

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 September 2018

Public Authority: Forest of Dean District Council

Address: Council Offices
High Street
Coleford
GL16 8HG

Decision (including any steps ordered)

1. The complainant has requested recorded information which primarily concerns, or is related to, the Forest of Dean District Council's enforcement notice served on the complainant in respect of the erection of a building without planning consent. The Council has refused parts of the complainant's request in reliance on section 14(1) of the FOIA and on section 42.
2. The Commissioner has decided that the Council is entitled to refuse to comply with the complainant's request in reliance on section 14(1) of the FOIA on the grounds that it is vexatious.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 9 March 2018, the complainant wrote to Forest of Dean District Council and asked to be provided with the following information:

"A copy of the Council's application for all business insurances at the last renewal, and copies of all correspondence relating to.

Copies of all correspondence, emails and office notes relating to all cases/matters dealt with at all by the Council's enforcement department from 1 April 2015 to date. I am requiring these in order that we can see

how these matters have been dealt with compared to my own case, and in particular regard was had (if any) to public interest in these cases. An overview of all the cases we feel may require us to do a report to the Secretary of State regarding the Council's conduct in relation to planning enforcement in the Forest of Dean over that period.

All documents brought into existence and held by you in whatever format relating to rates on [a specified address].

You were forced to supply documents previously relating to Sports and Leisure building [a specified address] and I require please all documents on that matter which are following on from those already supplied."

5. The Council responded to each of the four parts of the complainant's request on 9 April 2018. The Council's responses are summarised as:

Part 1: The Council refused to comply with part 1 of the request because it considered part 1 to be vexatious;

Part 2: The Council refused to comply with part 2 of the request on the grounds that to compliance would exceed the appropriate cost limit;

Part 3: The Council refused to comply with part 3 of the request because it has already supplied the complainant with "such information when [the] authority applied for a liability order against [the complainant] for unpaid Council Tax"; and.

Part 4: The Council responded to part 4 of the request by informing the complainant that, "you are already in possession of such information as it was served on you on 3 April when you were served with a copy of the application made by the Forest of Dean District Council to Court for an injunction under section 187B of the Town and Country Planning Act 1990 in respect of your unauthorised development".

6. On 10 April 2018, the complainant wrote to the Council to complain about its failure to supply to him the information he had asked for. In respect of part 2 of his request, the complainant asserted that it "relates solely to planning issues. All I need is access to the files, and presumably they are kept available and in some kind of order. Getting out the files should take only a few minutes each". In respect of part 3 of his request, the complainant stated his belief that the Council had not supplied him with all of the information it holds, and in respect of part 4 of his request, the complainant pointed out that the injunction contained only some of the documents and that he had requested all of them.

7. On 13 April 2018, the Council sent the complainant the results of its internal review. The Council upheld its decision in respect of part 1 of the request. In respect of part 2 of the request, the Council decided that this should also be refused on the grounds that it is vexatious. In respect of part 3 of the request, the Council restated its position that the documents have already been supplied to the complainant. In respect of part 4 of the request, the Council advised the complainant that, "all documents which are not the subject of legal privilege have already been supplied to you".
8. The Council's review also referred to an additional request made by the complainant on 9 March 2018. In that request, the complainant asked for:

"The names of anyone, not already on the attached list, who have been party to the decisions made by yourselves in this case.

The names of those who have taken the decision that the Council should continue with its demand for me to carry out the works.

Copies of any reports obtained by the Council which relate to the safety of enforcing the works to be carried out, in particular the O'Brien & Price Structural Engineers report. These are important to me as you are requesting that I carry out the works when all of the experts who I have consulted consider the work to be too dangerous to undertake and therefore I have a right to see those reports and you will have to produce them to the Court in any event.

...a copy of the Council's current Insurance Policy which covers damage and professional negligence."

9. The Council's internal review contained its response to the complainant's additional request: In respect of the first part of the request, the Council advised the complainant that it considered his request to be vexatious. The Council responded to the remaining parts of the request by informing the complainant that "these documents have already been provided to you".

