

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2024

Public Authority: Bolton Council
Address: Town Hall
Victoria Square
Bolton BL1 1RU

Decision (including any steps ordered)

1. The complainant has requested information relating to any subsidy paid by Bolton Council (the council) in respect of bowling greens.
2. The council refused the request under regulation 12(4)(b) – manifestly unreasonable, of the Environmental Information Regulations 2004 (the EIR).
3. The Commissioner has decided that FOIA is the appropriate access regime in this instance, but that the council’s arguments for refusing to comply with the request under regulation 12(4)(b) of the EIR are transferable to section 14(1) - vexatious requests, of FOIA.
4. However, it is the Commissioner’s decision that the council has failed to provide sufficient evidence that section 14(1) of FOIA is engaged.
5. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Either disclose the information held that is relevant to the request, or issue a fresh response to the request that does not rely on section 14 of FOIA.
6. The council must take these steps within 30 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

7. On 30 August 2023, the complainant wrote to the council and requested information in the following terms:

“Further to correspondence with a Bolton Councillor who states “Bolton Council provide no subsidy for bowling”. Please could you confirm the amount of subsidy provided for Bowling in Bolton each year by Bolton Council. The reason I am requesting this information is that allotments in Bolton, another recreational service provided by Bolton Council received zero subsidy and I am comparing subsidies across recreational services. This information is being requested in the public interest.”
8. On 22 September 2023, the council issued a refusal notice, citing regulation 12(4)(b) of the EIR. It went on to explain that the request was considered to be manifestly unreasonable on the basis that it was vexatious.
9. On 25 September 2023, the complainant requested an internal review. However, as far as the Commissioner is aware, the council failed to provide a response.

Scope of the case

10. The complainant has raised concerns with the Commissioner about the council’s decision to refuse their request.
11. On 21 December 2023, the Commissioner wrote to the council to confirm that the complaint had been accepted for investigation, and asked that the council provide him with a copy of any internal review it may now decide to issue to the complainant.
12. On 26 February 2024, the Commissioner wrote to the council asking for more information about how it had handled the complainant’s request.
13. On 14 March 2024, the Commissioner wrote to the council again, asking that it now provide a response to his enquiries within 5 working days.
14. Whilst the Commissioner has not received a response from the council, he has decided that, in the circumstances of this case, it is appropriate to make a decision based on the available information.
15. The council has considered the request under the EIR. However, the Commissioner is satisfied that a request for information held specifically about subsidies paid by the council to support the operation of the bowling greens in the local area is not environmental information. The

Commissioner therefore considers that, based on the information that is available, the FOIA is the correct information access regime in this case.

16. In most instances, the Commissioner regards arguments presented in support of the application of regulation 12(4)(b) of the EIR to be relevant, and transferable, to section 14 of FOIA.
17. The Commissioner will therefore decide whether the council is entitled to rely on section 14(1) of FOIA as its basis for refusing the complainant's request.

Reasons for decision

Section 14(1) of FOIA – vexatious requests

18. 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. There is no public interest test.
19. The term “vexatious” is not defined in FOIA. However, the Commissioner's guidance¹ states 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.
20. 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.
21. 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.
22. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)² (Dransfield case). Although the case was subsequently appealed to the

¹ [Dealing with vexatious requests \(section 14\) | ICO](#)

² [Social Security & Child Support Commissioners \(tribunals.gov.uk\)](#)

Court of Appeal, the Upper Tribunal's general guidance was supported, and established the Commissioner's approach.

23. When considering the issue of vexatious, the four broad themes considered by the Upper Tribunal in the Dransfield case 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).
24. The Upper Tribunal emphasised that these four broad themes are not a checklist, and are not exhaustive, saying that:

"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 council's position

25. The council, in its response to the complainant, confirmed that it had taken into account the Commissioner's guidance on vexatious requests, and the Upper Tribunal's comments in the Dransfield case.
26. The council said that whilst it accepted that the complainant's request was not manifestly unreasonable when considered in isolation, it considered it to be a continuation of previous requests that they had submitted.
27. The council stated that, with the inclusion of the request under consideration, the complainant had submitted 13 requests since 2 May 2023. It said that many of the requests overlapped, and were often submitted before it had been given the opportunity to address the complainant's previous queries. The council said that this meant that it had been unable to deal with the requests in a structured manner.
28. The council also said that there have been instances where the complainant, upon receipt of a response to a request, had responded by submitting a further request. The council went on to say that it had already received a further request from the complainant, even though it had not yet issued a response to the request that is currently under consideration.

