

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2023

Public Authority: Blackburn with Darwen Council
Address: Town Hall
Blackburn
Lancashire
BB1 7DY

Decision (including any steps ordered)

1. The complainant requested various information in respect of a Council Tax notice of liability order issued to 'debtors'. Blackburn with Darwen Council (the 'Council') refused the request on the basis that it was vexatious. The Commissioner's decision is that the Council was entitled to refuse the request on the basis of section 14(1) (vexatious request) FOIA. The Commissioner does not require any steps

Request and response

2. On 13 July 2023, the complainant wrote to the Council and requested the following information:

"FOI request, ref:09181 disclosed a notice of a liability that is issued to 'debtors'

The wording in the notice of liability order includes:

'Failure to provide the required information is a criminal offence and a fine of up to £500 can be imposed. If false information is provided the fine can be increased up to £1000.'

Can BwD disclose which legislation and section allows [BwD] to make the above claim?

If a 'debtor' has not complied with the request, what criminal action since 1992 has BwD taken on a 'debtor'?

How many 'debtors' that have not complied with the request have BwD taken into magistrates court for criminal proceedings?"

3. The Council responded on the same date. It refused the request on the basis that it was vexatious.
4. Following an internal review the Council wrote to the complainant on 17 July 2023. It upheld its original decision to refuse the request on the basis of section 14(1) FOIA.

Scope of the case

5. The complainant contacted the Commissioner on 24 July 2023 to complain about the way their request for information had been handled. They have stated that the request was a follow up to a request submitted by a different individual, with the reference included in the request. The complainant does not accept that the Council's application of section 14 is a claim which it is entitled to rely on.
6. The scope of Commissioner's investigation is to consider whether the Council was entitled to rely on section 14(1) to refuse the request.

Reasons for decision

Section 14(1) – vexatious request

7. Section 14(1) FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
8. The word "vexatious" is not defined in FOIA. However, as the Commissioner's 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.

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

9. 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.
10. However, 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.
11. 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.
12. 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);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
13. However, the Upper Tribunal 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).
14. The Commissioner's guidance based on the above case law states that:

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

“The key question to consider is whether the value and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it. A public authority must judge this as objectively as possible. In other words, would a reasonable person think that the value and purpose of the request are enough to justify the impact on the authority?”

The Council's view

15. The Council informed the Commissioner that it had been through a protracted and delayed two year debt recovery process with the complainant in relation to Council Tax. The Council further informed the Commissioner that during the course of the debt recovery process, the complainant sent a significant number of emails to its Council Tax and Complaints departments. It added that, as the debt recovery process escalated, the complainant submitted a large number of FOI and Subject Access Requests (SAR) questioning the legitimacy of the recovery process.
16. The Council now considers that the matter is concluded as recovery of the debt is now mandated by the Courts. However, the complainant has continued to submit what it considers to be spurious and burdensome FOI and SAR requests, all linked to various complaints they have against the Council. It has stated that new requests continue to be added on a regular basis.
17. The Council informed the Commissioner that the reference to FOI request 09181 was made by a separate requester via the What Do They Know (WDTK) website and was accusing the Council of unlawfully demanding money using fake liability orders and alleging that the liability orders are fictitious. The Council added that this has been the same tactic used by the complainant since their liability order was issued.
18. The Council considered the request vexatious for the following reasons:
 - The request had been issued in relation to the complainant's personal circumstances (which the Council is not willing to discuss on the public WDTK forum) and which it considers demonstrates their unreasonably entrenched position regarding their personal debt.
 - Over the course of two years, the complainant has submitted 11 FOIA requests and 4 SARs, many of which have led to subsequent requests that have served no benefit to the complainant as they repeat the same content.

- The complainant has been supplied with 148 pages of documentation, all of which provide a comprehensive and detailed explanation of the circumstances regarding all aspects of the enforcement of Council Tax arrears.
 - The request was submitted purposely to cause an undue burden as it was the seventh request made in a period of seven working days.
19. The Council further informed the Commissioner that following an intense period of FOI and SAR requests which concentrated on the matter of Council Tax processes and recovery of tax, on 22 September 2022, the complainant was specifically advised of the following:
- “Please be advised we are unable to communicate further on this matter. You have exhausted our internal process. All matters related to the recovery of Council Tax must now follow due process, directly with the department concerned. Any requests for further information in relation to this matter will be refused as manifestly unreasonable.”
20. The Council informed the Commissioner that the complainant subsequently changed their pattern of correspondence away from being directly related to their Council Tax arrears issue to other subjects such as generic Council Tax matters or matters linked to their personal interests such as education. The Council considers the correspondence had no serious purpose or value and was designed to cause disruption and annoyance. Nevertheless, the Council added that in the interests of transparency it chose to respond.
21. The Council also provided details of 14 examples of FOIA requests submitted by the complainant in the period from 19 January 2023 to 13 July 2023 when the request which is the subject of this investigation was submitted. The Commissioner has summarised the following two examples:
- Request received on 19 January 2023 for the specific email address issued to the magistrate for the liability email (as opposed to the copy of the liability order they had already received). The request was responded to on 24 February 2023 and soon followed by two further related requests which were also responded to in the interests of transparency.
 - 6 July 2023 a request was received for information about Penalty notices under section 444 of the Education Act 1996, including how much the demand is for, and what revenue has been generated for fines that have missed the deadline.
22. The Council informed the Commissioner that by March 2023 the complainant had switched their method of contact with the Council to