Scope of the case

10. The complainant contacted the Commissioner on 16 April 2018 to complain about the way his request for information had been handled.

11. The complainant advised the Commissioner that he considers, "...that there is a very great maladministration within the Forest of Dean District Council", and, "I am undertaking investigation work so that a full report on its finances and other activities can be brought to the attention of the Government and other rate payers..." The complainant asserted his opinion that, "[the Council] do not wish to let me have the information as it will help prove what is going on".
12. The Commissioner determined that the focus of her investigation would be to determine whether the Forest of Dean District Council has handled the complainant's request in accordance with the FOIA, and specifically, to determine whether the Council is entitled to rely on section 14(1) of the FOIA in respect of those parts of the complainant's requests which it considers are vexatious. The Commissioner also investigated whether the Council is entitled to rely on section 42 of the FOIA in respect of the information it has withheld from the complainant in respect of part 4 of his request, where the Council referred to withholding documents which are subject to legal privilege.

Background information relevant to the complainant's request

13. The Council has provided the Commissioner with information which it considers is relevant to her consideration of its application of sections 14(1) and 42 of the FOIA. The Commissioner notes that the following information is given solely from the Council's perspective.
14. The Council has informed the Commissioner that it received a complaint from a member of the public in November 2013 which concerned excavations on land at the rear of and within the curtilage of two neighbouring properties.
15. Whilst planning permission had been granted for alterations to the existing dwelling at one of the properties, the complainant was concerned that the excavations appeared to be in the wrong location for that development.
16. A site visit made by planning officers on 11 November 2013, which resulted in the provision of written pre-application advice, with the conclusion that planning permission would be required for the development.
17. The development in question was the removal of a significant quantity of the land within the rear garden of one of the properties and a section of that within the neighbouring property. The Council understood that the

excavation was taking place to provide a level platform for the erection of a building.

18. The Council considered the engineering operations constituted an operational development requiring planning permission in their own right.
19. The retaining walls forming part of the proposed building exceeded 4 metres in height, and the Council understood that the proposed building would feature two storeys, with the height of the eaves of the resulting building also exceeding 2.5 metres.
20. The proposed use of the building was not considered incidental to the enjoyment of a dwelling house due to the scale and range of its proposed uses.
21. The proposed building and its dimensions fall outside those permitted under Class E, Part 1 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2011, nor did they relate to the curtilage of a single dwelling house.
22. The owner of the site, the complainant in this case, was in dialogue with planning officers regarding the need to obtain planning permission for the operational development that had taken place and that which still had to take place,
23. The complainant disputed the fact that the development required planning permission. In a letter to the complainant dated 10 December 2013, the Council advised him that planning permission was required for the development being undertaken on the site.
24. A report was made to the Council's Planning Committee meeting on 11 February 2014. This set out the background to the matter and considered the expediency of issuing an Enforcement Notice in respect of the on-going breach of planning control at the site. The report sought authority in the following terms:-

"...the Group Manager for Planning and Housing and the Legal Team Manager be authorised to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended) and be authorised to withdraw and to vary such notices and in the event of non-compliance, to take action by way of prosecution under Section 179 of the Act in respect of the breach of planning control/or for injunctive relief under Section 187B."

25. The Planning Committee resolved that its officers should take enforcement action in the terms sought.
26. The Council issued an Enforcement Notice on the complainant on 6 March 2014. The Notice identified breaches of planning control in respect of the following:
 - "Without planning permission, the removal of topsoil and subsoil from the Land, the creation of new land form and the reprofiling of the Land so as to alter the natural ground level."
 - "Without planning permission, operational development in the form of the construction of walls and the installation of drainage in connection with the proposed erection of a building on the area of the land which has been excavated".
27. The Notice required the complainant to comply with the following measures:
 - "i) Remove all structures, walls and materials placed on the Land in connection with the aforementioned breach from the Land."
 - "ii) Reinstate the land to its original levels."
 - Requirement i) Three (3) calendar months after this notice takes effect;
 - Requirement ii) Three (3) calendar months after this notice takes effect.
28. The Notice was stated as taking effect on 8 April 2014 unless the complainant appealed it beforehand.
29. In accordance with his statutory right, the complainant appealed the Enforcement Notice to the Planning Inspectorate and a hearing was held by an independent Planning Inspector on 30 September 2014 and 21st November 2014.
30. The Planning Inspector made a visit to the site on 21 November 2014. In his decision of 19 February 2015, the Inspector partially allowed the appeal and amended the Enforcement Notice so that the period for compliance was amended from 3 months to 2 years. The new compliance period was, in the opinion of the Inspector, a more realistic timescale, having regard to the amount of work required to comply with the Notice.

