

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2014

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested information from Hampshire County Council ("the council") about the identity of council officers. The council refused to comply with the request on the basis that it was vexatious under section 14(1) of the Freedom of Information Act ("the FOIA") and manifestly unreasonable under regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the council has correctly refused the request under section 14(1) of the FOIA. However, the council provided its response outside of 20 working days, and therefore breached section 10(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 29 October 2013 the complainant wrote to the council and requested the following:

"Please will you send me a list of those who make up Area Team North? In fact a pro forma of who does what in the Countryside Department of HCC would be most useful so perhaps it could be included as part of the whole?"

5. The council responded on 6 January 2014 and provided held information, namely a structure chart of the specified team that included the identities of senior officers.
6. On 6 January 2014 the complainant contested that the response should have included the identities of all council officers. The Commissioner considers this to be a request for an internal review.
7. On 31 January 2014, the council responded and advised that it had reconsidered its response to the request, and now considered the request to be vexatious under section 14(1) of the FOIA and manifestly unreasonable under regulation 12(4)(b) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 18 February 2014 to contest the council's response.
9. Having reviewed the nature of the requested information, the Commissioner has identified that the information is not environmental in nature, and that the terms of the EIR do not apply. The request must therefore be considered solely under the terms of the FOIA.
10. The Commissioner considers that the scope of this case is the determination of whether the council has correctly identified the complainant's request as vexatious under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – vexatious requests

11. Section 14(1) states that:

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

12. The Commissioner has recently published new guidance on vexatious requests and for ease of reference, this can be accessed here: http://www.ico.org.uk/news/blog/2013/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx
13. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are

vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

The interaction between the parties

14. The Commissioner understands that the complainant is broadly concerned with issues relating to common land and public rights of way within Hampshire, and in particular those that relate to rights of access for horse riders. The complainant has corresponded with the council since 1992 on these issues, and maintains a website with other individuals in which these issues are outlined.
15. The Commissioner understands that a proportion of the complainant's recent correspondence has been about the status of a site known as 'Broxhead Common', which she contests has been unlawfully removed from the Commons Register held by the council, therefore losing its status as common land. This matter has resulted in two complaints to the Local Government Ombudsman ("the LGO") in 2012 and 2013; both of which the Commissioner understands were dismissed as being outside the LGO's jurisdiction. The Commissioner further understands, from references within both the council's and complainant's submissions, that the complainant has also referred the matter to other public authorities including DEFRA, the Parliamentary & Health Service Ombudsman, Hampshire Constabulary, and the Secretary of State. In these cases, the public authorities have either dismissed the complaint, or else advised that the matter would need to be referred to the courts.

The complainant's position

16. In submitting her complaint to the Commissioner, the complainant has explicitly referred the Commissioner to the matter of Broxhead Common defined above. The complainant has alleged maladministration and fraud on the part of the council in respect of its actions relating to this site, and has inferred that this is the reason for her continued engagement with the council about the matter.
17. The complainant has not directly advised the Commissioner why the requested information has been sought in relation to contested matter. However, the Commissioner has noted from the correspondence between the parties that he has been provided with, that the complainant holds a voluntary post within the British Horse Society, as part of which she represents the charity in issues relating to access and

bridleways within Hampshire. As such, the Commissioner appreciates that the complainant is likely to have a need to communicate with the council about such issues as part of her role.

The council's position

18. The council, in its submission to the Commissioner, has referenced 31 communications from the complainant on the issue of Broxhead Common since 2007, and a further 26 from individuals that it believes are associated with her. The council considers that when one item of correspondence has been responded to on this matter, it has generated further enquiries or information requests that are often directed at the council officer who provided the response. The council believes that disclosing the identifies of all council officers within the Countryside Team would therefore result in those officers being directly contacted by the complainant or her associates about the matter, circumventing the established points of contact or the council's contact centre, and in this way prevent council officers from undertaking their core duties and causing a significant diversion of the council's resources.
19. The council has explained to the Commissioner that it considers that the matter of Broxhead Common has already been addressed and concluded, with no further action considered necessary by the council. The council has provided documents confirming the legal status of the land to the Commissioner, and has explained that these documents have previously been released to the complainant, and that it is the complainant's continued dispute about the matter that has led to the most recent request.

