

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2024

Public Authority: Stockton-on-Tees Borough Council
Address: Municipal Buildings
Church Road
Stockton-on-Tees
TS18 1LD

Decision (including any steps ordered)

1. The complainant made a 12-part request for information linked to an investigation into the conduct of several senior staff members. Stockton-on-Tees Borough Council (the 'Council') initially refused to respond to the request in its entirety on the basis that it was vexatious under section 14(1) of FOIA. Following an internal review, the Council partly revised its position and responded to the majority of the request, but it maintained that section 14(1) applied to parts 4, 5 and 6. The complainant is only concerned with the Council's reliance on section 14(1) of FOIA.
2. The Commissioner's decision is that the request was vexatious, based on the oppressive burden that complying with the request would impose, and therefore the Council was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps as a result of this notice.

Request and response

4. On 15 July 2023, the complainant wrote to the Council and requested information in the following terms (numbers added for ease of reference):

"To support your investigation into the examples of wrongdoing, please review and provide the following information to me under FoI:

1. Job descriptions of the two officers that are part of this complaint – to better understand the requisite behaviours and scope of the two roles
 2. Agenda and minutes of meetings chaired by [name redacted] that I was invited to attend – to ascertain and evidence the negative and autocratic 'leadership style' from which to improve from in the future
 3. Policies and procedures – relating to Partnership-working, Equality & Diversity / Discrimination, Meetings Conduct and Staff Conduct, Anti-bullying Policy, Safeguarding Policy and Protocols – to help determine if there has been any breach of policy so that appropriate action can be taken
 4. Copies of all emails to and from [name redacted] between Feb 2023 – current date, this is to review patterns of behaviour
 5. Copies of all emails to and from [name redacted] between Feb 2023 – current date, this is to review patterns of behaviour
 6. Copies of agendas and minutes of meetings for similar meetings to determine patterns of behaviour – is [name redacted] behaviour consistent or have I been discriminated against in breach of [details redacted]?
 7. Logs of phone calls placed to and taken the [location name redacted] Provider / Business Owner and [name redacted]
 8. Surveys results for council partnership-working with Providers
 9. Survey results in relation to the Medication Optimisation service and the Quality and Compliance service and assessment of value for money
 10. Performance review of the Medication Optimisation service and the Quality and Compliance service
 11. Interview and investigation findings meeting minutes from relevant staff involved or witnessed the misconduct
 12. Adult services strategy.”
5. The Council responded on 15 August 2023 and refused to provide the requested information, citing section 14(1) of FOIA – vexatious requests.
6. Following an internal review, the Council wrote to the complainant on 31 August 2023. It now responded to the majority of the request but maintained that section 14(1) of FOIA applied to parts 4, 5 and 6. It explained that responding to these parts of the request would “cause an unjustified level of disruption” and said that “the impact on the authority outweighs any purpose or value in providing the information”.

Scope of the case

7. The complainant contacted the Commissioner on 12 October 2023 to complain about the way his request for information had been handled. He argued that the Council had “withheld key information that is available. This information requested is digital based and easy to share”.
8. The Commissioner has considered whether the Council was entitled to rely on section 14(1) of FOIA to refuse parts 4, 5 and 6 of the request.

Reasons for decision

Section 14(1) – vexatious requests

9. 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.
10. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)¹ states, the exemption is designed to protect public authorities by allowing them to refuse requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
11. 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. These requests can also damage the reputation of the legislation itself.
12. 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 which have a disproportionate impact on a public authority. The Commissioner’s guidance on what may typify a vexatious request stresses that it is always the request itself, and not the requestor, which is vexatious. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.
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

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

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. 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.
15. The four broad themes considered by the UT 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).
16. However, the UT emphasised that these four broad themes are not a checklist, and are not 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).
17. The Commissioner has published guidance on dealing with vexatious requests. That guidance includes a number of indicators that may apply in the case of a vexatious request. 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious.
18. Sometimes it will be obvious when a request is vexatious, but sometimes it may not. The Commissioner therefore considers that the key question to consider is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
19. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of

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

time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the Council in this case.

20. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
- the requester has asked for a substantial volume of information and
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner and
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
21. It is the Council's position that to comply with the request would be an unreasonable burden and would require a disproportionate effort which cannot be justified by the purpose and value of the request.

