

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 February 2022

Public Authority: Bristol City Council
Address: The Council House
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant has requested information relating to work carried out by the council on some of its properties. The council provided some information however it withheld other information on the basis that section 40(2) (personal information) of the FOI Act applied. It also applied section 14(1) of the FOIA and declared that the request was vexatious. The complainant disputed this. He also felt that other information should be held by the council.
2. The Commissioner has decided that the council was not correct to apply section 14(1) to the request. The Commissioner has, however, decided that the council was correct to apply section 40(2) to withhold the information. He has also decided that, on a balance of probabilities, it does hold information on a copy of one warranty which the complainant requested information about, but that this is exempt under section 40(2).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 1 March 2021 the complainant wrote to the council and requested information in the following terms:

The information required only relates to SOLTHERM BOLIX (EWI) system, External Wall Insulation installed on the 780 Bristol City Council properties.

1) Please supply the dates when the 17 properties sold under the RTB process were no longer owned by BCC.

2) How many properties had vented soffits fitted after these EWI were completed? Please supply the addresses.

3) The now remaining 763 SOLTHERM (EWI) External Wall Insulation installed BCC properties. How many of those properties are now currently in the process of the RTB process? please supply the dates when the RTB process began on each of those properties, please supply the number of those properties which do not have the SOLTHERM BOLIX warranty. Please supply all the address as well.

5. The council responded on 1 April 2021. It responded to the questions but said that no information was held in respect of question 2. It refused to provide the addresses for the properties as regards part 3. It also said that the warranty was not held for two properties in respect of the relevant part of question 3, and confirmed that the addresses were exempt under section 40(2).
6. Following an internal review, the council wrote to the complainant on 4 May 2021. The council amended its position. It clarified its response to part 2 of the request. In regard to part 3, it said that it had now discovered that only one warranty is not held. Again, it relied upon section 40(2) in respect of the addresses requested in part 3. It pointed out that part 3 was also a duplicate of another request for information made earlier by the complainant. The Commissioner disagrees that the request is a duplicate, but he does accept that they are similar and overlap.
7. In its internal review response, it also applied section 14(1) (vexatious requests) and 14(2) (repeated requests) to refuse to respond further to the request for information.

Scope of the case

8. The complainant contacted the Commissioner on 1 April 2021 to complain about the way his request for information had been handled.
9. The Commissioner considers that, in the first instance, the question for him is whether the council was correct to apply section 14(1) and (2) to refuse to respond to the request further.
10. If the council was incorrect to apply these exemptions, then she must look at the other exemptions which have been applied by the council in response to the request.
11. If the council was correct to apply section 14(1) or 14(2) then it was under no obligation to respond further to the request, and he does not need to look at these points further.

Reasons for decision

Section 14(1) – vexatious requests

12. 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.
13. 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.
14. 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.
15. 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).

16. 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. 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.
17. 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.
18. 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.
19. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.

The council’s position

20. The council said that in considering the application of section 14(1) it took into account the context and history of the request, and the guidance issued by the Commissioner regarding the application of section 14(1).
21. With regards to the context and history of the request it noted at least 15 requests submitted under the complainant’s name or under the name of another individual which, due to their substantially similar or identical nature, and the unusual volume and pattern of the requests, it concluded are part of a campaign of requests.
22. It provided the list of these requests to the Commissioner in evidence of its position, although it noted that further requests are still being received by the council and therefore the number of linked requests is likely higher.

23. It said that its view was that the information sought by these requests has already been provided, and the matter to which the information relates has already been addressed by the Ombudsman. It said that several complaints have also been referred to the Commissioner.
24. It said that the council considers this matter closed, and that the complainant's request is an attempt to reopen it.
25. It referred to the to the ICO guidance on section 14(1), and specifically noted the evidence of the following items which the guidance identifies as being demonstrative of a vexatious request:
 - Unreasonable persistence: The complainant is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
 - Frequent or overlapping requests: The complainant submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.
26. It argues that the multiple requests submitted demonstrate unreasonable persistence and are frequent and overlapping in nature. It said that compliance with this request, and others which are substantially similar, would create a disproportionate and unjustified level of disruption.

