means:-

- All insurance endorsements and conditions relevant to the council’s public liability cover from 29 July 2021 to date, plus
- All correspondence and file notes pertinent to that issue with particular regard to health and safety issues at the SPC play areas, adult gym area, MPF as a whole, and Canada Gardens Allotment from that date between:-
 - *Councillors and other councillors,
 - Councillors and the Office,
 - Councillors or the Office with the insurers or their brokers
 - Councillors or the Office with HDC and in particular those who inspect the play equipment
 - Councillors or the Office and Wicksteed
 - Councillors or the Office with TC Maintenance

* “Councillors” for the purposes of this request means Cllr Norcross who is Chairman of the Council, Cllr Young who is Vice-Chairman of the Council and Cllr Lloyd who is Chair of Community Committee.”

6. SPC responded and said the request was refused because it was vexatious under section 14(1) of FOIA.
7. Following an internal review, SPC wrote to the complainant on 3 February 2022, upholding its position.

Scope of the case

8. The complainant contacted the Commissioner on 10 February 2022 to complain about the way their request for information had been handled.
9. This notice covers whether SPC correctly determined that the request was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
11. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)¹ states, it is established that section 14(1) 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.
12. 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.
13. However, the ICO 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.
14. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)². Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
15. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
16. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

- the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
17. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. They stated:
- “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).

SPC's view

18. In its internal review, SPC explained to the complainant that the request appeared to be part of a pattern of frequent and overlapping requests made over the course of many years which was highly burdensome to SPC. SPC was of the view that the complainant was targeting members of the SPC with a view to causing distress. Furthermore, SPC stated that the issue of insurance and the play equipment had been discussed at great length in council session (at which the complainant had been present as an SPC councillor) and had been concluded. SPC could not, therefore, see the value of the request.
19. In its representations to the Commissioner, SPC reiterated the frequent requests made by the complainant over the course of many years, the burden that the requests had placed on SPC's limited resource, and the distress caused to SPC staff. SPC stated that, even though the complainant was now a councillor on the SPC and therefore privy to council information, their requests had continued. SPC referred to “constant” requests from the complainant, including two requests received recently.
20. SPC specifically referred to a letter from the Commissioner to SPC dated 7 June 2018 (written as a result of one of the complainant's previous cases) as justification for applying section 14 of FOIA in this case.

The complainant's view

21. The complainant's view is that the burden of the request on SPC would not be significant, and the purpose and value of the request is very high due to the importance of ensuring that public play and gym equipment is maintained to the appropriate standard to avoid harm to the public.
22. The complainant argues that the information sought relates only to a short period of 29 July 2021 to 30 September 2021 and that, as the

bulk of the information requested has seemingly now been provided to all committee members on 1 December 2021, there should not be any significant burden in providing what is still withheld.

23. The complainant argues that the withheld information:

“seems to be limited to the correspondence between councillors and between councillors and the Office over this short period plus the correspondence with Horsham District Council inspection team and with TC Maintenance which is anticipated to be negligible in quantity.”

The Commissioner's decision

24. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA.
25. The Commissioner acknowledges the complainant's past history of vexatious requests which was addressed at length in the Commissioner's letter dated 7 June 2018 letter.
26. However, each request must be assessed and judged on its own individual merit, and it is the request itself that must be vexatious, not the person making it.
27. In cases where the issue of whether a request is vexatious 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.
28. In this instance the request appears to focus on an issue of real concern (playground safety), and it is one where it would be expected that a public authority would demonstrate maximum openness and transparency.
29. In its representations to the Commissioner, SPC has not provided sufficient evidence that this request has the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
30. The Commissioner acknowledges that, if the complainant were to make further requests on the back of a response to this request, any such further correspondence could be deemed unreasonably persistent. The complainant is treading a fine line between requests that are vexatious and those which are not.
31. The Commissioner considers that a public authority must meet a high bar to demonstrate that section 14(1) of FOIA is engaged. In this case

SPC did not provide the Commissioner with sufficient evidence to persuade him that the bar is met.

32. The Commissioner's decision is that the request was not vexatious, and he orders SPC to issue a fresh response which does not rely on section 14(1) of FOIA.

Right of appeal

33. 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

34. 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.
35. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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