29. The council advised the complainant that it considered there to be a theme which occurs throughout the requests, that being the operation of the allotments in the local area. The council stated that "leaving aside the question of tone", it appreciated that the complainant understood the benefit of the allotments as a recreational activity.
30. However, the council went on to claim that the complainant's correspondence has rapidly escalated from persistence to accusatory. It said that this is directed to the council, its employees, elected members and that some of the requests would allude to seeking information on other individuals, which can "further indicate personal grudges".
31. The council referred to the Tribunal case of *Betts v ICO* (EA/2007/0109 19 May 2008)³, and the Commissioner's published comments⁴ on that case which states:

"Although the latest request was not vexatious in isolation, the Tribunal considered that it was vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the council. The request on its own may have been simple, but experience showed it was likely to lead to further correspondence, requests and more complaints. Given the wider context and history the request was harassing, likely to impose significant burden and obsessive."
32. The council said that it is unsure whether the true purpose of the complainant's requests is to achieve transparency and hold the council to account, or whether it is an attempt to indirectly seek information which could serve as evidence of perceived wrongdoing, and will then provide the basis for lengthy additional correspondence and complaints, causing the council significant disruption and distress.
33. The council argued that any value attributed to the request, if considered in isolation, is weakened by the overall effect which dealing with a series of manifestly unreasonable requests has had upon the council. It says that it is important that it is able to protect itself from exposure to disproportionate burden, and an unjustified level of distress and disruption in handling the requests received from the complainant.

³ [Betts decision v2 alt \(tribunals.gov.uk\)](https://www.tribunals.gov.uk/decisions/decision/EA20070109)

⁴ [Annex of example tribunal decisions | ICO](#)

The complainant's position

34. The complainant has said that whilst the councillor referred to in their request has confirmed that there is no subsidy provided for bowling greens, this appears to contradict information in the public domain which suggests that subsidies are paid by the council.
35. The complainant argues that it is important to know where subsidies are given by the council, and that this would also assist in establishing whether it is reasonable for members of the community to make a claim for subsidy towards allotments.
36. The complainant has also said that whilst they have taken certain actions and raised concerns about the state of the allotments, potential breaches of tenancy conditions, and a lack of funding to support the future of allotment sites in the area, the content of their correspondence has not been "accusatory", as claimed by the council. The complainant goes on to say that a number of "officers and elected officials" have accused them of unacceptable behaviour, which they dispute. They say that as a result of this, and the failure of certain officers to consider their concerns appropriately, they felt it was necessary and reasonable to submit a number of complaints to the council.

The Commissioner's analysis

37. As set out above, section 14(1) of FOIA 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.
38. 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,
39. The Commissioner does not consider the submission of 13 requests within the period of 2 May 2023, and 30 August 2023 (the date of the request), to be significant in number. Whilst noting that the council has said that the complainant's requests are all on the same theme, that being allotments, in the absence of any further details about all of the requests, and the responses provided by the council, the Commissioner considers there to be very little evidence to support any claim that the requests indicate an unreasonable persistence on a matter that has

been appropriately addressed, or that to deal with the current request would create an unreasonable burden.

40. Furthermore, the Commissioner has seen no evidence to support the council's claims that some of the correspondence it has received from the complainant was accusatory, or that requests were being submitted in order to pursue "personal grudges".
41. The complainant has said that a particular councillor advised them that the council pays no subsidy towards bowling greens. The complainant has referred to media articles published in 2020, and 2021, where the same councillor confirmed that steps were being taken to reduce (but not remove) the amount of subsidy paid by the council to support the continued operation of the bowling greens in the local area. The Commissioner has found no further information in the public domain which would confirm that the council no longer provides any financial support to bowling greens.
42. The Commissioner therefore considers that there is some value to the request as it would allow for greater public understanding about the expenditure of public money; in particular, it would provide details of the local recreational services which the council subsidises.
43. There is a high bar for engaging section 14(1). In this instance, given the lack of supporting evidence from the council in support of its claim that the request is vexatious, the Commissioner does not consider that the bar has been reached.
44. Given the above, the Commissioner has decided that the council is not entitled to rely on section 14(1) of FOIA to refuse the request as vexatious.

Other matters

45. The Commissioner considered that, in the circumstances of this case, he was able to make a balanced decision based on the information that was available. However, had the council responded to his requests for further information about how it handled the complainant's request, and was able to provide evidence to support the arguments set out in its response to the request, the outcome may possibly have been different.
46. The Commissioner would recommend that when the council receives notification of a complaint from the ICO in the future, that it uses the opportunity provided to set out in full its position, and provide any evidence held in support of that position.

Right of appeal

47. 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

48. 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.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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