The complainant's position

27. The complainant argues that the Ombudsman has found against the council in two of his investigation decisions, both of which found the council responsible for maladministration over the issues raised by him regarding his property. One of these is relevant to the current request, however the Ombudsman's decision on this was not issued until November 2021, after the request had been responded to.
28. One of these decisions only slightly relates to the issue at hand, however the other does address the council's actions as regards the EWI warranty. The complainant sent a copy of the Ombudsman's decision regarding the issue of the warranty, which reports that the council has agreed to rectify the issue should the complainant purchase the property from it. The council was also required to pay compensation for some of its actions during the process. In addition, it was required to pay compensation following the other complaint which the complainant made to the Ombudsman for its actions as regards part of the complaint.

29. Although the Ombudsman's second decision regarding the warranty was issued subsequent to his complaint to the council, it is relevant in that it explains why the complainant made the request in the first instance. The point is important when taking a holistic view of the circumstances of the case; the complainant's issues were based upon partially substantiated concerns regarding the council's actions relating to the property.

The Commissioner's analysis

30. 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);

31. The council did not specifically provide evidence of the burden which responding to the individual request would impose on it. It did however outline that the request follows on from similar requests, issues and complaints which the council has had to deal with over the issue previously.

32. The Commissioner 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;

33. The motivation of the requestor remains that he was seeking evidence to strengthen his position against the council for an issue which had already been considered by the Ombudsman as regards one issue, and which was, at the time, under investigation as regards the issue of the warranty.

34. Ultimately, both Ombudsman's decisions found that there had been maladministration and required the council to pay compensation in lieu of this. He therefore found, at least in part, in favour of the complainant's complaint.

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

35. Although there has been previous complaints, oversight and decisions, there remains a serious value or purpose behind the request. However independent oversight was taking place via the Ombudsman's investigation.

36. As regards the request for specific addresses, the Commissioner emphasizes that the property owners are members of the public, and that they have a right to have personal information about them and their properties protected under the DPA 2018. The council has informed the complainant of this on numerous occasions in its responses to his requests.
37. FOI disclosures are considered to be to the whole world. Whilst there may be an appropriate means by which the complainant might have been able to question the council's position, this would not be via a disclosure of the personal data of the property owners/tenants to the wider public in response to an FOI request. His complaint to the Ombudsman was the correct approach to have this aspect fully considered. This was ongoing at the time of the request.

(4) harassment or distress of and to staff.

38. The complainant's requests have not been abusive or aggressive. Nevertheless, the tenacity with which he has pursued his arguments will be felt as harassing by council officers.
39. The Commissioner notes that council officers may feel irritated and harassed by dealing with the same complainant and the same issues when it has responded to the complainant's requests previously. It would also be aware that the Ombudsman was considering the issue separately, and dealing with the investigation questions raised by him at the same time.

Other considerations

40. The Commissioner has also considered how relevant the issues which are raised in her guidance are to the circumstances of the request.
41. The requests from the complainant relate to his right to buy the property and its value following work carried out by the council's contractors which negated a warranty on the external wall insulation.
42. There is little wider value in the addresses of properties being disclosed to the whole world.
43. The Commissioner also accepts that the requests are similar to each other, if not specifically repeated requests. They often overlap, or surround the same issues, and the same information is often in question.

The Commissioner's conclusions

44. The Commissioner disagrees with the council that the request is seeking to reopen an issue which has been fully considered. The issue relating to the warranty was ongoing and was still under consideration by the Ombudsman at the time of the request.
45. The Commissioner recognises that, at the time that the request was received, there remained issues with the council's responses over the issue of the warranty and regarding another associated matter. This was, however, already under investigation by the Ombudsman.
46. The Ombudsman's decision subsequently outlined a number of flaws with the council's actions. However, the council also agreed to resolve the issue of the warranty insofar as the council has now agreed to 'make right' the warranty issue if the complainant purchases the property.
47. The Commissioner agrees that the number of requests and the similarity between them would lead to council staff feeling harassed by the complainant's persistence.
48. The Commissioner is however satisfied that his overall grievance had a real basis. The complainant's anger at, in his view, the council misleading him over the issue of the warranty, is understandable and was to an extent supported by the Ombudsman's subsequent decision.
49. Whilst the complainant could have waited for the outcome of the Ombudsman's investigation, the Commissioner accepts that under the circumstances he was entitled to make his own additional inquiries based upon the circumstances of the case.
50. The Commissioner has taken into account all of the above, and considered whether, on a holistic basis, he considers that the request emphasises the attributes of manifest unreasonableness, irresponsibility or a lack of proportionality that typically characterise vexatious requests.
51. Given the circumstances, whilst he believes this case to be finely balanced, the Commissioner's decision is that the request was not vexatious and hence the council was not correct to apply section 14(1) in this instance.

