

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2012

Public Authority: Basildon Council
Address: The Basildon Centre
St Martin's Square
Basildon
Essex
SS14 1DL

Decision (including any steps ordered)

1. The complainant requested information from Basildon Council (the council) relating to the registration of a named property as 'unfit for human habitation'. The council argued that it did not have to comply with the request because it was vexatious and repeated under the Freedom of Information Act 2000 ("the FOIA").
2. The Commissioner's decision is that the council correctly determined that the request was vexatious under the FOIA. There are no steps to be taken.

Request and response

3. On 5 November 2010, the complainant requested the following:

"Under the Freedom of Information Act I am therefore now requesting the council to confirm or deny whether you hold any recorded information showing the date that the other issues I raised were closed by the council, the reason why they have been closed, and the name of the person that authorised these other issues to be closed.

Basildon Council have previously submitted a statement to the Planning Inspectorate in which they said [named property] had been registered by the council as unfit for human habitation since 1989. I am requesting to be told whether you have any recorded information showing [named property] to currently be registered as unfit for

human habitation, and if so do you hold any recorded details of why it is so registered, and whether you hold any records showing what works are considered by the council to be necessary to make [named property] fit for human habitation. If it is no longer registered as unfit for human habitation I am requesting to be told whether you have any recorded information showing the date of when circumstances are said to have changed, and the reasons why it is no longer registered as unfit for human habitation..."

4. On 7 December 2010, the request was refused by the council as vexatious under section 14. The council explained that the matters contained in the request had all been the subject of previous extensive correspondence and it made the following statement:

"It has previously been confirmed that the Council do not accept that [named property] conforms to the definition of a dwelling in accordance with the criteria set out in Policy BASGB5 of the Saved Policies of the Basildon District Local Plan. This policy can be viewed on the Council's website by following the links through the planning pages. The definition of a dwelling house for planning purposes can be different to that used by Council Tax. This is on the basis that a building can be lived in for the purposes of Council Tax but it does not meet the specific definition of a dwelling as set out in Policy BAS GB5 so planning permission will not be given to extend the property."

5. The complainant requested an internal review. On 5 April 2011, the review upheld the original refusal.

Scope of the case

6. The complainant contacted the Commissioner on 2 June 2011 to complain about the way her request for information had been handled. She asked the Commissioner to consider whether the council had correctly determined that her request was vexatious or repeated under the FOIA.
7. The Commissioner considers the scope of this case to be the council's application of section 14 to the requested information.
8. On 27 October 2011, the Commissioner wrote to the council asking it to provide its arguments under section 14. He wrote to the complainant on the same day to outline the scope of the case.
9. On 13 December 2011, the Commissioner wrote to the complainant, giving his initial opinion that he was likely to uphold the council's

application of section 14 and highlighting the link between FS50381386¹ and the outcome of that decision notice which upheld the council's position. He gave his view that the council, whilst applying section 14, had reiterated in its 7 December 2010 letter why the named property did not conform to the definition of a dwelling in accordance with the criteria set out in the council's local plan. The council also provided an explanation as to the definition of dwelling house for planning and council tax purposes.

10. In December 2011, the complainant wrote to the Commissioner to say that she did not accept that the council had the right not to respond to her request for information and that she was still unaware if the property was "*unfit for human habitation*" and what work would need to be carried out to render it a legitimate dwelling house.
11. On 1 September 2011, the council provided its argument to support its application of section 14.
12. On 25 November 2011, the council gave further representation as to why it had applied section 14 to the requested information.

Reasons for decision

13. Section 14(1) of the FOIA states the following:

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

14. Guidance on the Commissioner's approach to vexatious requests can be found on the Commissioner's website and for ease of reference, at the following link:
http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/reasons_to_refuse.aspx
15. As explained in the guidance, the Commissioner's general approach is to consider the argument and evidence that the public authority is able to provide in response to the following questions:
 - Could the request fairly be seen as obsessive?

¹ http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50381386.ashx

- Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
16. It is not necessary for all of the above criteria to apply but in general, the more that apply, the stronger the case for a vexatious request will be. The Commissioner is able to take into account the history and context of the request when determining whether a request is vexatious. It is often the case that a request for information only reveals its vexatious quality when put into context.
17. Although he acknowledges that the complainant is a separate individual, the Commissioner wishes to make clear that he has considered this complaint alongside FS50381386 for the reasons outlined in paragraph 19 below. His decision in this matter has been reached after a consideration of the arguments provided by the council in that decision notice.

Could the request fairly be seen as obsessive?