31. In March 2015, the complainant sought to appeal the decision made by the Planning Inspector in the Planning Court at Birmingham. The complainant's appeal was dismissed by an order of the Court dated 7 July 2015 and the application for permission to appeal was refused.
32. Notwithstanding the requirements of the amended Enforcement Notice, the complainant has made no effort whatsoever to comply with the requirements of the Notice: He has continued to steadfastly maintain that the development will not be removed from the land.

Reasons for decision

Section 14(1) – Vexatious requests

33. Under Section 14(1) of FOIA a public authority is not obliged to comply with a request for information where the request is vexatious. The exemption provided by section 14(1) is not subject to consideration of the public interest test.
34. The term 'vexatious' is not defined in the Freedom of Information Act and therefore the Commissioner has adopted the Upper Tribunal's approach taken in *Information Commissioner v Devon County Council & Dransfield*.¹
35. In the Dransfield case the Upper Tribunal defined a vexatious request as, the "...manifestly unjustified, inappropriate or improper use of a formal procedure" and in making this decision the Tribunal determined that the concepts of 'proportionality' and 'justification' should be central to any consideration of whether a request is vexatious.
36. The Upper Tribunal found it was instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff.
37. The Tribunal stressed that these considerations were not exhaustive and therefore it is important to adopt an holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the

¹ UKUT 440 (AAC) (28 January 2013) paragraph 27

attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

38. Following the approach taken by the Upper Tribunal, the Commissioner needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to its serious purpose and value.
39. In the Commissioner's opinion a balancing exercise is required which weighs the impact of the request on the Council against its purpose and value.
40. To assist in this exercise, the Commissioner has identified a number of "indicators" which she has set out in her published guidance² on the application of section 14(1). The fact that a request contains one or more of these indicators will not necessarily determine that it is vexatious, as all the circumstances associated with the request will need to be considered in making a judgement as to whether the request is vexatious.
41. The Council has advised the Commissioner that, resulting from the complainant's failure to comply with the Enforcement Notice, the Council has issued legal proceedings in the form of an injunction: The Council now seeks an order from the Court forcing the complainant to remove the structure he has built.
42. On becoming aware that the Council was likely to issue legal proceedings, the Council says that the complainant has "gone on a tirade of harassment and abusive practice, in an attempt to force the Council into changing its mind". The Council has provided the Commissioner with examples of the complainant's behaviours. In the Council's opinion the most notable of these behaviours are:
 - Issuing a number of "notices of criminal liability" to both councillors and staff
 - Attending the Council Offices to inspect the electoral role with a view to establishing where staff live and thereby enabling him to contact staff their personal addresses and follow through his threat of writing to mortgage companies

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

- Making allegations of fraud against the Council
 - Making allegations of malfeasance and misconduct in public office against the Council's staff
 - Making allegations of allegations of blackmail
 - Making formal complaints to the Solicitors Regulatory Authority about the Solicitors involved in the case
 - Making numerous complaints to the Local Government Ombudsman
 - Making complaints to the Information Commissioner, including one alleging the failure of the Council to comply his Subject Access Request
 - Issuing legal proceedings against the Council in relation to planning fees and council tax
 - Conducting a full 'audit' of the Councils financial records where the complainant attended the Council's offices and spent three days with a team of accountants
43. In addition to asserting the foregoing, the Council has assured the Commissioner that it has provided the complainant with all the information he has requested with the exception of documents which the Council considers attract legal professional privilege.
44. In respect of those documents held in reliance on section 42, the Council has directed the Commissioner's attention to her decision in a separate complaint considered under reference number FER0673182, where the Commissioner's decision was to uphold the Council's application of Regulation 12(5)(b) of the EIR.
45. The Council's position in respect of the complainant's request in this case is, that all the information, except that where the Council claims legal privilege, has been provided to the complainant.
46. Given that the Commissioner's decision in case FER0673182, the Council has made no further representations to the Commissioner in respect of its application of section 42 of the FOIA. Instead, the Council points out that its enforcement matter remains an on-going case and consequently legal professional privilege has not been lost.