The Commissioner's analysis

20. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
21. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request

would have on the public authority's resources in providing it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the request

22. Having reviewed the grounds for complaint that were submitted by the complainant, the Commissioner perceives that whilst the request in isolation does not relate to any wider environmental matter, the complainant has expressly placed it within the context of the disputed matter of Broxhead Common, on which the complainant has corresponded with the council for a number of years. The Commissioner has therefore taken this as the starting basis for his investigation.
23. The council has proposed that releasing the information that the complainant has requested would allow specific council officers to be contacted in relation to the matter, thereby circumventing the points of contact that the council uses to administrate information requests and business enquiries. As it has been implied by the complainant that the request relates to her concerns about Broxhead Common, the Commissioner considers that the council's conclusion is likely to be reasonable, and that the purpose of the request is to allow the matter to be further disputed.
24. Having considered the wider circumstances of the matter of Broxhead Common, the Commissioner considers it reasonable to assume that any continued dispute about its status would need to be referred to the courts, and that the council itself considers the matter to be concluded and requiring no further action. The Commissioner therefore considers there to be limited public interest in the request when viewed within the context of the disputed matter, particularly in that the request is for information that is not directly connected to it.
25. The Commissioner further notes, that of the information that has been requested, the organisational structure of the Countryside Team and the identities of senior council officers have already been disclosed to the public as part of the council's initial response to the complainant. The disclosure of the identities of junior council officers in roles that are not public facing would be highly likely to engage the exemption provided for the personal data of third parties by section 40(2) of the FOIA. The Commissioner considers that as a proportion of the requested information is highly likely to be exempt, this further reduces the inherent public value of the request.
26. Notwithstanding the grounds of the complaint that have been submitted by the complainant, the Commissioner is aware from having read the

correspondence between the parties that post-dated the request, that the complainant has also sought the information for the purpose of assisting her work on behalf of the British Horse Society.

27. While the Commissioner is therefore mindful of the specific circumstances of the complainant, the FOIA requires a public authority to treat a request for information as applicant and purpose blind. While the complainant, and the charity that she acts on behalf of, may have a business need for the requested information, the Commissioner considers that any such request and resultant disclosure would be likely to fall outside the terms of the FOIA. This is because the FOIA does not allow for the select disclosure of information, such as might be required between two organisations for business purposes.

The burden upon the council

28. Having reviewed the prior history of the matter of Broxhead Common and its current status, and in particular the complainant's position that the request has been made in relation to the matter, it is reasonable for the Commissioner to assume that responding to the request would represent a further diversion of council resources in respect of the contested matter. There are no apparent public interest factors, such as a significant lack of transparency or strong evidence of improper action on the part of the council, that the Commissioner considers would justify this diversion.
29. This is particularly so in that the requested information does not directly relate to Broxhead Common, and has been requested for the apparent purpose of contacting a wider range of council officers about the matter. Regardless of whether the council either provided the requested information, or else issued a response citing the exemption provided by section 40(2), the Commissioner considers there to be limited public interest in requiring the council to comply with the request.

Conclusion

30. While the Commissioner appreciates that the disputed status of the land remains an important matter, he considers that the public value in this request being met is inherently limited when considered solely within that context. Requests for information about the status of Broxhead Common have previously been responded to by the council order to address the allegations that the complainant has made, and subsequent complaints to a range of public authorities have not been successful in resolving the matter to the complainant's satisfaction.
31. While the information requested in the complainant's latest request is not directly related to Broxhead Common, it is reasonable for the

Commissioner to conclude that in requesting the identities of council officers the complainant is attempting to continue the dispute through engaging specific officers. As such, the Commissioner considers that the information rights provided by the FOIA are being misused for this purpose, and that the council was correct to identify the request as vexatious under those specific circumstances.

32. The Commissioner has reached a conclusion that applies only to the request made by the complainant on 29 October 2013 for the identities of council officers. This conclusion has been made in consideration of the specific circumstances of the request, and the grounds of the complaint that were submitted by the complainant to the Commissioner. However, the Commissioner is aware that the complainant is likely to have contact with the council about a range of matters on behalf of the charity for which she works. As such, he appreciates that the complainant is likely to request information both within and outside the terms of the FOIA for this purpose. The Commissioner's decision has only been made only in regards of the request that has been refused, and has not been made in respect of any other requests for information that the complainant has made, or may choose to make in the future.

Section 10(1) – Time for compliance

33. Section 10(1) of the FOIA requires that a public authority must provide a substantive response within the time for compliance, which is 20 working days following the date of receipt.
34. In this case the Commissioner has identified that the council provided its response outside 20 working days, and therefore breached the requirement of section 10(1).

Right of appeal

35. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF