

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2022

Public Authority: Mid and East Antrim Borough Council

Address: The Braid
1-29 Bridge Street
Ballymena
BT43 5EJ

Decision (including any steps ordered)

1. The complainant has requested information from Mid and East Antrim Council ("the Council") in relation to the office relocation of the Council's Chief Executive in 2014.
2. The Commissioner's decision is that the Council has correctly applied section 14 (1) of FOIA to the request.
3. The Commissioner therefore requires no steps to be taken.

Request and response

4. On 14 October 2020, the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information Act please supply the following information:

In relation to the Chief Executive's office move from Ardeevin to The Braid in 2014 and any subsequent office changes thereafter, can you provide the following details please:

Q1. What sub-contractors (names and contact details) were used for the work completed split by the work done each year?

Q2. What work(s) was provided in summary by each of the sub-contractors, split by the year the work was done and the type of work done or name of supplier?

Q3. What was the approximate value of the payments to each of the sub-contractors in bands of £5k, e.g. if £17,500 (Exc. VAT) then state £15k - £20k Exc VAT?

Q4. What supplier(s) provided the office furniture and how much did that cost in bands of £5k, split by the year provided and each supplier?

Q5. Please state how the above sub-contractors / supplier(s) were procured and provide full details of that procurement. Please give full details, dates, who involved, names of bidders etc?"

5. The Council responded on 11 November 2020. It stated that it did hold information relating to the request, however [it refused to comply with the request as it considered it to be vexatious under section 14\(1\) FOIA.](#)
6. Following an internal review the Council wrote to the complainant and stated that it was upholding its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 5 February 2021 to complain about the way his request for information had been handled.
8. He disagreed with the Council's refusal to provide the requested information. The complainant considered that the Council could, and should, provide the requested information to ensure full transparency over how public money has been spent and in accordance with its commitment to openness and integrity.
9. The Commissioner has considered whether the Council has correctly applied section 14(1) of FOIA to the complainant's request.

Reasons for decision

Section 14-vexatious request

10. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

11. The term 'vexatious' is not defined in FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield. The Tribunal commented that vexatious could be defined as the:

"manifestly unjustified, inappropriate or improper use of a formal procedure".

The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

12. In the Dransfield case, the Upper Tribunal also found it 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 authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

13. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"...importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterises vexatious requests" (paragraph 45).

14. The Commissioner has published guidance on dealing with vexatious requests.¹ That guidance includes a number of indicators that may

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether or not a request is vexatious.

15. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.

16. In that respect, the Commissioner's guidance states:

"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

17. The Commissioner's guidance on section 14, also states, which is relevant to this case:

"If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious".

The complainant's view

18. The complainant stated in his initial complaint to the Commissioner that he had every right to submit a FOIA request to a public body and that he believed that, the Council's refusal to provide information in response to his request was "a clear communication that they have something to hide."

19. From the evidence the Commissioner has seen, the complainant did not put forward any arguments to the Council to counter its view that his requests were vexatious, beyond stating that he "strongly rejected" the Council's reasons for not providing the information.

20. However, the Commissioner notes that it does not fall upon the complainant to explain why the request is not vexatious; rather the burden falls upon the Council to explain why the request is vexatious.

The Council's view

21. In its correspondence with the complainant, the Council told him: "Mid and East Antrim Borough Council are of the opinion that "this request, in addition to previous requests are part of a wider campaign against Council".
22. Following an internal review, it stated that "the applicant persists in challenging through a variety of mechanisms in the manner of an ongoing campaign against the organisation. The information the applicant has requested has already been published in various forms, including through unrelated FOI requests. Where information has not been released, it is due to the fact it is not held by Council as detailed to the Information Commissioner's Office in previous investigations. The motivation behind the applicant's requests are clear and appear to stand only to provide irritation and an undue use of staff time and resources."
23. As the Council referred to "previous investigations" of the Information Commissioner, the Commissioner has referred to his previous decision notice (Reference: IC-49485-R5H4) which dealt with similar issues and upheld the Council's application of section 14 of FOIA.
24. In its submission to the Commissioner in the above-referenced decision notice, the Council explained why it considers the requests under consideration in that case: "... are part of a wider campaign against MEABC to unjustly use and monopolise council officers' time and resources unfairly". That explanation provided information about how the complainant was known to the Council.
25. The Council also stressed in its submission that section 14 of the FOIA: "...is not an exemption we use regularly". The Council told the Commissioner that when the requests under consideration were received, it was aware of almost-identical requests which had previously been submitted to the Council, and provided the Commissioner with details of those requests. In summary, the Council told the Commissioner: "Given the fact all requests are virtually identical, Council are of the opinion that [the complainant] is involved in some capacity".
26. In addition to the previous, near-identical, FOI requests, the Council provided an analysis of other communications it considered strengthened its argument. It evidenced a number of complaints it had received, and subject access requests (SARs) made under the Data Protection Act 2018 (DPA) by the complainant and others, which it

believed were associated with each other and which it concluded were part of a campaign against the Council.

27. Furthermore, the Council explained why it considers that the request in this case is linked to those complaints and other requests and how, taking everything into account, this amounts to a campaign. It argued that given the nature of the requests, the wording and stylistic similarities, there was a sufficient link between the complainant's requests and the campaign it believes is being waged against the Council. The Council told the Commissioner: "MEABC consider the above to be an inappropriate or improper use of a formal procedure".
28. As well as providing evidence in support of its view that the requests are part of a campaign, the Council referred in its submission to the indicators in the Commissioner's guidance that the Commissioner considers may be useful in identifying a vexatious request.
29. With respect to the 'No obvious intent to obtain information' indicator, the Council told the Commissioner that it considered that the complainant was abusing his right of access to information by using the legislation as a means to cause distress and vent anger towards it.
30. The Council also confirmed it had considered the four broad issues in *Dransfield*. For example, with respect to the burden imposed by the requests, the Council told the Commissioner it believed the complainant was part of a wider campaign targeting Council and its staff and that to continue to comply with his requests "will only continue to burden Council resources and time which are already limited".
31. With respect to the motive of the requester, the Council considered that his motive is to cause disruption. It also told the Commissioner that it considered that the requests have no value or serious purpose other than to disrupt Council business. Summarising, the Council told the Commissioner: "This campaign has been extremely labour intensive given the work involved within complying with the SARs, complaints and FOI requests".
32. The Council provided him with details of the amount of work involved, and the cost to the Council of that work, describing it as a significant burden in terms of resources. The Commissioner considers that the request which is the subject of this decision notice is similar, although not identical, to the requests which were the subject of the above-referenced decision notice. Having had sight of all of the correspondence referred to in the Commissioner's previous investigation, the Commissioner accepts that these are all related to procurement costs and other activities relating to expenditure by the Council. The Commissioner also notes that all of these requests were

submitted over a relatively short time period (December 2018-October 2020).

The Commissioner's view

33. The Commissioner acknowledges that there are many different reasons why a request may be vexatious, as reflected in her 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.
34. In his guidance on dealing with vexatious requests, the Commissioner recognises that FOIA was designed to give individuals a greater right of access to official information with the intention of increasing transparency and accountability within public bodies. Whilst most people exercise this right responsibly, the Commissioner acknowledges that a few may misuse or abuse FOIA by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
35. The Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
36. The Commissioner does, however, recognise that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

Was the request in this case vexatious?

37. With regard to the scenario whereby a public authority considers that requesters are abusing their information rights to engage in a campaign of disruption, the Commissioner's guidance on section 14 states: "The authority will need to have sufficient evidence to substantiate any claim of a link between the requests before it can go on to consider whether section 14(1) applies on these grounds".
38. The Commissioner considers that examples of the types of evidence a public authority might cite in support of its case are:
 - The requests are identical or similar;
 - They have received e-mail correspondence in which other requesters have been copied in or referred to;

- There is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time;
 - A group's website makes an explicit reference to a campaign against the public authority.
39. The Commissioner recognises that the Council relied on some of the above arguments in support of its belief that the requests which were the subject of the above-referenced decision notice were, to a significant degree, associated with previous requests received by it. He acknowledges that the Council provided evidence in his previous investigation to explain why it considers there are links between the various requests.
40. The Council's conclusions about these links came not only from the timing of the requests for information – while acknowledging the small number of requesters involved, it considered the sequence of requests to be significant – but also because of specific similarities in the information being requested and the wording and writing style used in the requests.
41. The Council considered that it strengthens its argument that previous FOIA requests it considers relevant were made using a pseudonym and/or by an individual who did not provide identification when asked to do so.
42. The Council believes that the requests in this case and the previous case are part of a campaign: the issue for the Commissioner is whether these other requests were sufficiently linked to the complainant's current request so as to be taken into account in assessing the nature of that request.
43. Having viewed the evidence, the Commissioner accepts that the wording of the seven requests in the previous case is near-identical to the wording of the previous requests shown to him by the Council. The request in this current case contains similar wording and themes to both those which it is known were previously submitted by the requester and those which the Council suspects were submitted by the requester under a pseudonym or by others as part of an ongoing campaign.
44. The Commissioner has acknowledged that some of the requests to which the Council directed him were made via the 'whatdotheyknow' website and are therefore in the public domain.

45. The Commissioner accepts that it is important to bear in mind that sometimes a number of individuals will independently ask for information on the same subject and that it is plausible that more than one requester may submit a request using similar or identical wording.
46. The Commissioner is also mindful of the complainant's argument that his requests had a serious purpose and value – namely transparency and accountability.
47. The Commissioner accepts that in isolation the request which is the subject of this decision notice could be said to display a serious purpose, namely informing the public of how taxpayers' money was spent.

Conclusion

48. In this case, the Commissioner acknowledges the absence of any explicit reference to a campaign, or any evidence that other requesters have been copied or mentioned in the requests. He also accepts that the information falling within the scope of these requests would enable the public to hold the Council to account.
49. However, on the evidence available to him, the Commissioner is satisfied that, on balance, the Council has demonstrated that there is a sufficient link to connect the request of the complainant in this current case to the requests in the previous case and also to the other requests which it considers to be part of a campaign of disruption.
50. From the information provided to him, the Commissioner is aware of the burden and distress placed upon the Council by all of the requests put together.
51. However, quite apart from their links to other requests discussed above, the Commissioner must have regard to the resources available to public authorities for dealing with requests for information.
52. The Commissioner is mindful of the number, and breadth, of previous requests. While accepting that, in isolation, this current request relates to matters of public interest, namely expenditure, contracts etc, the Commissioner is not satisfied that, given the wider context in which they are made, the purpose and value of the complainant's multiple requests is sufficient to justify the detrimental impact on the Council.
53. In the circumstances of this case, the Commissioner is satisfied that the Council was entitled to consider that the request was vexatious.

Right of appeal

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

55. 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.
56. 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

Deirdre Collins
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