The Commissioner's considerations and decision

47. The Commissioner has carefully considered the Council's representations together with the information which the Council has sent her in support of its position. The Commissioner has decided that the four parts of the complainants request made on 9 March 2018 should be considered as a single entity.

48. The Commissioner has also decided not to revisit her decision in case FER0673182 on the grounds that it dealt with, what is effectively, the same information. The Commissioner points out that the decision notice issued in that case advised the complainant of his right to appeal the Commissioner's decision to the First Tier Tribunal and the contact details of the Tribunal were provided in the Commissioner's notice.
49. The Commissioner considers that it is open to the Council to apply section 14(1) of the FOIA to all of the elements of the complainant's request and therefore using her discretion, and for the avoidance of doubt, the Commissioner's decision below concerns the complainant's request in its entirety.
50. One of the factors which the Commissioner looks for in respect of whether a request is vexatious is whether the request imposes a significant burden on the public authority. Such a burden may exist due to the time and resources the authority is required to spend in complying with the request, or it may be due to the burden the request has on the authority's staff.
51. The Council's evidence clearly indicates that significant resources have been spent, in terms of staff time and Council money, to comply with the complainant's previous requests, and to deal with the on-going legal dispute concerning the complainant's property. It also indicates the Council has been more than willing to comply with the complainant's past requests, insofar as it has been willing to provide him with large amounts of information, other than information which is exempt – as in case FER0673182.
52. The burden suggested by the Council's evidence is certainly present and not without significance, but it is not persuasive enough, on its own, for the Commissioner to conclude that the complainant's request is vexatious. To make that conclusion the Commissioner must additionally consider the burdensome effect of the complainant's request in terms of its harassment of staff, both implicit and explicit.
53. This form of burden is evidenced by the complainant's letter to the Council of 15 November 2017. In that letter, the complainant makes clear his intention to send updated Notices of Potential Criminal Liability to 24 of the Council's staff. The complainant's letter advises the Council that he would also alert the staff's mortgage providers, and joint owners, to the possibility they would be held criminally liable in the event his intended action against the Council is successful.

54. The Commissioner cannot support requests for information which uses the provisions of the FOIA to harass and attack the staff of a public authority. In this case, the Commissioner can find no legitimate reasons why the private addresses of councillors and employees should be disclosed into the public domain, which are greater than the privacy rights of those persons.
55. Additionally, the Commissioner cannot ignore the complaint made by the requestor to the Local Government Ombudsman and his allegations of fraud, malfeasance, etc. None of these complaints have been successful and at least one action has been terminated for being an abuse of process, and another dismissed for the failure of the complainant to disclose any reasonable grounds.
56. The Commissioner has given some consideration to the possible purpose of the complainant's request. It is clear that the complainant is seeking information which might support his position in respect of the Council's enforcement notice and in the event of future legal proceedings. The Commissioner therefore concedes that the information the complainant seeks has some value.
57. The Commissioner does not ignore the complainant's purpose, however she cannot give it any significant weight on the grounds that the information which the complainant seeks is of no particular value to the wider public, being narrowly focussed on the complainant's personal issue.
58. Taking the holistic approach advanced by the Tribunal in the Dransfield case, the Commissioner is drawn to conclude that the complainant's request of 9 March 2018 is vexatious.
59. The Commissioner's decision is that the Council is entitled to rely on the provisions of section 14(1) of the FOIA in respect of all the elements contained in the complainant's request.

Right of appeal

60. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

61. 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.

62. 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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