Section 14(2) - repeated requests

52. The council did not provide further arguments in support of its application of section 14(2) to the Commissioner, nor did it provide a detailed explanation of its application to the complainant in its request for review.
53. The Commissioner has not therefore considered the application of this exemption further within this decision notice.

Section 40(2)

54. The council applied section 40(2) to withhold partial addresses in respect of part 3 of the request.
55. The Commissioner has considered the application of section 40(2) in similar circumstances, to a similar request from the same complainant. He has provided the reasons for his decision in that case in decision notice IC-88722-R7D8.
56. There is little material difference between the information requested and the arguments on either side to be considered in this case to that considered in IC-88722-R7D8. The Commissioner therefore relies on the same arguments, and reaches the same decision in this case.
57. Based on the factors outlined in IC-88722-R7D8, together with the marginal differences in application in this case, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
58. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

Section 1(1) – information not held

59. In response to the last part of part 3 of the request, the council said that it does not hold one copy of one warranty relating to the external wall insulation.

60. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled—

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

61. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

62. The complainant's request was for "*...the number of those properties which do not have the SOLTHERM BOLIX warranty. Please supply all the address as well*".

63. In its internal review, the council confirmed that a warranty is not held for one property. The council states that it has not been able to find the relevant warranty for this one property.

64. The complainant disputes the council's response.

65. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

66. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

67. The complainant argues that the council's response is incorrect, and that it will hold information in respect of this part of the request.

The council's position

68. The council argues that it does not hold a warranty for one property. It said that one warranty is not held out of all of the 11 properties which fall within the complainant's request.

69. It said that it recognised that it was possible that the council could have held this data either as a hard copy paper record and/or as an electronic record following the original document being scanned.
70. Searches for any hard copies were made in the filing areas of the relevant site office. The filing system used in the site office is organised by address, and searches were made in each file of the 11 properties in scope for the request – all except one of the requested warranties was located in this filing system at the time of the original request and subsequent internal review.
71. Searches of electronic files held on networked drives were also carried out – this involved accessing the specific subfolders under the main folder name of EWI and then Warmer Homes EWI, where all such documents are stored.
72. Searches were also carried out of the council's electronic asset management database. Copies of 10 warranties were held electronically, but it remained the case that one warranty could not be located.
73. It said that:
 - The record type is a guarantee of product and workmanship which states that for a pre-determined length of time, any defect in materials or workmanship in connection with the installation shall be rectified without charge subject to terms and conditions. These types of records are provided to the council by the third-party professionals who carry out the works.
 - There is no record of the council ever receiving the document.
 - There is no record of the council having deleted the document, either prior to or subsequent to the date of the request.
 - The record type is not listed in the council's document retention schedule; however, warranties are retained indefinitely.
 - There is no known statutory requirement to retain this record type.
74. The council concluded that after carrying out appropriate searches for relevant information, there is no indication the record was ever held or ever deleted by the council, and therefore that the record is not held.

The Commissioner's analysis

75. The Commissioner has considered the council's position, in conjunction with the request. He recognises the work carried out to determine whether a copy of the missing warranty is held, however, in considering the specific wording of the request, the Commissioner considers that the request does not specifically ask for a copy of the 'missing' warranty.
76. The complainant's request was for:

"...the number of those properties which do not have the SOLTHERM BOLIX warranty. Please supply all the address [sic] as well".
77. The question for the Commissioner is whether the *requested* information is held.
78. The complainant requested how many properties do not have a warranty, and the address of those properties.
79. The council has told the complainant that there is only one property which does not have the relevant warranty. This responds to the first part of the request.
80. By a process of elimination from all the list of relevant properties which it holds warranties for, it also holds the address of the property which it does not hold the warranty for.
81. On this basis, the Commissioner has concluded that, on the balance of probabilities, the council does hold the requested information.
82. However, as the information in question is an address of a property, this information also falls within the scope of the Commissioner's consideration of the application of section 40(2) by the council.
83. The Commissioner's decision is therefore that the information is exempt under section 40(2) for the reason provided above.
84. The Commissioner does not therefore require the council to take any steps as regards this information.

Right of appeal

85. 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

86. 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.

87. 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
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