

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 7 March 2011

**Public Authority:** Whitby Town Council  
**Address:** Pannett Park  
Whitby  
North Yorkshire  
YO21 1RE

### Summary

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The complainant submitted a request to Whitby Town Council (the Council) for various pieces of information. The Council, based on the context and history between it and the complainant, refused the request by virtue of section 14(1) in that it was a vexatious request. The Commissioner has investigated and finds that the public authority were correct to apply section 14(1) to this request. The Commissioner does not require the public authority to take any action.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. In an email dated 21 January 2010 the complainant submitted the following request:

*"Pursuant to the matter of filming and/or 'live streaming' of Council Meetings, I would like to request, under the provisions of the Freedom of Information Act 2000, copies (in electronic format) of all*

*correspondence (including letters, emails, faxes, text-messages, contemporaneous notes of telephone conversations and whatsoever other forms of communication for which a record exists) between, on the one hand, Whitby Town (Parish) Council (including Councillors and Officers) and, on the other hand, any other party or parties, in which the words 'film', 'fillming [sic]', 'video', 'video-ing', 'live', 'streaming' (including variant spellings of the foregoing) appear, throughout the time period beginning 1st April 2009 and ending on the date of your full response to this request (ie: within twenty work days of this request).*

*As you know, my work in the public interest includes promoting a more active involvement by the community in the democratic process, congruent with the objective of fulfilling certain criteria of the Quality Council program. It is self-evident, therefore, that my request cannot be construed as 'vexatious', 'persistent' and/or 'unreasonable'.*

*Further, it is my expectation that Whitby Town (Parish) Council maintains a Disclosure Log in which all FOIA responses are accessible to public scrutiny. I would therefore like to take this opportunity separately to request, again under the provisions of the Freedom of Information Act 2000, a copy (in electronic format) of the entirety of that Disclosure Log, which I have been unable to locate on the WTC web-site - speaking of which, the web-site appears to have once again fallen into arrears. At the time of writing, the last available Minutes for a Full Council Meeting would appear to be 6th October 2009 (<http://www.whitbytowncouncil.gov.uk/fullcouncil.html>). This is most unsatisfactory.*

*Finally, I would very much appreciate a copy of the Minutes for the December Meeting, at which, if memory serves, the Council passed a resolution prohibiting 'filming'. My advice is that there is no statutory authority for such a resolution. That would seem to suggest that the Council has acted 'ultra vires'. I must, therefore, insist that the Council offers me a citation for the authority under which that resolution has been made."*

3. The Council responded to the complainant on 24 February 2010 in which it refused to supply the requested information on the basis that it found the request to be vexatious.
4. In an email dated 27 February 2010 the complainant requested an internal review.
5. After receiving no response to his request for an internal review, the complainant contacted the Commissioner on 17 May 2010.

6. The Commissioner telephoned the Council on 8 June 2010 asking that the internal review was completed as soon as possible.
7. The Council issued its internal review response on 25 June 2010 in which it upheld its application of section 14(1).

## **The Investigation**

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### **Scope of the case**

8. On 26 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The Council's application of section 14(1)
  - The time taken for the public authority to respond to both his initial request and his request for an internal review.
9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### **Chronology**

10. The Commissioner wrote to the Council on 4 October 2010 asking for detailed submissions regarding its application of section 14(1).
11. The Council responded on 15 November 2010 providing the Commissioner with its arguments along with supporting documents to show that this particular request was part of a long running campaign against the Parish Council.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Section 14**

12. Section 14(1) of the Act states that:

“Section 1(1) does not oblige a public authority to comply with a

request for information if the request is vexatious.”

The full text of section 14 is available in the Legal Annex at the end of this Notice.

13. The Commissioner’s approach is outlined in his guidance entitled ‘Vexatious or repeated requests’<sup>1</sup>. The guidance sets out a number of points to consider in determining whether a request is vexatious, namely that:

- it would create a significant burden in terms of expense and distraction;
- it is designed to cause disruption or annoyance;
- it has the effect of harassing the public authority;
- it can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
- it clearly does not have any serious purpose or value.

