

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2023

Public Authority: Hertsmere Borough Council
Address: Elstree Way
Borehamwood
Herts
WD6 1WA

Decision

1. The complainant has requested information from Hertsmere Borough Council ("the Council") relating to damaged wheelie bins and the number of freedom of information requests refused by the Council.
2. The Commissioner's decision is that the Council is entitled to rely on section 14(1) (vexatious request) of the FOIA to refuse to provide the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainant made the following information request to the Council on 28 July 2021 (IC-131272-M0S8):

"Can you please get some information for me.

- 1) how many bins have the crew reported as damaged by them in the last 5 years.
- 2) how many other residents have complained about their bins being damaged in the last 5 years

- 3) how many residents have paid the £40 for a replacement in the last 5 years”
5. The complainant made the following request for information to the Council 26 August 2021 (IC-159792-W2C2):
- “Can I also have an foi on how many time you have denied a request from residents in the past 5 years, if that’s not too hard for you.”
6. The Council refused to comply with both requests citing section 12(1) (cost limit) of the FOIA as its basis for doing so.
7. The complainant submitted the following refined request for information to the Council on 13 May 2022:
- “Hi all, have you come to a decision on the outstanding issues and the way forward I put to [name redacted] at Tuesdays meeting?
I do need a decision by next week or I will need the foi requested
- 1) IC-131272-M0S8 case 10 months information on part 1 of the 3 items
- 2) case IC-159792-W2C2, as recommended by ICO, 6 month information
- ICO has stated this is will be with in the section 12 requirements. Each request fall into 18 hour or £450”
8. The Council refused to provide the requested information citing section 14(1) (vexatious request) of the FOIA as its basis for doing so.

Reasons for decision

9. This reasoning covers whether the Council is entitled to rely on section 14(1) of the FOIA to refuse to provide the information requested on 13 May 2022.
10. The complainant does not consider their request to be vexatious. In their complaint to the Commissioner, the complainant stated that they require the requested information in order to appeal against the Council’s decision to not replace their wheelie bin free of charge after it was damaged.
11. The complainant acknowledged that they have previously submitted two information requests to the Council for similar information. However, the complainant explained that both of those requests were refused under

section 12(1) (cost limit) of the FOIA. The complainant explained that they submitted this request to the Council in an attempt to refine the scope of their two previous requests. The complainant considers that as the Council advised them to submit this refined request for information, their request is not vexatious.

12. The Council considers the request to be vexatious. In its submissions to the Commissioner, the Council stated that the complainant has sent a large volume of correspondence to the Council relating to a range of issues such as parking, fly tipping and his wheelie bin. The complainant has also submitted multiple freedom of information requests and subject access requests.
13. The Council explained that the request was submitted to the Council as part of an ongoing dispute relating to the replacement of the complainant's wheelie bin. The complainant believes the Council to have damaged their wheelie bin when collecting waste and they would like the Council to replace the bin free of charge. However, the Council explained that it has investigated the damaged wheelie bin by reviewing CCTV footage from the relevant waste collection lorry and have determined that the wheelie bin was already damaged prior to the Council collecting waste. The Council has therefore, refused to replace the complainant's wheelie bin free of charge in line with its bin replacement policy. The Commissioner notes that the Council refused to provide the complainant with a copy of its video evidence to this effect, stating that doing so would breach the data protection rights of its collection operative. It later said that due to a technical fault, the video was no longer recoverable¹.
14. The Council argues that the complainant is attempting to use their request for information as leverage to persuade the Council to provide a new wheelie bin free of charge. The complainant submitted the request to the Council after the Council did not uphold their complaint about the replacement of their wheelie bin. Furthermore, the Council explained that they have received an email from the complainant which stated that the request would be withdrawn if the Council provided a new wheelie bin free of charge. The complainant also suggested this in a meeting with the Council, in which they stated:

¹ <https://www.lgo.org.uk/decisions/environment-and-regulation/refuse-and-recycling/21-012-736#point5>

"The ombudsman says you have to pay me £50. I'll waive the £50 if you give me a new bin. I'll also withdraw the two FOI requests and save you another £900."

15. Whilst the Commissioner does not necessarily consider that complying with the request itself would place a significant burden on the Council, he recognises that the aggregated burden of dealing with the complainant's overall correspondence would place an additional burden on the Council and its limited resources over a matter which has already been through its three-stage complaint process and was also being considered by the Local Government and Social Care Ombudsman.
16. Whilst the complainant has stated that they require the requested information to appeal against the Council's decision to not provide them with a new wheelie bin free of charge, as the complainant has already made a complaint to the Council about the matter, and exhausted the Council's three stage complaints process, the Commissioner considers that the complainant is using their request for information to attempt to reopen a matter which has already been addressed by the Council. The Commissioner also notes that the complainant had made a complaint to the Local Government and Social Care Ombudsman which was in progress at the time that the request was responded to. Therefore, the Council's conduct over the matter was already receiving independent oversight at the time of the request. The Ombudsman ultimately provided their decision on 17 May 2022.
17. Moreover, the Commissioner accepts the Council's argument that the complainant is seeking to use their FOIA request as means of pressurising the Council into providing them with new bin, free of charge, in spite of its findings regarding the damaged wheelie bin. He therefore considers the request to lack a serious purpose or value.
18. The Commissioner decision is that the request is vexatious and therefore, the Council is entitled to rely on section 14(1) of the FOIA to refuse to provide the requested information.

Right of appeal

19. 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

20. 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.
21. 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