the WDTK public forum following their request for the Council to remove their email address and contact details from all of its systems.

23. The Council has further stated that it is clear from the pattern of requests and the dates of responses, that each response will generate a further request from the complainant which it considers were designed to be burdensome to the Council. Additionally, the requests have sometimes been made with reference to section 173 (alteration of personal data to prevent disclosure to the data subject) of the Data Protection Act 2018, with veiled threats to refer matters to the Commissioner. The Council does not consider that this is the behaviour of an individual making a genuine attempt to obtain information.
24. The Council has informed the Commissioner that it has sought to respond as fully as possible, particularly when the topic can be clearly separated from the original complaint and debt recovery process. However, this request was the seventh within seven working days, which when combined with the context and history outlined in paragraphs 15 to 23 of this notice, the Council considers is demonstrative of a vexatious request, as outlined in the following extract from the Commissioner's own guidance regarding vexatious requests and referred to in paragraph 8 of this notice:

"It is common for a potentially vexatious request to be the latest in a series of requests submitted by an individual. The greater the number of requests received, the more likely it is that the latest request is vexatious. This is because the collective burden of dealing with previous requests, combined with the burden imposed by the latest request, may mean a tipping point has been reached, rendering the latest request vexatious."

25. The Council has also taken into account the Upper Tribunal decision in the Dransfield case referred to in paragraph 11 of this notice, and has argued that the complainant has met the particular threshold outlined by the Upper Tribunal below:

"...A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with e-mail traffic, is more likely to be found to have made a vexatious request." (paragraph 32)

26. Finally, the Council has stated that it receives a significant number of FOI and SAR requests and considers that the complainant has taken a disproportionate amount of resources away from those who seek genuine data, both under the FOIA and DPA. This particular request was the latest in a series of requests demonstrating obsessive behaviour and has had the effect of harassment due to the collective burden placed on

staff. The personal anxiety this has caused its staff in both the Information Governance and Council Tax teams is not sustainable.

The Commissioner's conclusion

27. The Commissioner has considered the arguments and evidence put forward by the Council. He is mindful that a significant proportion of the complainant's requests and correspondence with the Council is in relation to Council Tax arrears and liability orders. He notes that the complainant has been given 148 pages of documentation regarding all aspects of the enforcement of Council Tax arrears. He also acknowledges that the Council now considers this matter to be concluded, having followed due process and ultimately dealt with by the Courts.
28. Based on these factors, the Commissioner is mindful that the complainant's continued correspondence on this issue after the matter has been concluded is indicative of the sort of obsessive behaviour and unreasonable persistence outlined in both his own guidance on vexatious requests and the Upper Tribunal's decision in Dransfield.
29. The Commissioner also notes that whilst the focus of the complainant's subsequent requests altered, their correspondence continued, often in relation to the Council's enforcement activities in other areas of its responsibility such as education, but including more generic requests in relation to Council Tax. In the Commissioner's view, this is a further indication of obsessive behaviour and unreasonable persistence. He considers that seven requests within a seven working day period will have placed a considerable burden on the Council's resources, particularly when combined with previous correspondence and requests.
30. This is consistent with the Upper Tribunal's comments reproduced in paragraph 25 of this notice that a requester who consistently submits multiple FOIA requests and/or associated correspondence within days of each other, is more likely to be found to have made a vexatious request.
31. The Commissioner accepts the Council's arguments that this request is likely to cause a disproportionate burden or unjustified level of disruption, irritation and distress to its officers in both the Information Governance and Council Tax teams. He also acknowledges that it has the potential to place a strain on the Council's resources, preventing it from delivering mainstream services or answering legitimate requests.
32. Taking all of the above factors into consideration, the Commissioner considers it is reasonable that the Council will have reached a tipping point with this latest request, rendering it vexatious. The Commissioner has therefore concluded that the Council was entitled to refuse this request on the basis of section 14(1) 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

Catherine Dickenson
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