14. The guidance indicates that it is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. However it does state that to judge a request vexatious a public authority should usually be able to make persuasive arguments under more than one of the above bullet points. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner* (EA/2007/0130):

*“a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach...”* (paragraph 20).

15. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) at paragraph 11 stated that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.

16. In *Gowers v Information Commissioner* (EA/2007/0114), the Information Tribunal noted that when considering section 14:

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<sup>1</sup>[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_and\\_repeated\\_requests\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf)

*"The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one"*

17. The Commissioner therefore views it as appropriate to consider the context and history of a request, in addition to the request itself, when determining whether one or more of the five bullet points listed in paragraph 13 can be satisfied.
18. In reaching his decision in this case, the Commissioner has considered the evidence provided by the Council and the complainant and considered the context and history of correspondence and contact between the complainant and the Council. The Commissioner also gave considerable weight to the language used in the request and subsequent emails that the complainant sent to the Council in relation to this matter.

### **Context and history**

19. The complainant has a long history of correspondence and contact with the Council. The nature of the dispute and the complainant's opinion of the Council are well documented in a website. The complainant appears to be a major contributor to this website; for example an article on the homepage bears the name of the complainant. The website aims to discredit the Council and bring about its abolition. The Commissioner has not provided details of that website in order to protect the identity of the complainant. However, having viewed the website the Commissioner is of the view that any reasonable person would conclude that the request forms part of a campaign against the Council.
20. The website contains a section headed "Questions" under which there are a number emails between the complainant and the Council, the majority of these emails being Freedom of Information requests to the Council. In a further section of the website headed "Letters" more evidence can be found to show the history of Freedom of Information requests and other contact between the complainant and the Council, as well as complaints about the Council to Councillors, MPs and the Secretary of State for Communities and Local Government.
21. There are a sizeable number of documents, letters, comments and opinions written by, or linked to, the complainant that contain serious allegations against named Council officials. Reference is also made to the Council's refusal to comply with the Act and the complainant's view that, by refusing to comply with his requests, a named official is acting

unlawfully. Direct links are provided from the above website to a further website, Facebook pages and a blog; all of which contain a considerable amount of input which can be linked to the complainant, in that he has added his name to comments, published letters or is one of the named administrators of the page, site or blog.

22. The Commissioner considers that there is a direct link between the campaign mounted against the Council, as detailed on the above mentioned websites and this complaint.
23. In addition to the history detailed above, the Commissioner has been provided information by the Council which shows the complainant has been submitting requests and sending emails to the Council since at least June 2009, he has also been party to several complaints about Councillors submitted to the Standards Committee. The Commissioner's view is that while these requests, emails and complaints might, on their face value, appear to be for or about varied information or Council matters, the underlying issue at their heart is the complainant's dissatisfaction at the running of the Council. As such, the Commissioner considers that it is reasonable to conclude that the request of 21 January 2010 forms part of wider campaign against the Council. As such, the Commissioner considers that the request could be considered obsessive.

### **The request and subsequent correspondence**

24. The Commissioner considers that language used by the complainant in both the request of 21 January 2010 (quoted in full above) and the request for the internal review dated 27 February 2010 could be considered antagonistic. For example in his letter of 27 February 2010 the complainant states the following:

"YOU WILL RESPOND IN FULL TO THE FOLLOWING FOIAS IMMEDIATELY"

"The public record of the attempts by members of the Whitby electorate to reform an extraordinarily poorly-mandated Council of mere parish council powers is committed, persistent and well-formulated. The so-called [redacted] movement is in no sense a formal organization. It is a spontaneous grass-roots response to a system of local government that offers no defence to the consequences of poor and perhaps biased decisions taken elsewhere. It is, in fact, in the finest tradition of democracy. Your Council's determination to pay it no mind is reason enough to justify righteous persistence."

"The campaign is emphatically NOT a political campaign – it is a DEMOCRATIC campaign.....It is commonly known that those individuals who support something more efficacious than the present local government arrangements conform to no specific doctrine, nor do they pay membership dues. There is no [redacted] movement. There is a growing number of individuals who share only a deep and justifiable dissatisfaction with the undemocratic conduct of WTC, who would deny us *"leave to live by no man's leave, underneath the law"*.