18. When a request for information is refused as vexatious, it is often the case that an examination of the background will reveal a long and difficult relationship between the parties that has arisen as a result of a dispute or a number of related disputes that, for whatever reason, have never been resolved to the satisfaction of the complainant. This is clearly the case here.
19. The council explained to the Commissioner that the history of this particular dispute is particularly complicated and involved. It explained that the complainant has a long-standing grievance, dating back over 20 years, relating to planning and council tax issues. It is the council's contention that the complainant, alongside another complainant, has been playing a subsidiary role in this campaign over that time. The council's argument rests on a close similarity between the two complainants' requests and concerns which leads it to suspect that they are acting in concert. The council has told the Commissioner that the arguments outlined in FS50381386 in relation to that complainant are largely the same arguments it would offer with regard to this complainant for the reasons given.

20. The Commissioner accepts the reasoned conclusion reached by the council, based on its experience over a considerable period of time, that this request is obsessive when set in context. The complainant has engaged in an obsessive campaign with another complainant that has repeatedly and repetitiously covered the same ground in relation to certain properties and their status. The council contends that these matters have been addressed with the complainant many times and that she has been provided with a response on many occasions in relation to this and other matters that have been obsessively revisited over a demonstrably long period of time.

Is the request harassing the authority or causing distress to staff?

21. The Commissioner would like to highlight the fact that, when considering this part of the criteria, the Commissioner is not concerned with what the complainant's intention may have been. It is not unusual for a request to be deemed vexatious even though the complainant genuinely believes that the request and behaviour was entirely justified. Instead, the Commissioner is concerned with the *effect* that the request would have had on any reasonable public authority.
22. There will often be a significant overlap between the reasons why a request can fairly be seen as obsessive and the reasons why it may have had the effect of harassing the authority. The council told the Commissioner that the complainant's constant, detailed and voluminous correspondence, often raising the same issues over and over again, had had the effect of harassing its officers for years.
23. The council believes, though cannot prove, that the request submitted on 5 November 2010, under the name of the complainant was written by another individual whose own request was the subject of FS50381386. The complainant whose request is the subject of that decision notice has had section 14 applied on several occasions. The council is not suggesting that the complainant was unaware of the request and its contents or that it was not signed by the complainant. Nonetheless, the council argued that the history of this case indicates that the style, subject and wording of letters from this complainant in this request and others is the same as the complainant in FS50381386.
24. The Commissioner accepts the council's view in this matter as he has found many points of similarity between the style and content of both complainants' requests. There are several examples of this symmetry:
- The format of the letters bears great similarity.
 - The format of the address is identical.

- The date reference in the correspondence is the same with a dot/full stop before the month.
- There are certain phrases which recur such as, "*I am requesting to be told whether you have any recorded information ...*"
- The complainant wrote to the Commissioner to say that there was no connection between her and the request in decision notice FS50381386. The Commissioner is satisfied that this request does closely relate to the decision notice as it names the same property and similar requests surrounding that property.

25. The Commissioner is convinced that the style and content of this request mirrors that of the requestor in FS50381386 and that this is not accidental. The Commissioner accepts that the reason for this is that the two individuals have been acting in concert over a significant period of time in an effort to pursue council staff for unknown reasons.

Would complying with the request impose a significant burden in terms of expense and distraction?

26. The council said that, given the nature and volume of the correspondence and the way in which the complainant had approached the authority, it was likely that it had cost thousands of pounds to deal with the complainant's issues.

27. Although the council has not provided a breakdown of costs associated with meeting this complainant's requests over the years, the council has given an indication in FS50381386. Compliance with this request in isolation may not have been too burdensome. However, the Commissioner accepts that this request is part of a concerted approach by both complainants. Therefore he is satisfied that the requests formed part of a collective burden that the authority has borne over a number of years and that the expense and distraction from its other important duties has been substantial. The evidence indicates that any response provided would be unlikely to satisfy the complainant and only result in further complaints. The Commissioner took this into account when deciding that compliance with the request would impose a significant burden on the authority.

Is the request designed to cause disruption or annoyance?

28. The council sought to rely on the argument it provided in FS50381386 where it was of the opinion that the requests were designed to cause disruption or annoyance as the complainant was clearly conducting a campaign to wear the council down. Although the Commissioner understands why the council has formed this view, this part of the criteria is difficult to engage because it requires objective

evidence of intention and motivation. The Commissioner does not agree that the council has provided sufficiently strong evidence to prove this was the intention or motivation behind the requests.

Does the request lack any serious purpose or value?

29. The council has offered no evidence under this heading and the Commissioner is convinced that the complainant believes that they do have a serious purpose behind the request.
30. However, the Commissioner agrees that the other elements of the criteria have been met to the required standard and that the council has been able to demonstrate that the requests were vexatious.

Repeated requests

31. For clarity, the Commissioner did not find it necessary to consider whether any of the requests were repeated because he was satisfied that they were vexatious.

Right of appeal

32. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. 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.
34. 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

Andrew White
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