

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2024

Public Authority: Essex County Council
Address: County Hall, Chelmsford
Essex CM1 1HQ

Decision (including any steps ordered)

1. The complainant has requested information about a list of properties owned by Essex County Council. Essex County Council ("the Council") refused to disclose the requested information on the basis it was vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the Council was not entitled to rely on section 14(1) when refusing to provide the requested information. He requires the Council to take the following step to ensure compliance with the legislation:
 - Provide the requested information or issue an appropriate refusal notice which does not rely on section 14(1).
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 23 July 2023, the complainant wrote to the Council and requested information in the following terms:

"Question – This relates to this closed case: ECC14993927 06 23. All properties owned or purchased by ECC to facilitate the Braintree inner ring road. Now I don't know what year they were purchased but certainly

some were sold in circa 1998, namely Victoria Road to South Street on the west side of railway street.

Details of properties with purchase and sales details required please. 76,78 & 86, 88 South Street.

New Request – ok could I then have the entire files on these properties namely 76, 78 & 86, 88. If there is any doubt or issues I could arrange to view them first so please give me the options with each cost if any.”

5. The Council responded on 1 September 2023. Initially it refused to comply with the request citing section 12 of the FOIA (cost limit). At internal review, the Council revised its position to rely on section 14(1) (vexatiousness).

Reasons for decision

6. 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.
7. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)¹ states¹, 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.
8. 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.
9. However, the ICO 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.
10. 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

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

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.

11. 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).
12. However, the UT 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).

The complainant's arguments

13. The complainant does not agree their request is vexatious, and notes they have already refined the request in response to the Council, although this has not resulted in a disclosure.

The Council's arguments

14. The Council believes this request is motivated by a complaint the requestor made about the Council to the Local Government Ombudsman (LGO) in 2001. It has stated the complainant has made three requests on this topic since April 2023, as well as one previously in 2006. It believes there is no wider value or public interest to this request, as the properties were sold more than two decades ago, the LGO complaint closed at the same time, and there have been no new documents created.
15. The Council has also stated this request would create a significant burden, noting:

"There are a number of boxes and files relating to the sale and purchase of these Plots. These boxes will also contain information that

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

is not relevant to the request that would need to be sifted. Given its age, the information is not held or searchable electronically and therefore a manual search of multiple boxes and papers would be required... it is likely that significant numbers of documents would need to be redacted as they may be covered by legal privilege.”

The Commissioner’s decision

16. As set out above, 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.
17. 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. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.
18. In theory, it is possible for an authority to rely on section 14(1) when the main or only ground for refusing the request as vexatious is the burden that responding to the request places on the resources of the authority. However, this is an extremely high bar to meet, and the authority must demonstrate complying with the request would place a grossly oppressive burden on it which outweighs any value or serious purpose the request may have.
19. When using section 14(1) in this context, the authority needs to demonstrate that they made a holistic assessment which takes into account all the relevant circumstances specific to the case and considered them objectively in the relevant context.
20. The Commissioner acknowledges that the complainant has submitted three requests to the Council in three months. However, the Commissioner notes the first and second requests were refused under section 12, and believes the complainant was attempting to refine his request to make it viable. It is not unreasonable that a requestor might make a similar request if they have not yet received the information, and this cannot be considered a repeated request.
21. The Commissioner acknowledges this request may impose a disproportionate burden, but the Council has not provided sufficient evidence of this. It has made reference to “a number” of boxes which will need to be examined, but has not stated how many, or how much information they contain.

22. The Commissioner also does not accept the Council's assertion that the complainant's correspondence is intended to harass or cause distress to its staff. While the Council has provided contextual documentation about the original complaint from 2001-2 when it was on-going, it has not provided any up to date correspondence evidencing harassing behaviour.
23. The Commissioner's decision is therefore that the Council is not entitled to rely on section 14(1) to refuse to comply with this request.

Procedural matters

24. The Council took 41 working days to respond to the request. This is a breach of sections 1 (General right of access) and 10 (Time for compliance) of FOIA, which permit up to 20 working days when responding to a request.
25. The Commissioner has logged this breach for monitoring purposes.

Right of appeal

26. 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

27. 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.
28. 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

Susan Duffy
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