

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2023

Public Authority: Mid and East Antrim Borough Council

Address: Ballymena Office
The Braid
1-29 Bridge Street
Ballymena
BT43 5EJ

Decision

1. The complainant requested information relating to bonfires. Mid and East Antrim Borough Council (the "council") refused the request under section 14(1) (vexatious request) of the FOIA.
2. The Commissioner's decision is that the council is entitled to rely on section 14(1) refuse to provide the requested information. He does not require the council to take any steps.

Request and response

3. On 10 July 2022 the complainant asked East Antrim Borough Council (the "council") for the following information:

"I am now formally asking for a copy of all internal communications under FOI/EIR and GDPR, regarding my correspondence with MEA Council to include deliberations and formation of responses to my communications. I expect this information to be provided by the use of whatever of the formal legislation delivers the most comprehensive material, and that whatever mechanism is most appropriate to ensure that it is expeditiously provided, and that absolutely no attempt to avoid provision is made under whatever exemptions may be thought by MEA Council to apply. This matter is far too serious.

I also ask for a copy of communications between MEA and HSENI regarding bonfires from January 2022 to this date of submission. A copy of internal communications should also include those following on from my emails to yourself Ms Watts in the last couple of weeks and any deliberations and responses between yourself and other personnel. I am happy for these communications to be suitably redacted in line with legislation."

4. The council's final position is that it is refusing the request, citing section 14(1) (vexatious request) of the FOIA as its basis for doing so.

Reasons for decision

5. This reasoning covers whether the council is entitled to rely on section 14(1) of the FOIA to refuse to provide the requested information.
6. The council has stated that, for the last two years, the complainant has corresponded with multiple departments across council and submitted numerous information requests and complaints in pursuit of their interest in bonfires within the Mid and East Antrim Borough.
7. The council has stated that, during 2021/2022 the complainant submitted six information requests and two formal complaints and that, during 2022/2023, they submitted a formal complaint and another information request. The council has stated that these requests and complaints are alongside various other contact with council departments and that the complainant's information requests, complaints and correspondence are consistently in relation to bonfires.

8. The council has stated that much of the content of the complainant's correspondence around this request makes reference to the accidental death of a man at a bonfire, including frequent allegations of wrongdoing on the part of council.
9. The council has submitted that, where its responses were not accepted by the complainant, these subsequently progressed into complaints and further information requests. The council has acknowledged that a response may provide information that was unknown at the time of the original request and therefore generate a further request, however, it has argued that the circumstances it has described demonstrate the principle of 'vexatiousness by drift', a concept previously acknowledged by the Commissioner in cases relating to the application of section 14(1).
10. The council has confirmed that it has given consideration to the public interest in the information and it has acknowledged the strong public interest in relation to bonfires, including the recent accidental death. It has argued, though, that it is satisfied that the information already provided to the requestor through previous information requests meets any public interest and in fact the release of this specific information would only serve to satisfy the requester's individual interest.
11. In addition to the points identified in this decision notice the council has identified a number of further reasons why it considers the request forms part of pattern of behaviour and correspondence which falls within the definition of vexatious in section 14(1) of the FOIA.
12. 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.
13. 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.
14. In his guidance on dealing with vexatious requests, the Commissioner recognises that FOIA was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. Therefore, engaging section 14(1) is a high hurdle.

15. 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 have a disproportionate impact on a public authority.
16. 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.
17. The Commissioner considers that, in this case, the nature of the request, within the context of other correspondence the complainant has had with the council, is indicative of the complainant's position regarding the council's approach to bonfires and the associated fatality. He, therefore, considers that the complainant is using the FOIA inappropriately to raise arguments with the council.
18. The Commissioner is mindful that the complainant disputes much of what the council says about their correspondence and requests, the form they take and the impact they have. He also notes that the number of requests made across the timeframe identified is not particularly high. The Commissioner also recognises that the complainant has concerns about the council's conduct in relation to bonfires.
19. However, the Commissioner considers that there are other remedies for addressing such concerns and that it is not the purpose of the FOIA to provide another route to the facilitating of grievances.
20. Revisiting the themes of vexatiousness within the Dransfield case, the Commissioner is satisfied that the complainant's motives behind this request are to further a personal campaign against the council.
21. The Commissioner's decision is that the request is vexatious. Therefore, the council is entitled to rely on section 14(1) of the FOIA to refuse to comply with the request.

Other matters

22. Although they do not form part of this notice the Commissioner would like to raise the following matters of concern.

Internal review

23. The code of practice issued under section 45 of the FOIA (the "code") recommends that internal reviews should normally be completed within 20 working days of receipt¹. In this case the council failed to meet this timeframe.
24. The Commissioner expects that, in its future handling of internal reviews, the council's practice will conform to the recommendations of the code.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

25. 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

26. 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.
27. 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

Christopher Williams
Senior Case Officer
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Wycliffe House
Water Lane
Wilmslow
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SK9 5AF