25. The Commissioner also notes the tone employed by the complainant in his correspondence with the Council. For example, one piece of correspondence sent to the Council dated 2 December 2009 the states following:

"[Redacted] will henceforth be 'live-streaming' Council activities, if we so wish, expressly to allow the wider public convenient access to the extraordinary nonsense that is Whitby's closest approach to democratic representation."

26. In addition to the above, following the complainant's request for information about filming and/or live streaming of Council meetings dated 21 January 2010; members of the Council noticed that posters had been placed around the town which stated the following:

"Public Notice, with any luck this may well be the Very Last Ever Whitby Town Council MEETING 6.45 pm Tuesday 2<sup>nd</sup> February 2009 PANNETT PARK ART GALLERY Free Comedy Bring Your Own Camcorder"

To which the complainant commented in his letter of 27 February 2010

"I, too, noted that several wildly SATIRICAL posters were placed in the town. They were very humorous but clearly not malign, as you attempt to suggest. Nor can you offer any evidence connecting those posters to your alleged 'political campaign', nor to your unlawfully refused FOIAs. Methinks you are perhaps too thin-skinned for the work that you do."

27. The Commissioner further notes the personal comments made to the Clerk of the Council by the complainant in his letter of 27 February 2010 in which he says:

"And because you, a mere parish council paid Clerk, consider yourself qualified to arbitrate on their putative condition of being 'vexatious', that should be the end of the matter? I have not seen communications that I would deem 'vexatious', and I question their existence. Your comment sounds paranoid. You are employed as a public servant; if

your temperament or present condition of health does not allow you to do your work, then that fact should be brought to the immediate attention of your present employers - and indeed should have been, prior to the ratification of your appointment."

28. The Commissioner considers that the effect of this approach towards the Council and its employees is likely to have the effect of causing harassment. Whether this was the intention of the complainant is not the issue that the Commissioner must consider – rather he must consider the effect of the language.

### **The Commissioner's view**

29. The Commissioner's view is that the Act was enacted to assist people in seeking access to recorded information held by public authorities and not as a tool with which to harass them or to engage in protracted correspondence about matters that would be more appropriately be raised with other bodies (in this case the Borough Council, or the Local Government Ombudsman). While the Commissioner acknowledges that the complainant in this case may feel that he has genuine concerns about the way in which the Council has acted, the Commissioner neither has the jurisdiction nor the evidence to reach any conclusion on those matters. The Commissioner's role in the context of complaints brought to him under section 50 of the Act, is to determine whether a public authority correctly applied the provisions of the Act.
30. As explained previously in this Notice, it is not necessary for every factor identified in the Commissioner's guidance as being relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1). In this case the Commissioner considers that there are sufficient grounds to justify upholding the application of section 14(1) and, based on the information set out above, the Commissioner considers that the public authority was correct to determine that the request was vexatious. For the reasons previously stated in the Notice, he considers that the request, together with subsequent correspondence and evidence of a campaign against the Council, can be considered obsessive, to have the effect of causing harassment to the Council and its employees and to have no serious purpose or value.

### **Procedural Requirements**

#### **Section 10**

31. Section 10(1) of the Act states that:



*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

The Commissioner considers that the Council has breached section 10(1) of the Act as it failed to respond to the request within twenty working days following the date of receipt.

32. The failure of the Council to carry out an internal review within a reasonable timeframe is addressed in the "Other Matters" section below.

## The Decision

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33. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The Council correctly applied section 14(1) to this request

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The Council breached section 10(1) of the Act in failing to respond within twenty working days following receipt of the request.

## Steps Required

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34. The Commissioner requires no steps to be taken.

## Other matters

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35. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the

complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took in excess of 40 working days for an internal review to be completed, despite the publication of his guidance on the matter.

## Right of Appeal

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36. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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

**Dated the 7<sup>th</sup> day of March 2011**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Time for Compliance

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

### **Vexatious or Repeated Requests**

**Section 14(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

**Section 14(2)** provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”