

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 November 2018

**Public Authority:** City of York Council

**Address:** West Offices

Station Rise

York

YO1 6GA

### Decision (including any steps ordered)

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1. The complainant has made three requests covering a variety of issues but relating to audit activities.
2. The Commissioner's decision is that City of York Council ("the Council") has correctly applied Section 17(6) to the requests and, as such, it would have been unreasonable to expect the Council to have issued fresh refusal notices.
3. The Commissioner does not require the Council to take further steps

### Request and response

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#### Request 1

4. On 11 May 2018, the complainant wrote to the Council and requested information in the following terms:

*"At the A & G committee of 22 Feb 2017 all three statutory officers said and repeated that they had reported to the ICO compliance teams the alleged leak of an unpublished investigation into the procurement of consultants.*

*Since that time there has been silence in this regard. Please provide all the correspondence between the ICO and each of the statutory officers, include the ICO investigation and their conclusions."*

Request 2

5. On 29 May 2018, the complainant made a further request to the Council in the following terms:

*"For the financial years 2015/6 and 2016/7 and 2017/8 please provide a schedule of the following for every decision marked key in the following categories*

- 1. Each key decision made that concerned 10% of a budget area.*
- 2. Please provide the recorded material as to what level of disaggregation is used for a 'budget area in the context of (1) above*
- 3. Each decision that was made that affected one ward, that was below the £500k key decision level*
- 4. Each decision that was made that affected two or more wards that was below the £500k*
- 5. Regarding delegated key decisions to officers can you assist in providing the recorded information into how that system works*
- 6. Provide the list of any/all key decisions made by officers by date, officer, protect, contract, value, directorate for the same period.*
- 7. Please provide the protocols for the publication of any key decisions to be made by officers.*
- 8. Please provide any circumstances in which an Exec Member would make a key decision outwith the Exec Committee*
- 9. Provide a list of all key decisions made by any individual Exec Member in the last three years as above:*
- 10. Provide the protocols on how a decision is allocated key."*

Request 3

6. On 15 June 2018, the complainant made a third request in the following terms:

*"Please will you provide the following:*

- 1. The process you went through or are going through to meet the requirements to include -*

2. *Recorded information and reports to committees ahead of the audit, dates, which committee, selection of supplier etc*
  3. *The process of the inspection, who interviews timescales etc*
  4. *The supplier who undertook your inspection and the Terms of reference*
  5. *The completed report and action plans and where and when it was reported, any follow up reports and cost.*
  6. *If your internal audit service provided this service to any other local authority in a reciprocal or other arrangement.*
7. The Council acknowledged all three requests but did not issue responses to any of them.

### **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way her requests for information had been handled.
9. The Commissioner contacted the Council on 2 November 2018 to highlight the outstanding responses. The Council confirmed that it considered that the requests were vexatious and that it wished to rely on Section 17(6) not to issue fresh refusal notices.
10. The scope of the Commissioner's investigation is to determine whether the Council was entitled to rely on Section 17(6) to refuse the requests.

### **Reasons for decision**

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11. Section 1(1) of the FOIA states that:

*"Any person making a request for information to a public authority is entitled—*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

12. Section 14 of the FOIA states that:

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

13. Section 17 of the FOIA states that:

*"(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.*

*(6) Subsection (5) does not apply where—*

*(a) the public authority is relying on a claim that section 14 applies,*

*(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*

*(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."*

14. On 1 November 2018, the Commissioner issued Decision Notice FS50754577 in which she upheld the Council's reliance on Section 17(6) to refuse another request. In that Decision Notice she noted that:

*"23. In this case the Commissioner notes that the Council does continue to respond to some of the complainant's requests and is only refusing those requests it considers to be a continuation of an underlying grievance.*

*"24. Whilst the Commissioner considers that there may be some public interest in the specific information that the complainant has requested and that there is always an inherent interest in transparency, the value of this request does not outweigh the substantial and ongoing burden upon the Council in complying with the requests.*

*"25. Furthermore, the Commissioner considers that it is unlikely that complying with this request (or even issuing a fresh refusal notice) would do anything to stem the stream of requests from this particular requestor (and she notes that the requestor had submitted at least 17 requests between the previous decision notice and the current request). The Commissioner also notes that the Council is still making efforts to comply with requests which it recognises as being for information with a strong public interest. "*

15. The Commissioner's view is that the analysis she set out in Decision Notice FS50754577 is equally applicable to all three of the requests set out above. Whatever public interest there may be in the information is outweighed by the burden placed upon the Council by the significant weight of requests being made.
16. This correspondence shows no sign of abating and therefore the Commissioner concludes that the requests are vexatious and it would be unreasonable in the circumstances to expect the Council to issue fresh refusal notices. She therefore finds that the Council is entitled to rely on Section 17(6) of the FOIA.

## Right of appeal

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17. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**