The complainant's position

22. The complainant's position is set out in paragraph 7 of this notice.

The Council's position

23. In this case, the Council has explained that it believes that responding to parts 4, 5 and 6 of the request "will cause an unjustified level of disruption and the impact on the authority outweighs any purpose or value in providing the information".
24. The Council also provided the background to this request to support its reliance on section 14(1) of FOIA and to provide context to a possible motive of the requester, the value of the request and the potential harassment and distress caused to Council staff.
25. The Commissioner is not able to reproduce the Council's submissions in relation to the background, because to do so would reveal personal information about the complainant. As the regulator for Data Protection, the Commissioner takes account of the need to protect personal data.
26. The Commissioner is mindful that both the Council and the complainant are fully aware of the background and history leading up to this request. The Commissioner has taken all the Council's submissions, together with the complainant's grounds of complaint, into account in reaching his decision in this case.

27. In addition, the Council believes that complying with parts 4, 5 and 6 of the request would have a detrimental impact on its resources, causing an unreasonable burden. The Council provided the Commissioner with a document evidencing its search results which shows that the Council would be required to download, read and redact 147,522 emails in order to respond to these three parts of the request. This number includes the emails sent and received by the two named parties during the specified time period, from February 2023 to the date of the request.
28. The Council explained that it considers this to be an unreasonable expectation and that it would add no substance to the complainant's claims. The Council also believes that there is no general public interest in the disclosure of this information, as it relates only to the complainant's personal circumstances, whereas there is clear evidence that dealing with the request will cause its staff and resources considerable disruption. It stated that this would not add any further value to the processes the Council has in place, as appropriate action had already been taken, and senior management had investigated the complainant's "unsubstantiated claims".
29. Taking all of the above into consideration, the Council believes the application of section 14(1) of FOIA, to refuse parts 4, 5 and 6 of the request, is justified.

The Commissioner's decision

30. In cases where a public authority is relying on section 14(1), it must demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA.
31. The Commissioner has taken into account the views of both parties. Having been made aware of the background, history and context of this request, the Commissioner is satisfied that there is no wider benefit to the general public that would flow from the disclosure of the emails at parts 4, 5 and 6 of his request. Whilst he acknowledges the complainant's position, the Commissioner is satisfied that the matters which resulted in his request have been fully considered by the Council and they have not been substantiated. Furthermore, the complainant's issues have also already been reviewed and considered by the external Ombudsman. The decision was that it was unlikely that an Ombudsman investigation into the issues raised by the complainant would lead to a different outcome. The complainant therefore appears to be attempting to 're-open' matters that have already been thoroughly considered, and to be requesting a significant amount of information in the hope that he might find in it, something which might further his personal aims.

32. From the evidence he has seen, the Commissioner is satisfied that there is a substantial volume of information falling in scope of parts 4, 5 and 6 of the request.
33. The Commissioner accepts that the Council would need to download, and read through over 147,000 emails. Potentially exempt information will be scattered throughout the emails, requiring consideration of whether particular exemptions apply. Even if only allowing one minute per email, clearly, the work involved would vastly exceed the allowable limit under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') of £450, or 18 hours' work. Although the Regulations relate specifically to section 12 of FOIA and are not directly applicable when assessing burden under section 14, they nevertheless provide a useful point of reference when considering whether complying with a request would incur an unreasonable cost.
34. In the Commissioner's opinion, the Council has evidenced that compliance with this request would clearly involve a significant diversion of resources which the Council could not reasonably be expected to absorb without it having a knock on effect for its other business areas. He is therefore satisfied that the Council has demonstrated that complying with the request would place a grossly excessive burden on it which is not capable of being justified by the request's underlying purpose or value.
35. The Commissioner has considered both the complainant's position and the Council's arguments regarding the information request in this case. In reaching a decision he has balanced the purpose and value of parts 4, 5 and 6 of the request against the detrimental effect on the Council of responding to those parts. Given that the overarching matter has already been carefully considered by two organisations, and there is no wider public benefit that would flow from the information being disclosed, the Commissioner finds that the request is vexatious on the grounds of burden, and that the Council was entitled to rely on section 14(1) of FOIA to refuse it.
36. In the event that section 14(1) of FOIA was deemed not to apply, or that the complainant significantly reduced the scope of his request to a smaller amount of information, the Commissioner considers it likely that section 40(2) (Personal information) of FOIA would be engaged because the requested information relates to named individuals. In the Commissioner's view, this means that the complainant would be unlikely to secure the information he is seeking at parts 4, 5 and 6 of his request through FOIA.

Right of appeal

37. 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

38. 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.

39. 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

Samantha Bracegirdle
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